



# Pensions Act 2004

## 2004 CHAPTER 35

### PART 1

#### THE PENSIONS REGULATOR

##### Modifications etc. (not altering text)

- C1** Pt. 1 applied in part (with modifications) (20.7.2005 for specified purposes, 1.9.2005 for specified purposes, 5.12.2005 for specified purposes) by [The Financial Assistance Scheme Regulations 2005 \(S.I. 2005/1986\)](#), regs. 1(1), 4, **Sch. 1** Pt. 1 (as amended (17.7.2008) by [The Financial Assistance Scheme \(Miscellaneous Amendments\) Regulations 2008 \(S.I. 2008/1903\)](#), regs. 1, 5(2), 13; (10.7.2009) by [The Financial Assistance Scheme \(Miscellaneous Provisions\) Regulations 2009 \(S.I. 2009/1851\)](#), regs. 1, 5, 18; (2.4.2010) by [The Financial Assistance Scheme \(Miscellaneous Amendments\) Regulations 2010 \(S.I. 2010/1149\)](#), regs. 1, 5, 15)

##### *Establishment*

## 1 The Pensions Regulator

There shall be a body corporate called the Pensions Regulator (in this Act referred to as “the Regulator”).

##### Commencement Information

- II** S. 1 in force at 17.12.2004 by [S.I. 2004/3350](#), art. 2, **Sch.**

## 2 Membership of the Regulator

- (1) The Regulator is to consist of the following members—
- a chairman appointed by the Secretary of State,
  - the Chief Executive of the Regulator, and

*Status: Point in time view as at 22/04/2011.*

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- (c) at least five other persons appointed by the Secretary of State after consulting the chairman.
- (2) The chairman must not be appointed from the staff of the Regulator or be the chairman of the Board of the Pension Protection Fund (see section 108).
- (3) At least two of the members appointed under subsection (1)(c) must be appointed from the staff of the Regulator.
- (4) In appointing persons under subsection (1)(c) the Secretary of State must secure that a majority of the members of the Regulator are non-executive members.
- (5) No member of the staff of the Board of the Pension Protection Fund is eligible for appointment as a member of the Regulator.
- (6) In this Part—
  - (a) references to executive members of the Regulator are to—
    - (i) the Chief Executive, and
    - (ii) the members appointed under subsection (1)(c) from the staff of the Regulator, and
  - (b) references to non-executive members of the Regulator are to members who are not executive members.

#### Commencement Information

- I2** S. 2(1)(2)(4)-(6) in force at 17.12.2004 by [S.I. 2004/3350](#), [art. 2](#), [Sch.](#)
- I3** S. 2(3) in force at 6.4.2005 by [S.I. 2005/275](#), [art. 2\(7\)](#), [Sch. Pt. 7](#)

### 3 Further provision about the Regulator

Schedule 1 makes further provision about the Regulator, including provision as to—  
the terms of appointment, tenure and remuneration of members,  
the appointment of the Chief Executive and other staff,  
the proceedings of the Regulator,  
its funding and accounts, and  
the status and liability of the Regulator, its members and staff.

#### Commencement Information

- I4** S. 3 in force at 17.12.2004 for specified purposes by [S.I. 2004/3350](#), [art. 2](#), [Sch.](#)
- I5** S. 3 in force at 1.4.2005 for specified purposes by [S.I. 2005/275](#), [art. 2\(2\)](#), [Sch. Pt. 2](#) at 10.2.2005 for specified purposes; at 1.4.2005 for all other purposes in so far as it relates to Sch. 1 para. 26, (with transitional provisions and savings in [S.I. 2005/695](#), arts. 5(8), 6, Schs. 2, 3 (as amended by [S.I. 2005/1108](#), art. 3(b))
- I6** S. 3 in force at 10.2.2005 for specified purposes by [S.I. 2005/275](#), [art. 2\(4\)](#), [Sch. Pt. 4](#)
- I7** S. 3 in force at 6.4.2005 for specified purposes by [S.I. 2005/275](#), [art. 2\(7\)](#), [Sch. Pt. 7](#)

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### *General provisions about functions*

## **4 Regulator's functions**

- (1) The Regulator has—
  - (a) the functions transferred to it from the Occupational Pensions Regulatory Authority by virtue of this Act or any provisions in force in Northern Ireland corresponding to this Act, and
  - (b) any other functions conferred by, or by virtue of, this or any other enactment.
- (2) As regards the exercise of the Regulator's functions—
  - (a) the non-executive functions listed in subsection (4) of section 8 must, by virtue of subsection (2) of that section, be discharged by the committee established under that section,
  - (b) the functions mentioned in the following provisions are exercisable only by the Determinations Panel—
    - (i) section 10(1) (the power in certain circumstances to determine whether to exercise the functions listed in Schedule 2 and to exercise them), and
    - (ii) section 99(10) (the functions concerning the compulsory review of certain determinations), and
  - (c) the exercise of other functions of the Regulator may be delegated by the Regulator under paragraph 20 of Schedule 1.
- (3) Subsection (2) is subject to any regulations made by the Secretary of State under paragraph 21 of Schedule 1 (power to limit or permit delegation of functions).

#### **Commencement Information**

- I8** S. 4(1)(a)(2)(3) in force at 6.4.2005 by [S.I. 2005/275](#), art. 2(7), [Sch. Pt. 7](#)
- I9** S. 4(1)(b) in force at 17.12.2004 by [S.I. 2004/3350](#), art. 2, [Sch.](#)

## **5 Regulator's objectives**

- (1) The main objectives of the Regulator in exercising its functions are—
  - (a) to protect the benefits under occupational pension schemes of, or in respect of, members of such schemes,
  - (b) to protect the benefits under personal pension schemes of, or in respect of, members of such schemes within subsection (2),
  - (c) to reduce the risk of situations arising which may lead to compensation being payable from the Pension Protection Fund (see Part 2),
  - [<sup>F1</sup>(ca) to maximise compliance with the duties under Chapter 1 of Part 1 (and the safeguards in sections 50 and 54) of the Pensions Act 2008,] and
  - (d) to promote, and to improve understanding of, the good administration of work-based pension schemes.
- (2) For the purposes of subsection (1)(b) the members of personal pension schemes within this subsection are—
  - (a) the members who are employees in respect of whom direct payment arrangements exist, and

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(b) where the scheme is a stakeholder pension scheme, any other members.

(3) In this section—

“stakeholder pension scheme” means a personal pension scheme which is or has been registered under section 2 of the Welfare Reform and Pensions Act 1999 (c. 30) (register of stakeholder schemes);

“work-based pension scheme” means—

- (a) an occupational pension scheme,
- (b) a personal pension scheme where direct payment arrangements exist in respect of one or more members of the scheme who are employees, or
- (c) a stakeholder pension scheme.

#### Textual Amendments

**F1** S. 5(1)(ca) inserted (16.3.2011) by [Pensions Act 2008 \(c. 30\)](#), **ss. 65**, 149(1); [S.I. 2011/664](#), **art. 2(1)**

#### Commencement Information

**I10** S. 5(1)(2) in force at 6.4.2005 by [S.I. 2005/275](#), **art. 2(7)**, **Sch. Pt. 7**

**I11** S. 5(3) in force at 17.12.2004 by [S.I. 2004/3350](#), **art. 2**, **Sch.**

## 6 Supplementary powers

The Regulator may do anything (except borrow money) which—

- (a) is calculated to facilitate the exercise of its functions, or
- (b) is incidental or conducive to their exercise.

#### Commencement Information

**I12** S. 6 in force at 17.12.2004 by [S.I. 2004/3350](#), **art. 2**, **Sch.**

## 7 Transfer of OPRA’s functions to the Regulator

(1) Subject to the provisions of this Act, the functions of the Occupational Pensions Regulatory Authority (“OPRA”) conferred by or by virtue of—

- (a) the Pension Schemes Act 1993 (c. 48),
- (b) the Pensions Act 1995 (c. 26), and
- (c) the Welfare Reform and Pensions Act 1999,

are hereby transferred to the Regulator.

(2) Accordingly—

- (a) in section 181(1) of the Pension Schemes Act 1993 (which defines “the Regulatory Authority” to mean OPRA), for the definition of “the Regulatory Authority” substitute—

““the Regulatory Authority” means the Pensions Regulator;”,

- (b) in section 124(1) of the Pensions Act 1995 (which defines “the Authority”, in Part 1 of that Act, to mean OPRA), for the definition of “the Authority” substitute—

““the Authority” means the Pensions Regulator;”,

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- (c) in section 8(1) of the Welfare Reform and Pensions Act 1999 (c. 30) (which defines “the Authority”, in Part 1 of that Act to mean OPRA), for the definition of “the Authority” substitute—

““the Authority” means the Pensions Regulator;”, and

- (d) in section 33 of that Act (time for discharge of pension credit liability), in subsection (5) for “the Occupational Pensions Regulatory Authority” substitute “the Pensions Regulator”.

#### Commencement Information

**113** S. 7 in force at 6.4.2005 by [S.I. 2005/275](#), art. 2(7), [Sch. Pt. 7](#) (with transitional provisions and savings in [S.I. 2005/695](#), arts. 5(8), 6, Schs. 2, 3 (as amended by [S.I. 2005/1108](#), art. 3(b))

### *Non-executive functions*

## **8 Non-executive functions**

- (1) The functions listed in subsection (4) (in this Part referred to as “the non-executive functions”) are functions of the Regulator.
- (2) The Regulator must establish a committee to discharge the non-executive functions on its behalf.
- (3) Only non-executive members of the Regulator may be members of the committee.
- (4) The non-executive functions are—
  - (a) the duty to keep under review the question whether the Regulator’s internal financial controls secure the proper conduct of its financial affairs;
  - (b) the duty to determine under paragraph 8(4)(b) of Schedule 1, subject to the approval of the Secretary of State, the terms and conditions as to remuneration of any Chief Executive appointed under paragraph 8(4)(a) of that Schedule.
- (5) The committee established under this section must prepare a report on the discharge of the non-executive functions for inclusion in the Regulator’s annual report to the Secretary of State under section 11.
- (6) The committee’s report must relate to the same period as that covered by the Regulator’s report.
- (7) The committee may establish sub-committees, and the members of any such sub-committee—
  - (a) may include persons who are not members of the committee or of the Regulator, but
  - (b) must not include persons who are executive members or other staff of the Regulator.
- (8) The committee may authorise any of its members or any of its sub-committees to discharge on its behalf—
  - (a) any of the non-executive functions;
  - (b) the duty to prepare a report under subsection (5).

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- (9) The committee (or any of its sub-committees) may be authorised under paragraph 20(1) of Schedule 1 to exercise further functions of the Regulator.
- (10) This section is subject to any regulations made by the Secretary of State under paragraph 21 of Schedule 1 (power to limit or permit delegation of functions).

#### Commencement Information

**I14** S. 8(1)(4)-(6)(8)(b)(9)(10) in force at 6.4.2005 by [S.I. 2005/275](#), art. 2(7), [Sch. Pt. 7](#)

**I15** S. 8(2)(3)(7)(8)(a) in force at 17.12.2004 by [S.I. 2004/3350](#), art. 2, [Sch.](#)

### *The Determinations Panel*

## 9 The Determinations Panel

- (1) The Regulator must establish and maintain a committee consisting of—
- (a) a chairman, and
  - (b) at least six other persons,
- (in this Part referred to as “the Determinations Panel”).
- (2) The Regulator must appoint as the chairman of the Panel the person nominated in accordance with paragraph 11 of Schedule 1 (nomination by a committee established by the chairman of the Regulator).
- (3) The chairman of the Panel must—
- (a) decide the number of persons to be appointed as the other members of the Panel, and
  - (b) nominate a person suitable for each of those appointments.
- (4) The Regulator must then appoint as the other members of the Panel the persons nominated by the chairman of the Panel.
- (5) The following are ineligible for appointment as members of the Panel—
- (a) any member of the Regulator;
  - (b) any member of the staff of the Regulator;
  - (c) any member of the Board of the Pension Protection Fund;
  - (d) any member of the staff of that Board.
- (6) The Panel may establish sub-committees consisting of members of the Panel.
- (7) Further provision about the Panel is made in Schedule 1, including provision as to the terms of appointment, tenure and remuneration of members and as to its procedure.

#### Commencement Information

**I16** S. 9 in force at 17.12.2004 by [S.I. 2004/3350](#), art. 2, [Sch.](#)

## 10 Functions exercisable by the Determinations Panel

- (1) The Determinations Panel is to exercise on behalf of the Regulator—

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- (a) the power to determine, in the circumstances described in subsection (2), whether to exercise a reserved regulatory function, and
  - (b) where it so determines to exercise a reserved regulatory function, the power to exercise the function in question.
- (2) Those circumstances are—
- (a) where the Regulator considers that the exercise of the reserved regulatory function may be appropriate, or
  - (b) where an application is made under, or by virtue of, any of the provisions listed in subsection (6) for the Regulator to exercise the reserved regulatory function.
- (3) Where subsection (1) applies, the powers mentioned in that subsection are not otherwise exercisable by or on behalf of the Regulator.
- (4) For the purposes of this Part, a function of the Regulator is a “reserved regulatory function” if it is a function listed in Schedule 2.
- (5) Regulations may amend Schedule 2 by—
- (a) adding any function of the Regulator conferred by, or by virtue of, this or any other enactment,
  - (b) omitting any such function, or
  - (c) altering the description of any such function contained in that Schedule.
- (6) The provisions referred to in subsection (2)(b) are—
- (a) section 20(10) (application to permit payments out of an account that is subject to a restraining order);
  - (b) section 26(2) (application for order validating action taken in contravention of freezing order);
  - (c) section 41(7) (application for the issue of a revised contribution notice under section 41(9));
  - (d) section 50(7) (application for the issue of a revised contribution notice under section 50(9));
  - (e) section 3(3) of the Pensions Act 1995 (c. 26) (application for revocation of prohibition order);
  - (f) section 4(5) of that Act (application for revocation of a suspension order);
  - (g) section 7(5A) of that Act (application for appointment of a trustee under section 7(3)(a) or (c) of that Act);
  - (h) section 29(5) of that Act (application for waiver of disqualification);
  - [<sup>F2</sup>(ha) section 58(7) of that Act (power of the Regulator in prescribed circumstances to extend or further extend the period referred to in section 58(6) of that Act in relation to a schedule of contributions);
  - (hb) section 60(7) of that Act (power of the Regulator in prescribed circumstances to extend or further extend the period applicable under section 60(3) of that Act in relation to securing an increase in value);]
  - (i) section 69(1) of that Act (application for order authorising modification or modifying a scheme);
  - (j) section 71A(2) of that Act (application for modifying a scheme to secure winding up);
  - (k) section 99(4A) of the Pension Schemes Act 1993 (c. 48) (application for extension under section 99(4) of that Act of a period for compliance);

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- (l) section 101J(6)(a) of that Act (application for extension under section 101J(2) of that Act of a period for compliance).
- (7) Regulations may amend subsection (6) by—
  - (a) adding any provision of this or any other enactment to the list in that subsection, or
  - (b) omitting or altering the description of any provision mentioned in that list.
- (8) The Panel may be authorised under paragraph 20(4) or (6) of Schedule 1 to exercise further functions of the Regulator on behalf of the Regulator.
- (9) The Panel may authorise any of its members or any of its sub-committees to exercise on its behalf—
  - (a) any of the functions of the Regulator which are exercisable by the Panel on behalf of the Regulator, or
  - (b) any of the functions of the Panel under section 93(3), section 99(11) and paragraph 18(2) of Schedule 1 (procedure).
- (10) This section is subject to any regulations made by the Secretary of State under paragraph 21 of Schedule 1 (power to limit or permit delegation of functions).

#### Textual Amendments

- F2** S. 10(6)(ha)(hb) inserted (19.8.2005) by [The Occupational Pension Schemes \(Miscellaneous Amendments\) Regulations 2005 \(S.I. 2005/2113\)](#), regs. 1(1), **2(1)** (with reg. 2(3))

#### Commencement Information

- I17** S. 10 in force at 6.4.2005 in so far as not already in force by [S.I. 2005/695](#), **art. 2(1)** (with [arts. 4-6](#), [Sch. 2](#), [Sch. 3](#))
- I18** S. 10(5)(a) for the purpose only of conferring power to make regulations, orders or rules, as the case may be, 10.2.2005; and for all other purposes, 6.4.2005 by [S.I. 2005/275](#), **art. 2(3)**, **Sch. Pt. 3**
- I19** S. 10(9)(b) in force at 17.12.2004 for specified purposes by [S.I. 2004/3350](#), **art. 2**, **Sch.**

### *Annual report*

## 11 Annual reports to Secretary of State

- (1) The Regulator must prepare a report for each financial year.
- (2) Each report—
  - (a) must deal with the activities of the Regulator in the financial year for which it is prepared, including the matters mentioned in subsection (3), and
  - (b) must include the report prepared under subsection (5) of section 8 by the committee established under that section.
- (3) The matters referred to in subsection (2)(a) are—
  - (a) the strategic direction of the Regulator and the manner in which it has been kept under review;
  - (b) the steps taken to scrutinise the performance of the Chief Executive in securing that the Regulator’s functions are exercised efficiently and effectively;



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- (c) the Regulator’s objectives and targets (including its main objectives as set out in section 5 or in any corresponding provision in force in Northern Ireland) and the steps taken to monitor the extent to which they are being met.
- (4) The Regulator must send each report to the Secretary of State as soon as practicable after the end of the financial year for which it is prepared.
- (5) The Secretary of State must lay before each House of Parliament a copy of every report received by him under this section.
- (6) In this section “financial year” means—
  - (a) the period beginning with the date on which the Regulator is established and ending with the next following 31st March, and
  - (b) each successive period of 12 months.

**Commencement Information**

**I20** S. 11 in force at 10.2.2005 by [S.I. 2005/275](#), art. 2(4), [Sch. Pt. 4](#)

*Provision of information, education and assistance*

**12 Provision of information, education and assistance**

- (1) The Regulator may provide such information, education and assistance as it considers appropriate to those involved in—
  - (a) the administration of work-based pension schemes, or
  - (b) advising the trustees or managers in relation to such schemes as to their operation.
- (2) To the extent that it is not authorised to do so under subsection (1), the Regulator may also provide such information, education and assistance as it considers appropriate to—
  - (a) employers in relation to work-based pension schemes,
  - (b) persons involved in advising such employers as to the operation of such schemes, or
  - (c) persons upon whom duties are imposed by or by virtue of section 238 (information and advice to employees).
- (3) For the purposes of subsection (2), “employers in relation to work-based pension schemes” means, in the case of stakeholder pension schemes, the persons upon whom duties are imposed by or by virtue of section 3 of the Welfare Reform and Pensions Act 1999 (c. 30) (duty of employers to facilitate access to stakeholder pension schemes).
- (4) In this section—
  - “assistance” does not include financial assistance;
  - “stakeholder pension scheme” and “work-based pension scheme” have the same meaning as in section 5 (Regulator’s objectives).

**Commencement Information**

**I21** S. 12(1)(2)(a)(b)(3)(4) in force at 17.12.2004 by [S.I. 2004/3350](#), art. 2, [Sch.](#)

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*New powers in respect of occupational and personal pension schemes*

### **13 Improvement notices**

- (1) If the Regulator is of the opinion that a person—
  - (a) is contravening one or more provisions of the pensions legislation, or
  - (b) has contravened one or more of those provisions in circumstances that make it likely that the contravention will continue or be repeated,
 it may issue a notice (an “improvement notice”) to that person directing him to take, or refrain from taking, such steps as are specified in the notice in order to remedy or prevent a recurrence of the contravention.
- (2) An improvement notice must—
  - (a) state that the Regulator is of that opinion and specify the provision or provisions of the pensions legislation in question,
  - (b) contain a statement of the matters which it is asserted constitute the contravention and of the evidence on which that opinion is based, and
  - (c) in respect of each step specified in the notice, state the period (being a period of not less than 21 days beginning with the date of the notice) within which it must be complied with.
- (3) Directions in an improvement notice—
  - (a) may be framed to any extent by reference to a code of practice issued by the Regulator under section 90, and
  - (b) may be framed so as to afford the person to whom the notice is issued a choice between different ways of remedying or preventing the recurrence of the contravention.
- (4) Directions in an improvement notice may be expressed to be conditional on compliance by a third party with a specified direction, or specified directions, contained in a notice under section 14 (third party notices).
- (5) An improvement notice may direct the person to whom it is issued to inform the Regulator, within such period as may be specified in the notice, of how he has complied, or is complying, with the notice.
- (6) Where a contravention of a provision of the pensions legislation consists of a failure to take action within a time limit, for the purposes of this section the contravention continues until such time as the action is taken.
- (7) In this section “pensions legislation” means any enactment contained in or made by virtue of—
  - (a) the Pension Schemes Act 1993 (c. 48),
  - (b) Part 1 of the Pensions Act 1995 (c. 26), other than sections 62 to 66A of that Act (equal treatment),
  - (c) Part 1 or section 33 of the Welfare Reform and Pensions Act 1999 (c. 30), or
  - (d) this Act.
- (8) If the trustees or managers of an occupational or personal pension scheme fail to comply with an improvement notice issued to them, section 10 of the Pensions Act 1995 (civil penalties) applies to any trustee or manager who has failed to take all reasonable steps to secure compliance.

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- (9) That section also applies to any other person who, without reasonable excuse, fails to comply with an improvement notice issued to him.

**Modifications etc. (not altering text)**

- C2** S. 13(7) modified (30.12.2005) by [The Occupational Pension Schemes \(Regulatory Own Funds\) Regulations 2005 \(S.I. 2005/3380\)](#), regs. 1, 13

**Commencement Information**

- I22** S. 13 in force at 6.4.2005 by [S.I. 2005/275](#), art. 2(7), [Sch. Pt. 7](#)

## 14 Third party notices

- (1) Where the Regulator is of the opinion that—
- (a) a person—
    - (i) is contravening one or more provisions of the pensions legislation, or
    - (ii) has contravened one or more of those provisions in circumstances that make it likely that the contravention will continue or be repeated,
  - (b) the contravention is or was, wholly or partly, a result of a failure of another person (“the third party”) to do any thing, and
  - (c) that failure is not itself a contravention of the pensions legislation,
- the Regulator may issue a notice (a “third party notice”) directing the third party to take, or refrain from taking, such steps as are specified in the notice in order to remedy or prevent a recurrence of his failure.
- (2) A third party notice must—
- (a) state that the Regulator is of that opinion and specify the provision or provisions of the pensions legislation in question,
  - (b) contain a statement of—
    - (i) the matters which it is asserted constitute the contravention of the provision or provisions, and
    - (ii) the matters which it is asserted constitute the failure by the third party, and the evidence on which that opinion is based, and
  - (c) in respect of each step specified in the notice, state the period (being a period of not less than 21 days beginning with the date of the notice) within which it must be complied with.
- (3) Directions in a third party notice may be framed so as to afford the third party a choice between different ways of remedying or preventing the recurrence of his failure.
- (4) A third party notice may direct the third party to inform the Regulator, within such period as may be specified in the notice, of how he has complied, or is complying, with the notice.
- (5) Where a contravention of a provision of the pensions legislation consists of a failure to take action within a time limit, for the purposes of this section the contravention continues until such time as the action is taken.
- (6) Section 10 of the Pensions Act 1995 (c. 26) (civil penalties) applies to a person who, without reasonable excuse, fails to comply with a third party notice issued to him.

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- (7) No duty to which a person is subject is to be regarded as contravened merely because of anything required to be done in compliance with a third party notice.

This is subject to section 311 (protected items).

- (8) In this section “pensions legislation” has the same meaning as in section 13.

**Modifications etc. (not altering text)**

- C3** S. 14(8) modified (30.12.2005) by [The Occupational Pension Schemes \(Regulatory Own Funds\) Regulations 2005 \(S.I. 2005/3380\)](#), regs. 1, **13**

**Commencement Information**

- I23** S. 14 in force at 6.4.2005 by [S.I. 2005/275](#), art. 2(7), **Sch. Pt. 7**

## 15 Injunctions and interdicts

- (1) If, on the application of the Regulator, the court is satisfied that—
- (a) there is a reasonable likelihood that a particular person will do any act which constitutes a misuse or misappropriation of any of the assets of an occupational or personal pension scheme, or
  - (b) a particular person has done any such act and there is a reasonable likelihood that he will continue or repeat the act in question or do a similar act,
- the court may grant an injunction restraining him from doing so or, in Scotland, an interdict prohibiting him from doing so.
- (2) The jurisdiction conferred by this section is exercisable by the High Court or the Court of Session.

**Commencement Information**

- I24** S. 15 in force at 6.4.2005 by [S.I. 2005/275](#), art. 2(7), **Sch. Pt. 7**

## 16 Restitution

- (1) If, on the application of the Regulator, the court is satisfied that there has been a misuse or misappropriation of any of the assets of an occupational or personal pension scheme, it may order any person involved to take such steps as the court may direct for restoring the parties to the position in which they were before the misuse or misappropriation occurred.
- (2) For this purpose a person is “involved” if he appears to the court to have been knowingly concerned in the misuse or misappropriation of the assets.
- (3) The jurisdiction conferred by this section is exercisable by the High Court or the Court of Session.

**Commencement Information**

- I25** S. 16 in force at 6.4.2005 by [S.I. 2005/275](#), art. 2(7), **Sch. Pt. 7**

*Status: Point in time view as at 22/04/2011.*

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## 17 Power of the Regulator to recover unpaid contributions

- (1) Where any employer contribution payable towards an occupational or personal pension scheme is not paid on or before its due date, the Regulator may, on behalf of the trustees or managers of the scheme, exercise such powers as the trustees or managers have to recover that contribution.
- (2) For the purposes of subsection (1), any employer contribution payable towards a personal pension scheme which is not paid on or before its due date is, if not a debt due from the employer to the trustees or managers apart from this subsection, to be treated as if it were such a debt.
- (3) In this section—
  - “due date”—
    - (a) in relation to employer contributions payable towards an occupational pension scheme in accordance with a schedule of contributions under section 227, has the same meaning as in section 228,
    - (b) in relation to employer contributions payable in accordance with a payment schedule under section 87 of the Pensions Act 1995 (c. 26) (schedules of payments to money purchase schemes), has the meaning given by subsection (2)(c) of that section, and
    - (c) in relation to employer contributions payable towards a personal pension scheme, has the same meaning as in section 111A of the Pension Schemes Act 1993 (c. 48) (monitoring of employer payments to personal pension schemes);
  - “employer contribution”—
    - (a) in relation to an occupational pension scheme, means any contribution payable by or on behalf of the employer towards the scheme in accordance with a schedule of contributions under section 227 of this Act or a payment schedule under section 87 of the Pensions Act 1995 (c. 26) (schedules of payments to money purchase schemes) whether—
      - (i) on the employer’s own account (but in respect of one or more employees), or
      - (ii) on behalf of an employee out of deductions from the employee’s earnings, and
    - (b) in relation to a personal pension scheme, means any contribution payable towards the scheme under direct payment arrangements.

### Commencement Information

**I26** S. 17 in force at 6.4.2005 by [S.I. 2005/275](#), [art. 2\(7\)](#), [Sch. Pt. 7](#)

## 18 Pension liberation: interpretation

- (1) In this section and sections 19 to 21—
  - (a) “pension scheme” means an occupational pension scheme or a personal pension scheme,
  - (b) “deposit-taker” has the meaning given by subsections (8A) and (8B) of section 49 of the Pensions Act 1995, except that, for the purposes of this definition, subsection (8A)(c) of that section has effect with the omission of the words from “or” to the end,

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- (c) references to money liberated from a pension scheme are to be read in accordance with subsection (2),
  - (d) “liberated member”, in relation to money liberated from a pension scheme, means the member of the pension scheme who is referred to in subsection (2) (a), and
  - (e) “restraining order” means a restraining order under section 20.
- (2) Money is to be taken to have been liberated from a pension scheme if—
- (a) the money directly or indirectly represents an amount that, in respect of accrued rights of a member of a pension scheme, has been transferred out of the scheme in pursuance of—
    - (i) a relevant statutory provision, or
    - (ii) a provision of the applicable rules, other than a relevant statutory provision,
  - (b) the trustees or managers of the scheme transferred the amount out of the scheme on the basis that a third party (“the liberator”) would secure that the amount was used in an authorised way,
  - (c) the amount has not been used in an authorised way, and
  - (d) the liberator has not secured, and is not likely to secure, that the amount will be used in an authorised way.
- (3) The following are “relevant statutory provisions” for the purposes of subsection (2)—
- (a) section 94(1)(a), (aa) or (b) of the Pension Schemes Act 1993 (c. 48) (right to cash equivalent under Chapter 4 of Part 4 of that Act);
  - (b) section 101AB(1)(a) of that Act (right to cash transfer sum under Chapter 5 of Part 4 of that Act);
  - (c) section 101F(1) of that Act (right to cash equivalent of pension credit benefit).
- (4) In subsection (2) “authorised way” means—
- (a) where the amount concerned is transferred out of the scheme in pursuance of a provision mentioned in subsection (3)(a), a way specified in subsection (2) or, as the case may be, subsection (3) of section 95 of the Pension Schemes Act 1993;
  - (b) where that amount is transferred out in pursuance of the provision mentioned in subsection (3)(b), a way specified in section 101AE(2) of that Act;
  - (c) where that amount is transferred out in pursuance of the provision mentioned in subsection (3)(c), a way specified in subsection (2) or, as the case may be, subsection (3) of section 101F of that Act;
  - (d) where that amount is transferred out in pursuance of a provision of the kind mentioned in subsection (2)(a)(ii), a way that is authorised by the applicable rules for amounts transferred out in pursuance of that provision.
- (5) In this section “the applicable rules” has the same meaning as, in the case of the pension scheme concerned, that expression has in section 94 of the Pension Schemes Act 1993.

#### Commencement Information

- I27** S. 18(1)(2)(3)(a)(c)(4)(a)(c)(d)(5) in force at 6.4.2005 by [S.I. 2005/275](#), art. 2(7), [Sch. Pt. 7](#)
- I28** S. 18(3)(b)(4)(b) in force at 6.4.2006 by [S.I. 2006/560](#), art. 2(3), [Sch. Pt. 3](#)

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## **19 Pension liberation: court’s power to order restitution**

- (1) This section applies where money has been liberated from a pension scheme.
- (2) In this section “recoverable property” means (subject to subsection (3))—
  - (a) the money or any of it, or
  - (b) property (of any kind and wherever situated) that, directly or indirectly, represents any of the money.
- (3) Where a person acquires the beneficial interest in recoverable property in good faith, for value and without notice that the property is, or (as the case may be) represents, money liberated from a pension scheme—
  - (a) the property ceases to be recoverable property, and
  - (b) no property that subsequently represents it is recoverable property.
- (4) The court, on the application of the Regulator, may make such order as the court thinks just and convenient for the purpose of securing that recoverable property, or money representing its value or proceeds of its sale, is transferred—
  - (a) towards a pension scheme,
  - (b) towards an annuity or insurance policy, or
  - (c) to the liberated member.
- (5) An order under subsection (4) may (in particular) direct a person who holds recoverable property, or has any degree of control over recoverable property, to take steps for the purpose mentioned in that subsection.
- (6) Where the court makes an order under paragraph (a) of subsection (4), it may by order direct the trustees or managers of the scheme referred to in that paragraph—
  - (a) to take steps for the purpose mentioned in that subsection;
  - (b) to apply the property or money transferred, in such manner as the court may direct, for the purpose of providing benefits under that scheme to or in respect of the liberated member.
- (7) Regulations may modify any of the provisions of the Pension Schemes Act 1993 (c. 48) as it applies in relation to cases where an order is made under subsection (6).
- (8) The jurisdiction conferred by this section is exercisable by the High Court or the Court of Session.
- (9) The generality of the jurisdiction conferred by section 16 is not to be taken to be prejudiced by this section.
- (10) The generality of the jurisdiction conferred by this section is not to be taken to be prejudiced by section 21.

### **Commencement Information**

**I29** S. 19(1)-(6)(8)-(10) in force at 6.4.2005 by [S.I. 2005/275](#), art. 2(7), [Sch. Pt. 7](#)

**I30** S. 19(7) in force for the purpose only of conferring power to make regulations, orders or rules, as the case may be, 10.2.2005; and for all other purposes, 6.4.2005 by [S.I. 2005/275](#), art. 2(3), [Sch. Pt. 3](#)

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## 20 Pension liberation: restraining orders

- (1) The Regulator may make a restraining order in relation to an account with a deposit-taker if—
  - (a) it is satisfied that the account contains money which has been liberated from a pension scheme,
  - (b) it is satisfied that the account is held by or on behalf of—
    - (i) the liberator, or
    - (ii) a person who has to, or in practice is likely to, ensure that the account is operated in accordance with the liberator’s directions, and
  - (c) the order is made pending consideration being given to the making of one or more repatriation orders in relation to the account under section 21.
- (2) A restraining order is an order directing that no credit or debit of any amount may be made to the account concerned (“the restrained account”) during the period for which the order has effect.
- (3) A restraining order must—
  - (a) specify the name of the deposit-taker in respect of which it is made,
  - (b) identify the account in respect of which it is made, and
  - (c) contain such other information as may be prescribed.
- (4) A restraining order—
  - (a) takes effect when the deposit-taker concerned is notified by the Regulator of the making of the order, and
  - (b) (subject to subsection (7)) ceases to have effect through expiry of time at the end of the six months beginning with the day when it is made.
- (5) The Regulator may, at a time when a restraining order has effect, make an order extending (or further extending) the restraining order.
- (6) An order under subsection (5) (an “extension order”) takes effect—
  - (a) when the deposit-taker concerned is notified by the Regulator of the making of the order, but
  - (b) only if notification under paragraph (a) occurs at a time when the restraining order concerned has effect.
- (7) Where an extension order takes effect—
  - (a) the restraining order concerned does not cease to have effect through expiry of time until the end of the six months beginning with the time when it would have ceased to have effect through expiry of time had it not been extended, but
  - (b) for so long as the extension order has effect, no further extension order can take effect before that time in relation to the restraining order.
- (8) A restraining order does not prevent the crediting to the restrained account of an amount representing interest payable by the deposit-taker on any amount which is, or has been, in the account.
- (9) Where a restraining order has effect, the deposit-taker must return to the payer any money credited to the restrained account in breach of the order.
- (10) Where a restraining order has effect, the Regulator may, on an application made by or with the consent of the person by whom the restrained account is held, by order



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permit a payment specified in the order to be made out of the account if the Regulator is satisfied—

- (a) that the payment will be made for the purpose of enabling—
    - (i) any individual to meet his reasonable living expenses, or
    - (ii) any person to carry on a trade, business, profession or occupation,
  - (b) that the beneficial interest in the money out of which the payment will be made belongs—
    - (i) to the individual, or person, concerned, or
    - (ii) to a person who consents to the making of the payment, and
  - (c) that the money out of which the payment will be made is not money liberated from a pension scheme.
- (11) Section 10 of the Pensions Act 1995 (c. 26) (civil penalties) applies to a deposit-taker who, without reasonable excuse, fails to comply with any obligation imposed by a restraining order or by this section.

#### Commencement Information

**I31** S. 20(1)(2)(3)(a)(b)(4)-(11) in force at 6.4.2005 by [S.I. 2005/275](#), art. 2(7), [Sch. Pt. 7](#)

## 21 Pension liberation: repatriation orders

- (1) Subsections (2) and (3) apply where—
- (a) a restraining order has effect, and
  - (b) the Regulator is satisfied that the restrained account contains an amount of money liberated from a pension scheme.
- (2) The Regulator may by order—
- (a) direct the deposit-taker concerned to pay from the account a sum not exceeding that amount—
    - (i) towards a pension scheme,
    - (ii) towards an annuity or insurance policy, or
    - (iii) to the liberated member, and
  - (b) where it makes an order under paragraph (a)(i), direct the trustees or managers of the scheme to apply the sum, in such manner as the Regulator may direct, for the purpose of providing benefits under the scheme to or in respect of the liberated member.
- (3) If it appears to the Regulator, on taking an overall view of transactions taking place before the restraining order was made, that there are two or more individuals each of whom is a person who is or may be the liberated member in relation to some of the money, the Regulator may determine the sums to be paid from the restrained account under subsection (2) on any basis that appears to the Regulator to be just and reasonable.
- (4) Regulations may modify any of the provisions of the Pension Schemes Act 1993 (c. 48) as it applies in relation to cases where an order is made under subsection (2)(b).
- (5) Section 10 of the Pensions Act 1995 (c. 26) (civil penalties) applies to a deposit-taker who, without reasonable excuse, fails to comply with a direction given to him under subsection (2)(a).

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- (6) If the trustees or managers of a pension scheme fail to comply with a direction given to them under subsection (2)(b), that section applies to any trustee or manager who has failed to take all reasonable steps to secure compliance.
- (7) In this section “restrained account” has the meaning given by section 20.

#### Commencement Information

**I32** S. 21(1)-(3)(5)-(7) in force at 6.4.2005 by S.I. 2005/275, art. 2(7), Sch. Pt. 7

**I33** S. 21(4) for the purpose only of conferring power to make regulations, orders or rules, as the case may be, 10.2.2005; and for all other purposes, 6.4.2005 by S.I. 2005/275, art. 2(3), Sch. Pt. 3

### *Powers in relation to winding up of occupational pension schemes*

## 22 Powers to wind up occupational pension schemes

In section 11 of the Pensions Act 1995 (powers to wind up occupational pension schemes)—

- (a) omit subsection (3),  
(b) before subsection (4) insert—

“(3A) The Authority may, during an assessment period (within the meaning of section 132 of the Pensions Act 2004 (meaning of “assessment period” for the purposes of Part 2 of that Act)) in relation to an occupational pension scheme, by order direct the scheme to be wound up if they are satisfied that it is necessary to do so in order—

- (a) to ensure that the scheme’s protected liabilities do not exceed its assets, or  
(b) if those liabilities do exceed its assets, to keep the excess to a minimum.

(3B) In subsection (3A)—

- (a) “protected liabilities” has the meaning given by section 131 of the Pensions Act 2004, and  
(b) references to the assets of the scheme are references to those assets excluding any assets representing the value of any rights in respect of money purchase benefits (within the meaning of that Act) under the scheme.”,  
(c) at the end of subsection (4) insert— “ This subsection is subject to sections 28, 135 and 219 of the Pensions Act 2004 (winding up order made when freezing order has effect in relation to scheme, during assessment period under Part 2 of that Act etc). ”, and  
(d) after subsection (6) insert—

“(6A) Subsection (6) does not have effect to authorise the Authority to make an order as mentioned in paragraph (a) or (b) of that subsection, if their doing so would be unlawful as a result of section 6(1) of the Human Rights Act 1998 (unlawful for public authority to act in contravention of a Convention right).”

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#### Commencement Information

**I34** S. 22 in force at 6.4.2005 by [S.I. 2005/275](#), art. 2(7), [Sch. Pt. 7](#)

### 23 Freezing orders

- (1) This section applies to an occupational pension scheme which is not a money purchase scheme.
- (2) The Regulator may make a freezing order in relation to such a scheme if and only if—
  - (a) the order is made pending consideration being given to the making of an order in relation to the scheme under section 11(1)(c) of the Pensions Act 1995 (c. 26) (power to wind up schemes where necessary to protect the generality of members), and
  - (b) the Regulator is satisfied that—
    - (i) there is, or is likely to be if the order is not made, an immediate risk to the interests of members under the scheme or the assets of the scheme, and
    - (ii) it is necessary to make the freezing order to protect the interests of the generality of the members of the scheme.

But no freezing order may be made in relation to a scheme during an assessment period (within the meaning of section 132) in relation to the scheme (see section 135(11)).

- (3) A freezing order is an order directing that during the period for which it has effect—
  - (a) no benefits are to accrue under the scheme rules to, or in respect of, members of the scheme, and
  - (b) winding up of the scheme may not begin.
- (4) A freezing order may also contain one or more of the following directions which have effect during the period for which the order has effect—
  - (a) a direction that no new members, or no specified classes of new member, are to be admitted to the scheme;
  - (b) a direction that—
    - (i) no further contributions or payments, or
    - (ii) no further specified contributions or payments,are to be paid towards the scheme by or on behalf of the employer, any members or any specified members of the scheme;
  - (c) a direction that any amount or any specified amount which—
    - (i) corresponds to any contribution which would be due to be paid towards the scheme on behalf of a member but for a direction under paragraph (b), and
    - (ii) has been deducted from a payment of any earnings in respect of an employment,is to be repaid to the member in question by the employer;
  - (d) a direction that no benefits, or no specified benefits, are to be paid to or in respect of any members or any specified members under the scheme rules;
  - (e) a direction that payments of all benefits or specified benefits under the scheme rules to or in respect of all the members or specified members may only be

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- made from the scheme if they are reduced in a specified manner or by a specified amount;
- (f) a direction that—
- (i) no transfers or no specified transfers of, or no transfer payments or no specified transfer payments in respect of, any member's rights under the scheme rules are to be made from the scheme, or
  - (ii) no other steps or no specified other steps are to be taken to discharge any liability of the scheme to or in respect of a member of the scheme in respect of pensions or other benefits;
- (g) a direction that no statements of entitlement are to be provided to members of the scheme under section 93A of the Pension Schemes Act 1993 (c. 48) (salary related schemes: right to statement of entitlement);
- (h) a direction that—
- (i) no refunds of, or no specified refunds of, or in respect of, contributions paid by or in respect of a member towards the scheme are to be made from the scheme, or
  - (ii) refunds or specified refunds of, or in respect of, contributions paid by or in respect of a member towards the scheme may only be made from the scheme if they are determined in a specified manner and satisfy such other conditions as may be specified.
- (5) In subsection (4)(b)—
- (a) the references to contributions do not include contributions due to be paid before the order takes effect, and
  - (b) the references to payments towards a scheme include payments in respect of pension credits where the person entitled to the credit is a member of the scheme.
- (6) A freezing order may not contain a direction under subsection (4)(d) or (e) which reduces the benefits payable to or in respect of a member, for the period during which the order has effect, below the level to which the trustees or managers of the scheme would have power to reduce them if a winding up of the scheme had begun at the time when the freezing order took effect.
- (7) A direction under subsection (4)(f) may, in particular, provide that transfers or specified transfers of, or transfer payments or specified transfer payments in respect of, any member's rights under the scheme rules may not be made from the scheme unless the amounts paid out from the scheme in respect of the transfers or transfer payments are determined in a specified manner and the transfer or transfer payments satisfy such other conditions as may be specified.
- (8) A freezing order may also require the trustees or managers of the scheme to obtain an actuarial valuation within a specified period.
- (9) A freezing order containing such a requirement must specify—
- (a) the date by reference to which the assets and liabilities are to be valued,
  - (b) the assets and liabilities which are to be taken into account,
  - (c) the manner in which the valuation must be prepared,
  - (d) the information and statements which it must contain, and
  - (e) any other requirements that the valuation must satisfy.
- (10) For the purposes of subsection (8)—

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“an actuarial valuation” means a written valuation of the scheme’s assets and liabilities prepared and signed by the actuary;

“the actuary” means—

- (a) the actuary appointed under section 47(1)(b) of the Pensions Act 1995 (c. 26) (professional advisers) in relation to the scheme, or
- (b) if no such actuary has been appointed—
  - (i) a person with prescribed qualifications or experience, or
  - (ii) a person approved by the Secretary of State.

(11) In this section “specified” means specified in the freezing order.

#### Commencement Information

- I35** S. 23(1)-(9)(11) in force at 6.4.2005 by [S.I. 2005/275](#), [art. 2\(7\)](#), [Sch. Pt. 7](#)
- I36** S. 23(10) in relation to paragraph (b)(i) of the definition of "the actuary" for the purpose only of conferring power to make regulations, orders or rules, as the case may be, 10.2.2005; and for all other purposes in relation to that paragraph of that definition, 6.4.2005 by [S.I. 2005/275](#), [art. 2\(3\)](#), [Sch. Pt. 3](#)
- I37** S. 23(10) in force at 6.4.2005 in so far as not already in force by [S.I. 2005/275](#), [art. 2\(7\)](#), [Sch. Pt. 7](#)

## 24 Consequences of freezing order

- (1) If a freezing order is made in relation to a scheme any action taken in contravention of the order is void except to the extent that the action is validated by an order under section 26.
- (2) A freezing order in relation to a scheme does not prevent any increase in a benefit which is an increase which would otherwise accrue in accordance with the scheme or any enactment during the period for which the order has effect, unless the order contains a direction to the contrary.
- (3) A freezing order in relation to a scheme does not prevent the scheme being wound up in pursuance of an order under section 11 of the Pensions Act 1995 (power to wind up occupational pension schemes).
- (4) If a freezing order contains a direction under section 23(4)(b) that no further contributions, or no further specified contributions, are to be paid towards a scheme during the period for which the order has effect—
  - (a) any contributions which are the subject of the direction and which would otherwise be due to be paid towards the scheme during that period are to be treated as if they do not fall due, and
  - (b) any obligation to pay those contributions (including any obligation under section 49(8) of the Pensions Act 1995 to pay amounts deducted corresponding to such contributions) is to be treated as if it does not arise.
- (5) If a freezing order contains a direction under section 23(4)(f) (no transfers or discharge of member’s rights) it does not prevent—
  - (a) giving effect to a pension sharing order or provision, or
  - (b) giving effect to a pension earmarking order in a case where—
    - (i) the order requires a payment to be made if a payment in respect of any benefits under the scheme becomes due to a person, and

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- (ii) a direction under section 23(4)(d) or (e) does not prevent the payment becoming due.
- (6) For the purposes of subsection (5)—
- “pension sharing order or provision” means an order or provision falling within section 28(1) of the Welfare Reform and Pensions Act 1999 (c. 30) (activation of pension sharing);
- “pension earmarking order” means—
- (a) an order under section 23 of the Matrimonial Causes Act 1973 (c. 18) (financial provision orders in connection with divorce etc) so far as it includes provision made by virtue of section 25B or 25C of that Act (powers to include provision about pensions),
- (aa) [<sup>F3</sup>an order under Part 1 (financial provision in connection with dissolution, nullity or separation) of Schedule 5 to the Civil Partnership Act 2004 (c. 33) (financial relief in the High Court or a county court etc.) so far as it includes provision made by virtue of paragraphs 25 and 26 of Part 6 of that Schedule (powers to include provisions about pensions),]
- (b) an order under section 12A(2) or (3) of the Family Law (Scotland) Act 1985 (c. 37) (powers in relation to pension lump sums when making a capital sum order), <sup>F4</sup> ...
- (c) an order under Article 25 of the Matrimonial Causes (Northern Ireland) Order 1978 (S.I. 1978/1045 (N.I.15)) so far as it includes provision made by virtue of Article 27B or 27C of that Order (Northern Ireland powers corresponding to those mentioned in paragraph (a)) [<sup>F5</sup>, or
- (d) an order under Part 1 (financial provision in connection with dissolution, nullity or separation) of Schedule 15 to the Civil Partnership Act 2004 (financial relief in the High Court or a county court etc.: Northern Ireland) so far as it includes provision made by virtue of paragraphs 20 and 21 of Part 5 of that Schedule (powers to include provisions about pensions)]
- (7) Regulations may modify any provisions of—
- (a) Chapter 4 of Part 4 of the Pension Schemes Act 1993 (c. 48) (protection for early leavers: transfer values), or
- (b) Chapter 5 of that Part (protection for early leavers: cash transfer sums and contribution refunds),
- in their application to an occupational pension scheme in relation to which a freezing order is made containing a direction under section 23(4)(f), (g) or (h) (no transfers etc in respect of member’s rights or refunds of contributions etc from the scheme).
- (8) Disregarding subsection (1), if a freezing order made in relation to a scheme is not complied with, section 10 of the Pensions Act 1995 (c. 26) (civil penalties) applies to any trustee or manager of the scheme who has failed to take all reasonable steps to secure compliance.
- (9) Subsection (8) does not apply in the case of non-compliance with a direction under section 23(4)(c) (direction that certain deducted contributions are to be repaid by the employer).
- (10) In such a case, section 10 of the Pensions Act 1995 (civil penalties) applies to an employer who, without reasonable excuse, fails to repay an amount as required by the direction.

*Status: Point in time view as at 22/04/2011.*

*Changes to legislation: Pensions Act 2004, Part 1 is up to date with all changes known to be in force on or before 23 May 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

#### Textual Amendments

- F3** Words in s. 24(6) inserted (5.12.2005) by [The Civil Partnership \(Pensions and Benefit Payments\) \(Consequential, etc. Provisions\) Order 2005 \(S.I. 2005/2053\)](#), art. 1(3), **Sch. para. 27(a)**
- F4** Word in s. 24(6) omitted (5.12.2005) by virtue of [The Civil Partnership \(Pensions and Benefit Payments\) \(Consequential, etc. Provisions\) Order 2005 \(S.I. 2005/2053\)](#), art. 1(3), **Sch. para. 27(b)**
- F5** Words in s. 24(6) inserted (5.12.2005) by [The Civil Partnership \(Pensions and Benefit Payments\) \(Consequential, etc. Provisions\) Order 2005 \(S.I. 2005/2053\)](#), art. 1(3), **Sch. para. 27(c)**

#### Commencement Information

- I38** S. 24(1)-(6)(7)(b)(8)-(10) in force at 6.4.2005 by [S.I. 2005/275](#), art. 2(7), **Sch. Pt. 7**
- I39** S. 24(7)(a) in force for the purpose only of conferring power to make regulations, orders or rules, as the case may be, 10.2.2005; and for all other purposes at 6.4.2005 in so far as not already in force by [S.I. 2005/275](#), art. 2(3), **Sch. Pt. 3**

### 25 Period of effect etc of freezing order

- (1) A freezing order must specify the period for which it has effect.
- (2) The period specified must not exceed three months.
- (3) The Regulator may on one or more occasions by order extend the period for which the order has effect.
- (4) But the total period for which the order has effect must not exceed six months.
- (5) This section is subject to sections 27, 28 and 29 (effect of winding up and assessment period on freezing orders).

#### Commencement Information

- I40** S. 25 in force at 6.4.2005 by [S.I. 2005/275](#), art. 2(7), **Sch. Pt. 7**

### 26 Validation of action in contravention of freezing order

- (1) If a freezing order is made in relation to a scheme, the Regulator may by order validate action taken in contravention of the order.
- (2) Any of the following persons may apply to the Regulator for an order under this section validating particular action—
  - (a) the trustees or managers of the scheme;
  - (b) any person directly affected by the action.

#### Commencement Information

- I41** S. 26 in force at 6.4.2005 by [S.I. 2005/275](#), art. 2(7), **Sch. Pt. 7**

### 27 Effect of determination to wind up scheme on freezing order

- (1) This section applies where—

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*Changes to legislation: Pensions Act 2004, Part 1 is up to date with all changes known to be in force on or before 23 May 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

- (a) the Regulator determines to make an order under section 11 of the Pensions Act 1995 (c. 26) (power to wind up occupational pension schemes) in relation to a scheme (“a winding up order”),
  - (b) that determination is made during the period for which a freezing order has effect in relation to the scheme,
  - (c) the case is not one to which the special procedure in section 98 applies (immediate exercise of powers where immediate risk to assets etc), and
  - (d) the winding up order accordingly cannot be made until the expiry of the period specified in section 96(5) (no exercise during period of referral to the Tribunal etc).
- (2) In such a case the freezing order is to continue to have effect until—
- (a) where the winding up order is made, it ceases to have effect under section 28 from the time when that order is made, or
  - (b) the determination to make the winding up order is revoked.
- (3) Subsection (2) is subject to the Regulator’s power under section 101 to revoke the freezing order at any time.

#### **Commencement Information**

**I42** S. 27 in force at 6.4.2005 by [S.I. 2005/275](#), art. 2(7), [Sch. Pt. 7](#)

## **28 Effect of winding up order on freezing order**

- (1) This section applies where—
- (a) an order is made under section 11 of the Pensions Act 1995 (“the 1995 Act”) (power to wind up occupational pension schemes) in relation to a scheme, and
  - (b) the order is made during the period for which a freezing order has effect in relation to the scheme.
- (2) In such a case—
- (a) the winding up of the scheme in pursuance of the order under section 11 of the 1995 Act is to be taken as beginning at the time when the freezing order took effect, and
  - (b) the freezing order ceases to have effect from the time when the order under section 11 of the 1995 Act is made.
- (3) The Regulator may by order direct any specified person—
- (a) to take such specified steps as it considers are necessary as a result of the winding up of the scheme being deemed under subsection (2)(a) to have begun at the time when the freezing order took effect, and
  - (b) to take those steps within a specified period.
- (4) If the trustees or managers of a scheme fail to comply with a direction to them contained in an order under this section, section 10 of the 1995 Act (civil penalties) applies to any trustee or manager who has failed to take all reasonable steps to secure compliance.
- (5) That section also applies to any other person who, without reasonable excuse, fails to comply with a direction to him contained in an order under this section.



*Status: Point in time view as at 22/04/2011.*

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(6) In this section “specified” means specified in an order under this section.

**Commencement Information**

**I43** S. 28 in force at 6.4.2005 by [S.I. 2005/275](#), art. 2(7), [Sch. Pt. 7](#)

**29 Effect of assessment period under Part 2 on freezing order**

Where an assessment period (within the meaning of section 132) begins in relation to a scheme, any freezing order in relation to the scheme ceases to have effect when the assessment period begins.

**Commencement Information**

**I44** S. 29 in force at 6.4.2005 by [S.I. 2005/275](#), art. 2(7), [Sch. Pt. 7](#)

**30 Power to give a direction where freezing order ceases to have effect**

- (1) This section applies where—
- (a) the Regulator revokes a freezing order in relation to a scheme or it otherwise ceases to have effect, and
  - (b) at the time when the freezing order ceases to have effect, the Regulator has not made an order under section 11 of the Pensions Act 1995 (c. 26) (“the 1995 Act”) in relation to the scheme.
- (2) In such a case the Regulator may make an order under this section in relation to the scheme containing a direction that, if specified conditions are met, specified benefits are to accrue under the scheme rules to, or in respect of, specified members of the scheme in respect of specified periods of service being service in employment which but for the freezing order would have qualified the member in question for those benefits under the scheme rules.
- (3) The conditions mentioned in subsection (2) may include—
- (a) a requirement that specified benefits do not accrue to, or in respect of, a member or a specified member unless a contribution of a specified amount is paid by or on behalf of the member towards the scheme within a specified period;
  - (b) a requirement that a contribution of a specified amount must be paid by or on behalf of the employer within a specified period;
  - (c) a requirement that such contributions as are specified under paragraph (a) or (b) are to be accepted for the period for which the freezing order had effect or any part of that period.
- (4) Where the freezing order contained a direction under section 23(4)(d) or (e) and any amount of any benefit under the scheme rules was not paid as a result of the direction—
- (a) the direction does not affect any entitlement to that benefit, and
  - (b) any benefit to which a member, or a person in respect of a member, remains entitled at the end of the period for which the freezing order had effect is an amount which falls due to the member or, as the case may be, the person at the end of that period.

*Status: Point in time view as at 22/04/2011.*

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- (5) If an order made under this section in relation to a scheme is not complied with, section 10 of the 1995 Act (civil penalties) applies to a trustee or a manager of the scheme who has failed to take all reasonable steps to secure compliance.
- (6) Subsection (7) applies if—
- (a) an order is made under this section in relation to a scheme,
  - (b) the order contains a requirement as described in subsection (3)(b) that a contribution of a specified amount must be paid by or on behalf of the employer within a specified period, and
  - (c) the contribution is not paid within that period.
- (7) In such a case—
- (a) section 10 of the 1995 Act applies to the employer if he has failed, without reasonable excuse, to secure compliance,
  - (b) the amount which for the time being remains unpaid after the end of the specified period is to be treated as a debt due from the employer to the trustees or managers of the scheme, and
  - (c) except in prescribed circumstances, the trustees or managers must, within a prescribed period, give notice of the failure to pay to the Regulator and to the member.
- (8) If in any case subsection (7)(c) is not complied with, section 10 of the 1995 Act applies to any trustee or manager who has failed to take all reasonable steps to secure compliance.
- (9) In this section “specified” means specified in an order under this section.

#### Commencement Information

**I45** S. 30(1)-(6)(7)(a)(b)(8)(9) in force at 6.4.2005 by [S.I. 2005/275](#), art. 2(7), [Sch. Pt. 7](#)

**I46** S. 30(7)(c) in force for the purpose only of conferring power to make regulations, orders or rules, as the case may be, 10.2.2005; and for all other purposes at 6.4.2005 in so far as not already in force by [S.I. 2005/275](#), art. 2(3), [Sch. Pt. 3](#)

### 31 Notification of trustees, managers, employers and members

- (1) This section applies where—
- (a) a freezing order is made in relation to a scheme,
  - (b) an order is made under section 26 validating action taken in contravention of a freezing order made in relation to a scheme,
  - (c) an order is made under section 28 directing specified steps to be taken following the winding up of a scheme, or
  - (d) an order is made under section 30 in relation to a scheme where a freezing order ceases to have effect.
- (2) The Regulator must, as soon as reasonably practicable after the order has been made, notify—
- (a) the trustees or managers of the scheme, and
  - (b) the employer in relation to the scheme,
- of the fact that the order has been made and of its effect.

*Status: Point in time view as at 22/04/2011.*

*Changes to legislation: Pensions Act 2004, Part 1 is up to date with all changes known to be in force on or before 23 May 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

- (3) The Regulator may by order direct the trustees or managers of the scheme to notify—
  - (a) all the members of the scheme, or
  - (b) the members of the scheme specified in the order,of the fact that the order mentioned in subsection (1) has been made and of its effect.
- (4) Notification is to be within the period and in the manner specified in the order under subsection (3).
- (5) If the trustees or managers of a scheme fail to comply with a direction to them contained in an order made under subsection (3), section 10 of the Pensions Act 1995 (c. 26) (civil penalties) applies to any trustee or manager who has failed to take all reasonable steps to secure compliance.

#### Commencement Information

**I47** S. 31 in force at 6.4.2005 by [S.I. 2005/275](#), art. 2(7), [Sch. Pt. 7](#)

### 32 Sections 23 to 31: supplementary

- (1) An order may be made in relation to a scheme under any of sections 23, 25, 26, 28, 30 and 31—
  - (a) in spite of any enactment or rule of law, or any rule of the scheme, which would otherwise operate to prevent the order being made, and
  - (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 order.
- (2) Subsection (1) does not have effect to authorise the Regulator to make an order as mentioned in that subsection if its doing so would be unlawful as a result of section 6(1) of the Human Rights Act 1998 (c. 42) (unlawful for public authority to act in contravention of a Convention right).

#### Commencement Information

**I48** S. 32 in force at 6.4.2005 by [S.I. 2005/275](#), art. 2(7), [Sch. Pt. 7](#)

### *Trustees of occupational pension schemes*

### 33 Prohibition orders

For section 3 of the Pensions Act 1995 (c. 26) (prohibition orders) substitute—

#### “3 Prohibition orders

- (1) The Authority may by order prohibit a person from being a trustee of—
  - (a) a particular trust scheme,
  - (b) a particular description of trust schemes, or
  - (c) trust schemes in general,

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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.
- (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 the 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 the Tribunal’s determination, 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) In this section “the Tribunal” means the Pensions Regulator Tribunal established under section 102 of the Pensions Act 2004.”

#### Commencement Information

**I49** S. 33 in force at 6.4.2005 by [S.I. 2005/275](#), art. 2(7), [Sch. Pt. 7](#) (with transitional provisions and savings in [S.I. 2005/695](#), arts. 5(8), 6, Schs. 2, 3 (as amended by [S.I. 2005/1108](#), art. 3(b))

## 34 Suspension orders

In section 4 of the Pensions Act 1995 (c. 26) (suspension orders)—

- (a) after subsection (1)(a) insert—
  - “(aa) pending consideration being given to the institution of proceedings against him for an offence involving dishonesty or deception,”
- (b) in subsection (2)—
  - (i) in paragraph (a) after “paragraph (a)” insert “ or (aa) ”,
  - (ii) after “have effect” insert “ in relation to a trust scheme ”, and
  - (iii) after “section 3(1)” insert “ in relation to that scheme ”,
- (c) after subsection (5) insert—
  - “(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 the Tribunal under section 96(3) or 99(7) of the Pensions Act 2004, and

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- (b) if the determination is so referred, until the reference, and any appeal against the Tribunal’s determination, has been finally disposed of.”, and

<sup>F6</sup>(d) .....

**Textual Amendments**

**F6** S. 34(d) repealed (6.4.2010) by [The Transfer of Tribunal Functions Order 2010 \(S.I. 2010/22\)](#), art. 1(2)(g), [Sch. 4 Pt. 2](#) (with [Sch. 5](#))

**Commencement Information**

**I50** S. 34 in force at 6.4.2005 by [S.I. 2005/275](#), art. 2(7), [Sch. Pt. 7](#) (with transitional provisions and savings in [S.I. 2005/695](#), arts. 5(8), 6, Schs. 2, 3 (as amended by [S.I. 2005/1108](#), art. 3(b)))

**35 Appointments of trustees by the Regulator**

(1) In section 7 of the Pensions Act 1995 (appointment of trustees)—

- (a) omit subsection (4), and
- (b) after subsection (5) insert—

“(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).”

(2) In section 8 of that Act (consequences of appointment of trustees under section 7), for subsections (1) and (2) substitute—

“(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—

- (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.”

**Commencement Information**

**I51** S. 35 in force at 6.4.2005 by [S.I. 2005/275](#), art. 2(7), [Sch. Pt. 7](#)

**36 Independent trustees**

(1) Part 1 of the Pensions Act 1995 (c. 26) (occupational pension schemes) is amended as follows.

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- (2) In section 22 (circumstances in which provisions relating to independent trustees apply)—
- (a) in subsection (1)(b) omit “or” at the end of sub-paragraph (i) and after that sub-paragraph insert—
    - “(ia) the interim receiver of the property of a person who is the employer in relation to the scheme, or”;
  - (b) in subsection (2), after “a scheme” insert “ by virtue of subsection (1) ”;
  - (c) after subsection (2) insert—
    - “(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.”; and
    - (d) after subsection (2A) (inserted by paragraph (c) above) insert—
      - “(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;
        - (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

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(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) For sections 23 and 24 (appointment of independent trustees) substitute—

**“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.

(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.”

(4) In section 25 (appointment and powers of independent trustees: further provisions)—

(a) for subsection (4)(a) substitute—

“(a) he must as soon as reasonably practicable give written notice of that fact to the Authority, and”,

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- (b) after subsection (5) insert—
- “(5A) Section 10 applies to any person who, without reasonable excuse, fails to comply with subsection (4)(a).”, and
- (c) for subsection (6) substitute—
- “(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 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.”

#### Commencement Information

- I52** S. 36(1)(4) in force for the purpose only of conferring power to make regulations, orders or rules, as the case may be, 10.2.2005; and for all other purposes in so far as not already in force (6.4.2005) by [S.I. 2005/275, art. 2\(7\), Sch. Pt. 7](#)
- I53** S. 36(2)(3) in force at 10.2.2005 for specified purposes and 6.4.2005 in so far as not already in force by [S.I. 2005/275, art. 2\(3\), Sch. Pt. 3](#)

### 37 Disqualification

In section 30 of the Pensions Act 1995 (c. 26) (consequences of disqualification under section 29), for subsection (1) substitute—

- “(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.”

#### Commencement Information

- I54** S. 37 in force at 6.4.2005 by [S.I. 2005/275, art. 2\(7\), Sch. Pt. 7](#)

*Contribution notices where avoidance of employer debt*

### 38 Contribution notices where avoidance of employer debt

- (1) This section applies in relation to an occupational pension scheme other than—
- (a) a money purchase scheme, or
  - (b) a prescribed scheme or a scheme of a prescribed description.



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- (2) The Regulator may issue a notice to a person stating that the person is under a liability to pay the sum specified in the notice (a “contribution notice”)—
- (a) to the trustees or managers of the scheme, or
  - (b) where the Board of the Pension Protection Fund has assumed responsibility for the scheme in accordance with Chapter 3 of Part 2 (pension protection), to the Board.
- (3) The Regulator may issue a contribution notice to a person only if—
- (a) the Regulator is of the opinion that the person was a party to an act or a deliberate failure to act which falls within subsection (5),
  - (b) the person was at any time in the relevant period—
    - (i) the employer in relation to the scheme, or
    - (ii) a person connected with, or an associate of, the employer,
  - (c) the Regulator is of the opinion that the person, in being a party to the act or failure, was not acting in accordance with his functions as an insolvency practitioner in relation to another person, and
  - [<sup>F7</sup>(d) the Regulator is of the opinion that it is reasonable to impose liability on the person to pay the sum specified in the notice, having regard to—
    - (i) the extent to which, in all the circumstances of the case, it was reasonable for the person to act, or fail to act, in the way that the person did, and
    - (ii) such other matters as the Regulator considers relevant, including (where relevant) the matters falling within subsection (7).]
- (4) But the Regulator may not issue a contribution notice, in such circumstances as may be prescribed, to a person of a prescribed description.
- (5) An act or a failure to act falls within this subsection if—
- (a) the Regulator is of the opinion that [<sup>F8</sup>the material detriment test is met in relation to the act or failure (see section 38A) or that] the main purpose or one of the main purposes of the act or failure was—
    - (i) to prevent the recovery of the whole or any part of a debt which was, or might become, due from the employer in relation to the scheme under section 75 of the Pensions Act 1995 (c. 26) (deficiencies in the scheme assets), or
    - (ii) <sup>F9</sup>... to prevent such a debt becoming due, to compromise or otherwise settle such a debt, or to reduce the amount of such a debt which would otherwise become due,
  - (b) it is an act which occurred, or a failure to act which first occurred—
    - (i) on or after 27th April 2004, and
    - (ii) before any assumption of responsibility for the scheme by the Board in accordance with Chapter 3 of Part 2, and
  - (c) it is either—
    - (i) an act which occurred during the period of six years ending with the determination by the Regulator to exercise the power to issue the contribution notice in question, or
    - (ii) a failure which first occurred during, or continued for the whole or part of, that period.
- (6) For the purposes of subsection (3)—

*Status: Point in time view as at 22/04/2011.*

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- (a) the parties to an act or a deliberate failure include those persons who knowingly assist in the act or failure, and
  - (b) “the relevant period” means the period which—
    - (i) begins with the time when the act falling within subsection (5) occurs or the failure to act falling within that subsection first occurs, and
    - (ii) ends with the determination by the Regulator to exercise the power to issue the contribution notice in question.
- (7) [<sup>F10</sup>The matters within this subsection are—]
- (a) the degree of involvement of the person in the act or failure to act which falls within subsection (5),
  - (b) the relationship which the person has or has had with the employer (including, where the employer is a company within the meaning of subsection (11) of section 435 of the Insolvency Act 1986 (c. 45), whether the person has or has had control of the employer within the meaning of subsection (10) of that section),
  - (c) any connection or involvement which the person has or has had with the scheme,
  - (d) if the act or failure to act was a notifiable event for the purposes of section 69 (duty to notify the Regulator of certain events), any failure by the person to comply with any obligation imposed on the person by subsection (1) of that section to give the Regulator notice of the event,
  - (e) all the purposes of the act or failure to act (including whether a purpose of the act or failure was to prevent or limit loss of employment),
- [<sup>F11</sup>(ea) the value of any benefits which directly or indirectly the person receives, or is entitled to receive, from the employer or under the scheme;
- (eb) the likelihood of relevant creditors being paid and the extent to which they are likely to be paid;]
  - (f) the financial circumstances of the person, and
  - (g) such other matters as may be prescribed.
- [<sup>F12</sup>(7A) In subsection (7)(eb) “relevant creditors” means—
- (a) creditors of the employer, and
  - (b) creditors of any other person who has incurred a liability or other obligation (including one that is contingent or otherwise might fall due) to make a payment, or transfer an asset, to the scheme.]
- (8) For the purposes of this section references to a debt due under section 75 of the Pensions Act 1995 (c. 26) include a contingent debt under that section.
- (9) Accordingly, in the case of such a contingent debt, the reference in subsection (5)(a)(ii) to preventing a debt becoming due is to be read as including a reference to preventing the occurrence of any of the events specified in section 75(4C)(a) or (b) of that Act upon which the debt is contingent.
- (10) For the purposes of this section—
- (a) section 249 of the Insolvency Act 1986 (connected persons) applies as it applies for the purposes of any provision of the first Group of Parts of that Act,
  - (b) section 435 of that Act (associated persons) applies as it applies for the purposes of that Act, and

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- (c) section 74 of the Bankruptcy (Scotland) Act 1985 (c. 66) (associated persons) applies as it applies for the purposes of that Act.
- (11) For the purposes of this section “insolvency practitioner”, in relation to a person, means—
- (a) a person acting as an insolvency practitioner, in relation to that person, in accordance with section 388 of the Insolvency Act 1986, or
- (b) an insolvency practitioner within the meaning of section 121(9)(b) (persons of a prescribed description).
- [<sup>F13</sup>(12) Subsection (13) applies if the Regulator is of the opinion that—
- (a) a person was a party to a series of acts or failures to act,
- (b) each of the acts or failures in the series falls within subsection (5)(b) and (c), and
- (c) the material detriment test is met in relation to the series, or the main purpose or one of the main purposes of the series was as mentioned in subsection (5) (a)(i) or (ii).
- (13) The series of acts or failures to act is to be regarded as an act or failure to act falling within subsection (5) (and, accordingly, the reference in subsection (6)(b)(i) to the act or failure to act falling with subsection (5) is to the first of the acts or failures to act in the series).]

#### Textual Amendments

- F7** S. 38(3)(d) substituted (with effect in accordance with Sch. 9 para. 15(1) of the amending Act) by [Pensions Act 2008 \(c. 30\)](#), s. 149(2)(3), **Sch. 9 para. 7(2)**
- F8** Words in s. 38(5)(a) inserted (for specified purposes and with effect in accordance with Sch. 9 para. 15(1) of the amending Act and 29.6.2009 so far as not already in force) by [Pensions Act 2008 \(c. 30\)](#), s. 149(1), **Sch. 9 para. 2(1)**; S.I. 2009/1566, art. 2(1)(b)(ii)
- F9** Words in s. 38(5)(a)(ii) repealed (with effect in accordance with Sch. 9 para. 15(1) of the amending Act and 6.4.2011 so far as not already in force) by [Pensions Act 2008 \(c. 30\)](#), s. 149(2)(3), **Sch. 9 para. 6**, **Sch. 11 Pt. 6**; S.I. 2011/664, art. 2(3), Sch. Pt. 2
- F10** Words in s. 38(7) substituted (with effect in accordance with Sch. 9 para. 15(1) of the amending Act) by [Pensions Act 2008 \(c. 30\)](#), s. 149(2)(3), **Sch. 9 para. 7(3)(a)**
- F11** S. 38(7)(ea)(eb) inserted (with effect in accordance with Sch. 9 para. 15(1) of the amending Act) by [Pensions Act 2008 \(c. 30\)](#), s. 149(2)(3), **Sch. 9 para. 7(3)(b)**
- F12** S. 38(7A) inserted (with effect in accordance with Sch. 9 para. 15(1) of the amending Act) by [Pensions Act 2008 \(c. 30\)](#), s. 149(2)(3), **Sch. 9 para. 7(4)**
- F13** S. 38(12)(13) inserted (for specified purposes and with effect in accordance with Sch. 9 para. 15(2) of the amending Act and 29.6.2009 so far as not already in force) by [Pensions Act 2008 \(c. 30\)](#), s. 149(2)(3), **Sch. 9 para. 8(1)**; S.I. 2009/1566, art. 2(1)(b)(ii)

#### Modifications etc. (not altering text)

- C4** Pt. 1 applied in part (with modifications) (20.7.2005 for specified purposes, 1.9.2005 for specified purposes, 5.12.2005 for specified purposes) by [The Financial Assistance Scheme Regulations 2005 \(S.I. 2005/1986\)](#), regs. 1(1), 4, **Sch. 1**
- C5** Ss. 38-56 modified (1.9.2005) by [The Pensions Regulator \(Financial Support Directions etc.\) Regulations 2005 \(S.I. 2005/2188\)](#), regs. 1, **15**, **16**
- C6** S. 38 excluded (29.9.2008) by [The Bradford & Bingley plc Transfer of Securities and Property etc. Order 2008 \(S.I. 2008/2546\)](#), **Sch. 3 para. 11(b)(ii)**

*Status: Point in time view as at 22/04/2011.*

*Changes to legislation: Pensions Act 2004, Part 1 is up to date with all changes known to be in force on or before 23 May 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

- C7** S. 38 excluded (29.9.2008 at 8.00 a.m.) by [The Bradford & Bingley plc Transfer of Securities and Property etc. Order 2008 \(S.I. 2008/2546\)](#), [Sch. 3 para. 11\(b\)\(ii\)](#)
- C8** S. 38 modified (30.3.2009) by [The Amendments to Law \(Resolution of Dunfermline Building Society\) Order 2009 \(S.I. 2009/814\)](#), [art. 5](#)
- C9** S. 38 modified (30.3.2009 at 8.00 a.m.) by [The Amendments to Law \(Resolution of Dunfermline Building Society\) Order 2009 \(S.I. 2009/814\)](#), [art. 5](#)

#### Commencement Information

- I55** S. 38(1)(a)(2)(3)(5)(6)(7)(a)-(f)(8)-(11) in force in so far as not already in force except subsections (4) and (7)(g) at 6.4.2005 by [S.I. 2005/275](#), [art. 2\(7\)](#), [Sch. Pt. 7](#)
- I56** S. 38(1)(b) in force for the purpose only of conferring power to make regulations, orders or rules, as the case may be, 10.2.2005; and for all other purposes at 6.4.2005 in so far as not already in force by [S.I. 2005/275](#), [art. 2\(3\)](#), [Sch. Pt. 3](#)

### [<sup>F14</sup>38A Section 38 contribution notice: meaning of “material detriment test”

- (1) For the purposes of section 38 the material detriment test is met in relation to an act or failure if the Regulator is of the opinion that the act or failure has detrimentally affected in a material way the likelihood of accrued scheme benefits being received (whether the benefits are to be received as benefits under the scheme or otherwise).
- (2) In this section any reference to accrued scheme benefits being received is a reference to benefits the rights to which have accrued by the relevant time being received by, or in respect of, the persons who were members of the scheme before that time.
- (3) In this section “the relevant time” means—
  - (a) in the case of an act, the time of the act, or
  - (b) in the case of a failure—
    - (i) the time when the failure occurred, or
    - (ii) where the failure continued for a period of time, the time which the Regulator determines and which falls within that period;

and, in the case of acts or failures to act forming part of a series, any reference in this subsection to an act or failure is a reference to the last of the acts or failures in that series.
- (4) In deciding for the purposes of section 38 whether the material detriment test is met in relation to an act or failure, the Regulator must have regard to such matters as it considers relevant, including (where relevant)—
  - (a) the value of the assets or liabilities of the scheme or of any relevant transferee scheme,
  - (b) the effect of the act or failure on the value of those assets or liabilities,
  - (c) the scheme obligations of any person,
  - (d) the effect of the act or failure on any of those obligations (including whether the act or failure causes the country or territory in which any of those obligations would fall to be enforced to be different),
  - (e) the extent to which any person is likely to be able to discharge any scheme obligation in any circumstances (including in the event of insolvency or bankruptcy),
  - (f) the extent to which the act or failure has affected, or might affect, the extent to which any person is likely to be able to do as mentioned in paragraph (e), and
  - (g) such other matters as may be prescribed.

*Status: Point in time view as at 22/04/2011.*

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- (5) In subsection (4) “scheme obligation” means a liability or other obligation (including one that is contingent or otherwise might fall due) to make a payment, or transfer an asset, to—
- (a) the scheme, or
  - (b) any relevant transferee scheme in respect of any persons who were members of the scheme before the relevant time.
- (6) In this section—
- (a) “relevant transferee scheme” means any work-based pension scheme to which any accrued rights to benefits under the scheme are transferred;
  - (b) any reference to the assets or liabilities of any relevant transferee scheme is a reference to those assets or liabilities so far as relating to persons who were members of the scheme before the relevant time.
- (7) For the purposes of subsection (6)(a) the reference to the transfer of accrued rights of members of a pension scheme to another pension scheme includes a reference to the extinguishing of those accrued rights in consequence of the obligation to make a payment, or transfer an asset, to that other scheme.
- (8) In this section—
- (a) “work-based pension scheme” has the meaning given by section 5(3);
  - (b) any reference to rights which have accrued is to be read in accordance with section 67A(6) and (7) of the Pensions Act 1995 (reading any reference in those subsections to a subsisting right as a reference to a right which has accrued).
- (9) In deciding for the purposes of this section whether an act or failure has detrimentally affected in a material way the likelihood of accrued scheme benefits being received, the following provisions of this Act are to be disregarded—
- (a) Chapter 3 of Part 2 (the Board of the Pension Protection Fund: pension protection), and
  - (b) section 286 (the financial assistance scheme for members of certain pension schemes).
- (10) Regulations may amend any provision of subsections (4) to (8).

#### Textual Amendments

- F14** Ss. 38A, 38B inserted (for specified purposes and with effect in accordance with Sch. 9 para. 15(1) of the amending Act and 29.6.2009 so far as not already in force) by [Pensions Act 2008 \(c. 30\)](#), s. 149(2)(3), [Sch. 9 para. 2\(2\)](#); S.I. 2009/1566, art. 2(1)(b)(ii)

### **38B Section 38 contribution notice issued by reference to material detriment test: defence**

- (1) This section applies where—
- (a) a warning notice is given to any person (“P”) in respect of a contribution notice under section 38, and
  - (b) the contribution notice under consideration would be issued wholly or partly by reference to the Regulator's opinion that the material detriment test is met in relation to an act or deliberate failure to act to which P was a party.

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*Status: Point in time view as at 22/04/2011.*

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- (2) If the Regulator is satisfied that P has shown that—
  - (a) conditions A and C are met, and
  - (b) where applicable, condition B is met,the Regulator must not issue the contribution notice by reference to its being of the opinion mentioned in subsection (1)(b).
- (3) Condition A is that, before becoming a party to the act or failure, P gave due consideration to the extent to which the act or failure might detrimentally affect in a material way the likelihood of accrued scheme benefits being received.
- (4) Condition B is that, in any case where as a result of that consideration P considered that the act or failure might have such an effect, P took all reasonable steps to eliminate or minimise the potential detrimental effects that the act or failure might have on the likelihood of accrued scheme benefits being received.
- (5) Condition C is that, having regard to all relevant circumstances prevailing at the relevant time, it was reasonable for P to conclude that the act or failure would not detrimentally affect in a material way the likelihood of accrued scheme benefits being received.
- (6) P is to be regarded as giving the consideration mentioned in condition A only if P has made the enquiries, and done the other acts, that a reasonably diligent person would have made or done in the circumstances.
- (7) For the purposes of condition C—
  - (a) “the relevant time” means the time at which the act occurred or the failure to act first occurred;
  - (b) the reference to the circumstances mentioned in that condition is a reference to those circumstances of which P was aware, or ought reasonably to have been aware, at that time (including acts or failures to act which have occurred before that time and P's expectation at that time of other acts or failures to act occurring).
- (8) In the case of acts or failures to act forming part of a series, P is to be regarded as having shown the matters mentioned in subsection (2) if P shows in the case of each of the acts or failures in the series that—
  - (a) conditions A and C are met, and (where applicable) condition B is met, in relation to the act or failure, or
  - (b) the act or failure was one of a number of acts or failures (a “group” of acts or failures) selected by P in relation to which the following matters are shown.
- (9) The matters to be shown are that—
  - (a) before becoming a party to the first of the acts or failures in the group, condition A is met in relation to the effect of the acts or failures in the group taken together,
  - (b) condition B is (where applicable) met in relation to that effect, and
  - (c) condition C is then met in relation to each of the acts or failures in the group (determined at the time at which each act or failure concerned occurred or first occurred).
- (10) If at any time P considers that condition C will not be met in relation to any particular act or failure in the group—

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- (a) the previous acts or failures in the group are to be regarded as a separate group for the purposes of subsection (8), and
- (b) P may then select another group consisting of the particular act or failure concerned, and any subsequent act or failure, in relation to which P shows the matters mentioned in subsection (9).

Nothing in paragraph (b) is to be read as preventing P from showing the matters mentioned in subsection (8)(a).

(11) If—

- (a) P is unable to show in the case of each of the acts or failures in the series that the matters set out in subsection (8)(a) or (b) are met, but
  - (b) does show in the case of some of them that those matters are met,
- the acts or failures within paragraph (b) are not to count for the purposes of section 38A as acts or failures to act in the series.

(12) In this section—

- (a) “a warning notice” means a notice given as mentioned in section 96(2)(a);
- (b) any reference to an act or failure to which a person is a party has the same meaning as in section 38(6)(a);
- (c) any reference to the accrued scheme benefits being received has the same meaning as in section 38A;

and subsection (9) of section 38A applies for the purposes of conditions A to C as it applies for the purposes of that section.

(13) Regulations may amend this section.]

#### Textual Amendments

**F14** Ss. 38A, 38B inserted (for specified purposes and with effect in accordance with Sch. 9 para. 15(1) of the amending Act and 29.6.2009 so far as not already in force) by [Pensions Act 2008 \(c. 30\)](#), s. 149(2)(3), [Sch. 9 para. 2\(2\)](#); S.I. 2009/1566, art. 2(1)(b)(ii)

### 39 The sum specified in a section 38 contribution notice

- (1) The sum specified by the Regulator in a contribution notice under section 38 may be either the whole or a specified part of the shortfall sum in relation to the scheme.
- (2) Subject to subsection (3), the shortfall sum in relation to a scheme is—
  - (a) in a case where, at the relevant time, a debt was due from the employer to the trustees or managers of the scheme under section 75 of the Pensions Act 1995 (c. 26) (“the 1995 Act”) (deficiencies in the scheme assets), the amount which the Regulator estimates to be the amount of that debt at that time, and
  - (b) in a case where, at the relevant time, no such debt was due, the amount which the Regulator estimates to be the amount of the debt under section 75 of the 1995 Act which would become due if—
    - (i) subsection (2) of that section applied, and
    - (ii) the time designated by the trustees or managers of the scheme for the purposes of that subsection were the relevant time.

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- (3) Where the Regulator is satisfied that the act or failure to act falling within section 38(5) resulted—
- (a) in a case falling within paragraph (a) of subsection (2), in the amount of the debt which became due under section 75 of the 1995 Act being less than it would otherwise have been, or
  - (b) in a case falling within paragraph (b) of subsection (2), in the amount of any such debt calculated for the purposes of that paragraph being less than it would otherwise have been,
- the Regulator may increase the amounts calculated under subsection (2)(a) or (b) by such amount as the Regulator considers appropriate.
- (4) For the purposes of this section “the relevant time” means [<sup>F15</sup>(subject to subsection (4A))] —
- (a) in the case of an act falling within subsection (5) of section 38, the time of the act, or
  - (b) in the case of a failure to act falling within that subsection—
    - (i) the time when the failure occurred, or
    - (ii) where the failure continued for a period of time, the time which the Regulator determines and which falls within that period.
- [<sup>F16</sup>(4A) In the case of a series of acts or failures to act, “the relevant time” is determined by reference to whichever of the acts or failures in the series is, in the Regulator's opinion, most appropriate.]
- (5) For the purposes of this section—
- (a) references to a debt due under section 75 of the 1995 Act include a contingent debt under that section, and
  - (b) references to the amount of such a debt include the amount of such a contingent debt.

#### Textual Amendments

- F15** Words in s. 39(4) inserted (for specified purposes and with effect in accordance with Sch. 9 para. 15(2) of the amending Act and 29.6.2009 so far as not already in force) by [Pensions Act 2008 \(c. 30\)](#), s. 149(2)(3), [Sch. 9 para. 8\(2\)\(a\)](#); S.I. 2009/1566, art. 2(1)(b)(ii)
- F16** S. 39(4A) inserted (for specified purposes and with effect in accordance with Sch. 9 para. 15(2) of the amending Act and 29.6.2009 so far as not already in force) by [Pensions Act 2008 \(c. 30\)](#), s. 149(2)(3), [Sch. 9 para. 8\(2\)\(b\)](#); S.I. 2009/1566, art. 2(1)(b)(ii)

#### Modifications etc. (not altering text)

- C4** Pt. 1 applied in part (with modifications) (20.7.2005 for specified purposes, 1.9.2005 for specified purposes, 5.12.2005 for specified purposes) by [The Financial Assistance Scheme Regulations 2005 \(S.I. 2005/1986\)](#), regs. 1(1), 4, [Sch. 1](#)
- C5** Ss. 38-56 modified (1.9.2005) by [The Pensions Regulator \(Financial Support Directions etc.\) Regulations 2005 \(S.I. 2005/2188\)](#), regs. 1, [15](#), [16](#)

#### Commencement Information

- I57** S. 39 in force at 6.4.2005 by S.I. 2005/275, art. 2(7), [Sch. Pt. 7](#)



*Status: Point in time view as at 22/04/2011.*

*Changes to legislation: Pensions Act 2004, Part 1 is up to date with all changes known to be in force on or before 23 May 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

### [<sup>F17</sup>39A Section 38 contribution notice: transfer of members of the scheme

- (1) This section applies where—
  - (a) the Regulator is of the opinion that in relation to a scheme (“the initial scheme”) in relation to which section 38 applies—
    - (i) an act or failure to act falling within subsection (5) of that section has occurred (or first occurred) at any time, and
    - (ii) the other conditions in that section for issuing a contribution notice are met in relation to the initial scheme (or, but for any transfer falling within paragraph (b), would be met), and
  - (b) the accrued rights of at least two persons who were members of the initial scheme are transferred at that or any subsequent time to one or more work-based pension schemes (whether by virtue of the act or otherwise).
- (2) The Regulator may issue a contribution notice under section 38 in relation to any transferee scheme (and, accordingly, any reference in section 40 or 41 to the scheme is to the transferee scheme).
- (3) In the case of any contribution notice issued by virtue of subsection (2) to any transferee scheme which is not within subsection (5)(a) or (b), section 39 has effect as if any reference in that section to the scheme were a reference to whichever of—
  - (a) the initial scheme, and
  - (b) the transferee scheme,the Regulator determines to be more appropriate in the circumstances.
- (4) In any case where section 39 has effect in relation to the transferee scheme by virtue of subsection (3), any reference in that section to a debt under section 75 of the 1995 Act is a reference to so much of that debt as, in the Regulator's opinion, is attributable to those members of the transferee scheme who were members of the initial scheme.
- (5) In the case of any contribution notice issued by virtue of subsection (2) to any transferee scheme which is—
  - (a) a scheme to which section 75 of the 1995 Act does not apply, or
  - (b) a scheme to which that section does apply in a case where the liabilities of the scheme that would be taken into account for the purposes of that section do not relate to the members of the initial scheme,the sum specified by the Regulator in the notice is determined in accordance with regulations (and not in accordance with section 39).
- (6) The Regulator may also issue a direction to the trustees or managers of any transferee scheme requiring them to take specified steps to secure that the sum payable under the notice is applied for the benefit of the members of the transferee scheme who were members of the initial scheme.
- (7) If the trustees or managers fail to comply with a direction issued to them under subsection (6), section 10 of the 1995 Act (civil penalties) applies to any trustee or manager who has failed to take all reasonable steps to secure compliance.

#### Textual Amendments

**F17** Ss. 39A, 39B inserted (with effect in accordance with Sch. 9 para. 15(3) of the amending Act) by [Pensions Act 2008 \(c. 30\)](#), s. 149(2)(3), [Sch. 9 para. 9](#) (with [Sch. 9 para. 16\(1\)](#))

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*Status: Point in time view as at 22/04/2011.*

*Changes to legislation: Pensions Act 2004, Part 1 is up to date with all changes known to be in force on or before 23 May 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

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### **39B Section 39A: supplemental**

- (1) In section 39A a “transferee scheme”, in relation to any time, means any work-based pension scheme—
  - (a) to which the accrued rights of at least two persons who were members of the initial scheme have been transferred, and
  - (b) of which any of those persons are members at that time.
- (2) For the purposes of section 39A(1) and subsection (1) above it does not matter whether any rights are transferred to a work-based pension scheme directly from the initial scheme or following one or more other transfers to other work-based pension schemes.
- (3) For the purposes of section 39A and this section references to the transfer of accrued rights of members of a pension scheme to another pension scheme include references to the extinguishing of those accrued rights in consequence of the obligation to make a payment, or transfer an asset, to that other scheme.
- (4) In section 39A and this section—
  - (a) “the 1995 Act” means the Pensions Act 1995;
  - (b) “work-based pension scheme” has the meaning given by section 5(3);
  - (c) any reference to rights which have accrued is to be read in accordance with section 67A(6) and (7) of the 1995 Act (reading any reference in those subsections to a subsisting right as a reference to a right which has accrued).
- (5) Section 39A applies even if the initial scheme—
  - (a) is wound up as a result of any transfer falling within subsection (1)(b) of that section, or
  - (b) otherwise ceases to exist at the time of the transfer or at any subsequent time.
- (6) Accordingly, in any such case, in subsection (1) of that section—
  - (a) the reference to a scheme to which section 38 applies is a reference to a scheme which was such a scheme before the transfer;
  - (b) the reference to any conditions in section 38 being met is a reference to any conditions in that section that, but for the transfer, would have been met in relation to the scheme.
- (7) Nothing in section 39A or this section is to be read as preventing the Regulator from issuing a contribution notice in relation to the initial scheme.
- (8) Regulations may make provision applying, with or without modifications, any provision made by or under section 39A or this section in relation to any scheme or other arrangement in any case where the accrued rights of persons who were members of the initial scheme are transferred or extinguished directly or indirectly in consequence of or otherwise in connection with—
  - (a) the making of any payment at any time to or for the benefit of the scheme or other arrangement,
  - (b) the transfer of any asset at any time to or for the benefit of the scheme or other arrangement,
  - (c) the discharge (wholly or partly) at any time of any liability incurred by or on behalf of the scheme or other arrangement, or
  - (d) the incurring at any time of any obligation to do any act falling within paragraph (a) to (c).

*Status: Point in time view as at 22/04/2011.*

*Changes to legislation: Pensions Act 2004, Part 1 is up to date with all changes known to be in force on or before 23 May 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

- (9) Any reference in subsection (8)(a) to (d) to the doing of an act of any description at any time in relation to the scheme or other arrangement includes a reference to the doing of an act of that description at any previous time in relation to any other scheme or other arrangement.
- (10) Regulations under subsection (8) may—
- (a) make provision having effect in relation to any case where rights are transferred or extinguished on or after the date on which the Secretary of State publishes a statement of the intention to make the regulations; and
  - (b) without prejudice to section 315(5), make consequential provision applying with modifications any provision of this Act which relates to contribution notices under section 38.]

#### Textual Amendments

**F17** Ss. 39A, 39B inserted (with effect in accordance with Sch. 9 para. 15(3) of the amending Act) by [Pensions Act 2008 \(c. 30\)](#), s. 149(2)(3), **Sch. 9 para. 9** (with [Sch. 9 para. 16\(1\)](#))

## 40 Content and effect of a section 38 contribution notice

- (1) This section applies where a contribution notice is issued to a person under section 38.
- (2) The contribution notice must—
- (a) contain a statement of the matters which it is asserted constitute the act or failure to act which falls within subsection (5) of section 38,
  - (b) specify the sum which the person is stated to be under a liability to pay, and
  - (c) identify any other persons to whom contribution notices have been or are issued as a result of the act or failure to act in question and the sums specified in each of those notices.
- (3) Where the contribution notice states that the person is under a liability to pay the sum specified in the notice to the trustees or managers of the scheme, the sum is to be treated as a debt due from the person to the trustees or managers of the scheme.
- (4) In such a case, the Regulator may, on behalf of the trustees or managers of the scheme, exercise such powers as the trustees or managers have to recover the debt.
- (5) But during any assessment period (within the meaning of section 132) in relation to the scheme, the rights and powers of the trustees or managers of the scheme in relation to any debt due to them by virtue of a contribution notice are exercisable by the Board of the Pension Protection Fund to the exclusion of the trustees or managers and the Regulator.
- (6) Where, by virtue of subsection (5), any amount is paid to the Board in respect of a debt due by virtue of a contribution notice, the Board must pay the amount to the trustees or managers of the scheme.
- (7) Where the contribution notice states that the person is under a liability to pay the sum specified in the notice to the Board, the sum is to be treated as a debt due from the person to the Board.
- (8) Where the contribution notice so specifies, the person to whom the notice is issued (“P”) is to be treated as jointly and severally liable for the debt with any persons

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specified in the notice who are persons to whom corresponding contribution notices are issued.

- (9) For the purposes of subsection (8), a corresponding contribution notice is a notice which—
- (a) is issued as a result of the same act or failure to act falling within subsection (5) of section 38 as the act or failure as a result of which P’s contribution notice is issued,
  - (b) specifies the same sum as is specified in P’s contribution notice, and
  - (c) specifies that the person to whom the contribution notice is issued is jointly and severally liable with P, or with P and other persons, for the debt in respect of that sum.
- (10) A debt due by virtue of a contribution notice is not to be taken into account for the purposes of section 75(2) and (4) of the Pensions Act 1995 (c. 26) (deficiencies in the scheme assets) when ascertaining the amount or value of the assets or liabilities of a scheme.

**Modifications etc. (not altering text)**

- C4** Pt. 1 applied in part (with modifications) (20.7.2005 for specified purposes, 1.9.2005 for specified purposes, 5.12.2005 for specified purposes) by [The Financial Assistance Scheme Regulations 2005 \(S.I. 2005/1986\)](#), regs. 1(1), 4, **Sch. 1**
- C5** Ss. 38-56 modified (1.9.2005) by [The Pensions Regulator \(Financial Support Directions etc.\) Regulations 2005 \(S.I. 2005/2188\)](#), regs. 1, **15**, **16**

**Commencement Information**

- I58** S. 40 in force at 6.4.2005 by [S.I. 2005/275](#), art. 2(7), **Sch. Pt. 7**

**41 Section 38 contribution notice: relationship with employer debt**

- (1) This section applies where a contribution notice is issued to a person (“P”) under section 38 and condition A or B is met.
- (2) Condition A is met if, at the time at which the contribution notice is issued, there is a debt due under section 75 of the Pensions Act 1995 (“the 1995 Act”) (deficiencies in the scheme assets) from the employer—
  - (a) to the trustees or managers of the scheme, or
  - (b) where the Board of the Pension Protection Fund has assumed responsibility for the scheme in accordance with Chapter 3 of Part 2 (pension protection), to the Board.
- (3) Condition B is met if, after the contribution notice is issued but before the whole of the debt due by virtue of the notice is recovered, a debt becomes due from the employer to the trustees or managers of the scheme under section 75 of the 1995 Act.
- (4) The Regulator may issue a direction to the trustees or managers of the scheme not to take any or any further steps to recover the debt due to them under section 75 of the 1995 Act pending the recovery of all or a specified part of the debt due to them by virtue of the contribution notice.

*Status: Point in time view as at 22/04/2011.*

*Changes to legislation: Pensions Act 2004, Part 1 is up to date with all changes known to be in force on or before 23 May 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

- (5) If the trustees or managers fail to comply with a direction issued to them under subsection (4), section 10 of the 1995 Act (civil penalties) applies to any trustee or manager who has failed to take all reasonable steps to secure compliance.
- (6) Any sums paid—
  - (a) to the trustees or managers of the scheme in respect of any debt due to them by virtue of the contribution notice, or
  - (b) to the Board in respect of any debt due to it by virtue of the contribution notice,are to be treated as reducing the amount of the debt due to the trustees or managers or, as the case may be, to the Board under section 75 of the 1995 Act.
- (7) Where a sum is paid to the trustees or managers of the scheme or, as the case may be, to the Board in respect of the debt due under section 75 of the 1995 Act, P may make an application under this subsection to the Regulator for a reduction in the amount of the sum specified in P's contribution notice.
- (8) An application under subsection (7) must be made as soon as reasonably practicable after the sum is paid to the trustees or managers or, as the case may be, to the Board in respect of the debt due under section 75 of the 1995 Act.
- (9) Where such an application is made to the Regulator, the Regulator may, if it is of the opinion that it is appropriate to do so—
  - (a) reduce the amount of the sum specified in P's contribution notice by an amount which it considers reasonable, and
  - (b) issue a revised contribution notice specifying the revised sum.
- (10) For the purposes of subsection (9), the Regulator must have regard to such matters as the Regulator considers relevant including, where relevant, the following matters—
  - (a) the amount paid in respect of the debt due under section 75 of the 1995 Act since the contribution notice was issued,
  - (b) any amounts paid in respect of the debt due by virtue of that contribution notice,
  - (c) whether contribution notices have been issued to other persons as a result of the same act or failure to act falling within subsection (5) of section 38 as the act or failure as a result of which P's contribution notice was issued,
  - (d) where such contribution notices have been issued, the sums specified in each of those notices and any amounts paid in respect of the debt due by virtue of those notices,
  - (e) whether P's contribution notice specifies that P is jointly and severally liable for the debt with other persons, and
  - (f) such other matters as may be prescribed.
- (11) Where—
  - (a) P's contribution notice specifies that P is jointly and severally liable for the debt with other persons, and
  - (b) a revised contribution notice is issued to P under subsection (9) specifying a revised sum,the Regulator must also issue revised contribution notices to those other persons specifying the revised sum and their joint and several liability with P for the debt in respect of that sum.
- (12) For the purposes of this section—

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- (a) references to a debt due under section 75 of the 1995 Act include a contingent debt under that section, and
- (b) references to the amount of such a debt include the amount of such a contingent debt.

**Modifications etc. (not altering text)**

- C4** Pt. 1 applied in part (with modifications) (20.7.2005 for specified purposes, 1.9.2005 for specified purposes, 5.12.2005 for specified purposes) by [The Financial Assistance Scheme Regulations 2005 \(S.I. 2005/1986\)](#), regs. 1(1), 4, **Sch. 1**
- C5** Ss. 38-56 modified (1.9.2005) by [The Pensions Regulator \(Financial Support Directions etc.\) Regulations 2005 \(S.I. 2005/2188\)](#), regs. 1, **15**, 16

**Commencement Information**

- I59** S. 41(1)-(9)(10)(a)-(e)(11)(12) in force at 6.4.2005 by [S.I. 2005/275](#), art. 2(7), **Sch. Pt. 7**

**42 Section 38 contribution notice: clearance statements**

- (1) An application may be made to the Regulator under this section for the issue of a clearance statement within paragraph (a), (b) or (c) of subsection (2) in relation to circumstances described in the application.
- (2) A clearance statement is a statement, made by the Regulator, that in its opinion in the circumstances described in the application—
  - (a) the applicant would not be, for the purposes of subsection (3)(a) of section 38, a party to an act or a deliberate failure to act falling within subsection (5)(a) of that section,
  - (b) it would not be reasonable to impose any liability on the applicant under a contribution notice issued under section 38, or
  - (c) such requirements of that section as may be prescribed would not be satisfied in relation to the applicant.
- (3) Where an application is made under this section, the Regulator—
  - (a) may request further information from the applicant;
  - (b) may invite the applicant to amend the application to modify the circumstances described.
- (4) Where an application is made under this section, the Regulator must as soon as reasonably practicable—
  - (a) determine whether to issue the clearance statement, and
  - (b) where it determines to do so, issue the statement.
- (5) A clearance statement issued under this section binds the Regulator in relation to the exercise of the power to issue a contribution notice under section 38 to the applicant unless—
  - (a) the circumstances in relation to which the exercise of the power under that section arises are not the same as the circumstances described in the application, and
  - (b) the difference in those circumstances is material to the exercise of the power.

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**Modifications etc. (not altering text)**

- C4** Pt. 1 applied in part (with modifications) (20.7.2005 for specified purposes, 1.9.2005 for specified purposes, 5.12.2005 for specified purposes) by [The Financial Assistance Scheme Regulations 2005 \(S.I. 2005/1986\)](#), regs. 1(1), 4, **Sch. 1**
- C5** Ss. 38-56 modified (1.9.2005) by [The Pensions Regulator \(Financial Support Directions etc.\) Regulations 2005 \(S.I. 2005/2188\)](#), regs. 1, **15**, 16

**Commencement Information**

- I60** S. 42(1)(2)(a)(b)(3)-(5) in force at 6.4.2005 by [S.I. 2005/275](#), art. 2(7), **Sch. Pt. 7**

*Financial support directions*

**43 Financial support directions**

- (1) This section applies in relation to an occupational pension scheme other than—
- a money purchase scheme, or
  - a prescribed scheme or a scheme of a prescribed description.
- (2) The Regulator may issue a financial support direction under this section in relation to such a scheme if the Regulator is of the opinion that the employer in relation to the scheme—
- is a service company, or
  - is insufficiently resourced,
- at a time determined by the Regulator which falls within subsection (9) (“the relevant time”).
- (3) A financial support direction in relation to a scheme is a direction which requires the person or persons to whom it is issued to secure—
- that financial support for the scheme is put in place within the period specified in the direction,
  - that thereafter that financial support or other financial support remains in place while the scheme is in existence, and
  - that the Regulator is notified in writing of prescribed events in respect of the financial support as soon as reasonably practicable after the event occurs.
- (4) A financial support direction in relation to a scheme may be issued to one or more persons.
- (5) But the Regulator may issue such a direction to a person only if—
- the person is at the relevant time a person falling within subsection (6), and
  - the Regulator is of the opinion that it is reasonable to impose the requirements of the direction on that person.
- (6) A person falls within this subsection if the person is—
- the employer in relation to the scheme,
  - an individual who—
    - is an associate of an individual who is the employer, but
    - is not an associate of that individual by reason only of being employed by him, or

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- (c) a person, other than an individual, who is connected with or an associate of the employer.
- (7) The Regulator, when deciding for the purposes of subsection (5)(b) whether it is reasonable to impose the requirements of a financial support direction on a particular person, must have regard to such matters as the Regulator considers relevant including, where relevant, the following matters—
- (a) the relationship which the person has or has had with the employer (including, where the employer is a company within the meaning of subsection (11) of section 435 of the Insolvency Act 1986 (c. 45), whether the person has or has had control of the employer within the meaning of subsection (10) of that section),
  - (b) in the case of a person falling within subsection (6)(b) or (c), the value of any benefits received directly or indirectly by that person from the employer,
  - (c) any connection or involvement which the person has or has had with the scheme,
  - (d) the financial circumstances of the person, and
  - (e) such other matters as may be prescribed.
- (8) A financial support direction must identify all the persons to whom the direction is issued.
- (9) A time falls within this subsection if it is a time which falls within a prescribed period which ends with the determination by the Regulator to exercise the power to issue the financial support direction in question.
- (10) For the purposes of subsection (3), a scheme is in existence until it is wound up.
- (11) No duty to which a person is subject is to be regarded as contravened merely because of any information or opinion contained in a notice given by virtue of subsection (3)(c).
- This is subject to section 311 (protected items).

#### **Modifications etc. (not altering text)**

- C4** Pt. 1 applied in part (with modifications) (20.7.2005 for specified purposes, 1.9.2005 for specified purposes, 5.12.2005 for specified purposes) by [The Financial Assistance Scheme Regulations 2005 \(S.I. 2005/1986\)](#), regs. 1(1), 4, **Sch. 1**
- C5** Ss. 38-56 modified (1.9.2005) by [The Pensions Regulator \(Financial Support Directions etc.\) Regulations 2005 \(S.I. 2005/2188\)](#), regs. 1, **15**, 16
- C10** S. 43 excluded (29.9.2008 at 8.00 a.m.) by [The Bradford & Bingley plc Transfer of Securities and Property etc. Order 2008 \(S.I. 2008/2546\)](#), **Sch. 3 para. 11(b)(ii)**
- C11** S. 43 modified (30.3.2009 at 8.00 a.m.) by [The Amendments to Law \(Resolution of Dunfermline Building Society\) Order 2009 \(S.I. 2009/814\)](#), **art. 5**

#### **Commencement Information**

- I61** S. 43(1)(a)(2)(3)(a)(b)(4)-(6)(7)(a)-(d)(8)(10)(11) in force in so far as not already in force except subsection (7)(e) at 6.4.2005 by [S.I. 2005/275](#), art. 2(7), **Sch. Pt. 7**
- I62** S. 43(1)(b)(3)(c)(9) in force for the purpose only of conferring power to make regulations, orders or rules, as the case may be, 10.2.2005; and for all other purposes at 6.4.2005 in so far as not already in force by [S.I. 2005/275](#), art. 2(3), **Sch. Pt. 3**



*Status: Point in time view as at 22/04/2011.*

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## **[<sup>F18</sup>43A Financial support directions: transfer of members of the scheme**

- (1) This section applies where—
  - (a) the Regulator is of the opinion by reference to any time that the conditions in section 43 for issuing a financial support direction are met in relation to a scheme (“the initial scheme”) in relation to which that section applies (or, but for any transfer falling within paragraph (b), would be met), and
  - (b) the accrued rights of at least two persons who were members of the initial scheme are transferred at any subsequent time to one or more work-based pension schemes.
- (2) The Regulator may issue a financial support direction under that section in relation to any transferee scheme (and, accordingly, any reference in section 45 or any of sections 47 to 50 to the scheme is to the transferee scheme).
- (3) The Regulator may also issue a direction to the trustees or managers of any transferee scheme requiring them to take specified steps to secure that the financial support is put in place for the benefit of the members of the transferee scheme who were members of the initial scheme.
- (4) If the trustees or managers fail to comply with a direction issued to them under subsection (3), section 10 of the 1995 Act (civil penalties) applies to any trustee or manager who has failed to take all reasonable steps to secure compliance.

### **Textual Amendments**

**F18** Ss. 43A, 43B inserted (with effect in accordance with Sch. 9 para. 15(3) of the amending Act) by [Pensions Act 2008 \(c. 30\)](#), s. 149(2)(3), **Sch. 9 para. 10** (with Sch. 9 para. 16(2))

## **43B Section 43A: supplemental**

- (1) In section 43A a “transferee scheme”, in relation to any time, means any work-based pension scheme—
  - (a) to which the accrued rights of at least two persons who were members of the initial scheme have been transferred, and
  - (b) of which any of those persons are members at that time.
- (2) For the purposes of section 43A(1) and subsection (1) above it does not matter whether any rights are transferred to a work-based pension scheme directly from the initial scheme or following one or more other transfers to other work-based pension schemes.
- (3) For the purposes of section 43A and this section references to the transfer of accrued rights of members of a pension scheme to another pension scheme include references to the extinguishing of those accrued rights in consequence of the obligation to make a payment, or transfer an asset, to that other scheme.
- (4) In section 43A and this section—
  - (a) “the 1995 Act” means the Pensions Act 1995;
  - (b) “work-based pension scheme” has the meaning given by section 5(3);
  - (c) any reference to rights which have accrued is to be read in accordance with section 67A(6) and (7) of the 1995 Act (reading any reference in those subsections to a subsisting right as a reference to a right which has accrued).

*Status: Point in time view as at 22/04/2011.*

*Changes to legislation: Pensions Act 2004, Part 1 is up to date with all changes known to be in force on or before 23 May 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

- (5) Section 43A applies even if the initial scheme—
- (a) is wound up as a result of any transfer falling within subsection (1)(b) of that section, or
  - (b) otherwise ceases to exist at the time of the transfer or at any subsequent time.
- (6) Accordingly, in any such case, in subsection (1) of that section—
- (a) the reference to a scheme to which section 43 applies is a reference to a scheme which was such a scheme before the transfer;
  - (b) the reference to any conditions in section 43 being met is a reference to any conditions in that section that, but for the transfer, would have been met in relation to the scheme.
- (7) Nothing in section 43A or this section is to be read as preventing the Regulator from issuing a financial support direction in relation to the initial scheme.
- (8) Regulations may make provision applying, with or without modifications, any provision made by section 43A or this section in relation to any scheme or other arrangement in any case where the accrued rights of persons who were members of the initial scheme are transferred or extinguished directly or indirectly in consequence of or otherwise in connection with—
- (a) the making of any payment at any time to or for the benefit of the scheme or other arrangement,
  - (b) the transfer of any asset at any time to or for the benefit of the scheme or other arrangement,
  - (c) the discharge (wholly or partly) at any time of any liability incurred by or on behalf of the scheme or other arrangement, or
  - (d) the incurring at any time of any obligation to do any act falling within paragraph (a) to (c).
- (9) Any reference in subsection (8)(a) to (d) to the doing of an act of any description at any time in relation to the scheme or other arrangement includes a reference to the doing of an act of that description at any previous time in relation to any other scheme or other arrangement.
- (10) Regulations under subsection (8) may—
- (a) make provision having effect in relation to any case where rights are transferred or extinguished on or after the date on which the Secretary of State publishes a statement of the intention to make the regulations; and
  - (b) without prejudice to section 315(5), make consequential provision applying with modifications any provision of this Act which relates to financial support directions under section 43.]

#### Textual Amendments

**F18** Ss. 43A, 43B inserted (with effect in accordance with Sch. 9 para. 15(3) of the amending Act) by [Pensions Act 2008 \(c. 30\)](#), s. 149(2)(3), **Sch. 9 para. 10** (with Sch. 9 para. 16(2))

## 44 Meaning of “service company” and “insufficiently resourced”

- (1) This section applies for the purposes of section 43 (financial support directions).

*Status: Point in time view as at 22/04/2011.*

*Changes to legislation: Pensions Act 2004, Part 1 is up to date with all changes known to be in force on or before 23 May 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

- (2) An employer (“E”) is a “service company” at the relevant time if—
  - (a) E is a company [<sup>F19</sup>as defined in section 1(1) of the Companies Act 2006],
  - (b) E is a member of a group of companies, and
  - (c) E’s turnover, as shown in the latest available [<sup>F20</sup>individual accounts] for E prepared in accordance with [<sup>F21</sup>Part 15 of that Act], is solely or principally derived from amounts charged for the provision of the services of employees of E to other members of that group.
- (3) The employer in relation to a scheme is insufficiently resourced at the relevant time if—
  - (a) at that time the value of the resources of the employer is less than the amount which is a prescribed percentage of the estimated section 75 debt in relation to the scheme, and
  - [<sup>F22</sup>(b) condition A or B is met.]
- [<sup>F23</sup>(3A) Condition A is met if—
  - (a) there is at that time a person who falls within section 43(6)(b) or (c), and
  - (b) the value at that time of that person's resources is not less than the relevant deficit, that is to say the amount which is the difference between—
    - (i) the value of the resources of the employer, and
    - (ii) the amount which is the prescribed percentage of the estimated section 75 debt.
- (3B) Condition B is met if—
  - (a) there are at that time two or more persons who—
    - (i) fall within section 43(6)(b) or (c), and
    - (ii) are connected with, or associates of, each other, and
  - (b) the aggregate value at that time of the resources of the persons who fall within paragraph (a) (or any of them) is not less than the relevant deficit.]
- (4) For the purposes of [<sup>F24</sup>subsections (3) to (3B)] —
  - (a) what constitutes the resources of a person is to be determined in accordance with regulations, and
  - (b) the value of a person’s resources is to be determined, calculated and verified in a prescribed manner.
- (5) In this section the “estimated section 75 debt”, in relation to a scheme, means the amount which the Regulator estimates to be the amount of the debt which would become due from the employer to the trustees or managers of the scheme under section 75 of the Pensions Act 1995 (c. 26) (deficiencies in the scheme assets) if—
  - (a) subsection (2) of that section applied, and
  - (b) the time designated by the trustees or managers of the scheme for the purposes of that subsection were the relevant time.
- (6) When calculating the estimated section 75 debt in relation to a scheme under subsection (5), the amount of any debt due at the relevant time from the employer under section 75 of the Pensions Act 1995 (c. 26) is to be disregarded.
- (7) In this section “the relevant time” has the same meaning as in section 43.

*Status: Point in time view as at 22/04/2011.*

*Changes to legislation: Pensions Act 2004, Part 1 is up to date with all changes known to be in force on or before 23 May 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

### Textual Amendments

- F19** Words in s. 44(2)(a) substituted (1.10.2009) by [The Companies Act 2006 \(Consequential Amendments, Transitional Provisions and Savings\) Order 2009 \(S.I. 2009/1941\)](#), art. 1(2), [Sch. 1 para. 243\(2\)\(a\)](#) (with art. 10)
- F20** Words in s. 44(2)(c) substituted (1.10.2009) by [The Companies Act 2006 \(Consequential Amendments, Transitional Provisions and Savings\) Order 2009 \(S.I. 2009/1941\)](#), art. 1(2), [Sch. 1 para. 243\(2\)\(b\)\(i\)](#) (with art. 10)
- F21** Words in s. 44(2)(c) substituted (1.10.2009) by [The Companies Act 2006 \(Consequential Amendments, Transitional Provisions and Savings\) Order 2009 \(S.I. 2009/1941\)](#), art. 1(2), [Sch. 1 para. 243\(2\)\(b\)\(ii\)](#) (with art. 10)
- F22** S. 44(3)(b) substituted (with effect in accordance with Sch. 9 para. 15(4) of the amending Act) by [Pensions Act 2008 \(c. 30\)](#), s. 149(2)(3), [Sch. 9 para. 14\(1\)](#)
- F23** S. 44(3A)(3B) inserted (with effect in accordance with Sch. 9 para. 15(4) of the amending Act) by [Pensions Act 2008 \(c. 30\)](#), s. 149(2)(3), [Sch. 9 para. 14\(2\)](#)
- F24** Words in s. 44(4) substituted (with effect in accordance with Sch. 9 para. 15(4) of the amending Act) by [Pensions Act 2008 \(c. 30\)](#), s. 149(2)(3), [Sch. 9 para. 14\(3\)](#)

### Modifications etc. (not altering text)

- C4** Pt. 1 applied in part (with modifications) (20.7.2005 for specified purposes, 1.9.2005 for specified purposes, 5.12.2005 for specified purposes) by [The Financial Assistance Scheme Regulations 2005 \(S.I. 2005/1986\)](#), regs. 1(1), 4, [Sch. 1](#)
- C5** Ss. 38-56 modified (1.9.2005) by [The Pensions Regulator \(Financial Support Directions etc.\) Regulations 2005 \(S.I. 2005/2188\)](#), regs. 1, [15](#), [16](#)

### Commencement Information

- I63** S. 44(1)(2)(3)(b)(5)-(7) in force at 6.4.2005 by [S.I. 2005/275](#), art. 2(7), [Sch. Pt. 7](#)
- I64** S. 44(3)(a)(4) in force for the purpose only of conferring power to make regulations, orders or rules, as the case may be, 10.2.2005; and for all other purposes at 6.4.2005 in so far as not already in force by [S.I. 2005/275](#), art. 2(3), [Sch. Pt. 3](#)

## 45 Meaning of “financial support”

- (1) For the purposes of section 43 (financial support directions), “financial support” for a scheme means one or more of the arrangements falling within subsection (2) the details of which are approved in a notice issued by the Regulator.
- (2) The arrangements falling within this subsection are—
- (a) an arrangement whereby, at any time when the employer is a member of a group of companies, all the members of the group are jointly and severally liable for the whole or part of the employer’s pension liabilities in relation to the scheme;
  - (b) an arrangement whereby, at any time when the employer is a member of a group of companies, a company (<sup>F25</sup>within the meaning of section 1159 of the Companies Act 2006) which meets prescribed requirements and is the holding company of the group is liable for the whole or part of the employer’s pension liabilities in relation to the scheme;
  - (c) an arrangement which meets prescribed requirements and whereby additional financial resources are provided to the scheme;
  - (d) such other arrangements as may be prescribed.

*Status: Point in time view as at 22/04/2011.*

*Changes to legislation: Pensions Act 2004, Part 1 is up to date with all changes known to be in force on or before 23 May 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

- (3) The Regulator may not issue a notice under subsection (1) approving the details of one or more arrangements falling within subsection (2) unless it is satisfied that the arrangement is, or the arrangements are, reasonable in the circumstances.
- (4) In subsection (2), “the employer’s pension liabilities” in relation to a scheme means—
- (a) the liabilities for any amounts payable by or on behalf of the employer towards the scheme (whether on his own account or otherwise) in accordance with a schedule of contributions under section 227, and
  - (b) the liabilities for any debt which is or may become due to the trustees or managers of the scheme from the employer whether by virtue of section 75 of the Pensions Act 1995 (deficiencies in the scheme assets) or otherwise.

#### Textual Amendments

- F25** Words in s. 45(2)(b) substituted (1.10.2009) by [The Companies Act 2006 \(Consequential Amendments, Transitional Provisions and Savings\) Order 2009 \(S.I. 2009/1941\)](#), art. 1(2), **Sch. 1 para. 243(3)** (with art. 10)

#### Modifications etc. (not altering text)

- C4** Pt. 1 applied in part (with modifications) (20.7.2005 for specified purposes, 1.9.2005 for specified purposes, 5.12.2005 for specified purposes) by [The Financial Assistance Scheme Regulations 2005 \(S.I. 2005/1986\)](#), regs. 1(1), 4, **Sch. 1**
- C5** Ss. 38-56 modified (1.9.2005) by [The Pensions Regulator \(Financial Support Directions etc.\) Regulations 2005 \(S.I. 2005/2188\)](#), regs. 1, **15**, **16**

#### Commencement Information

- I65** S. 45(1)(2)(a)(c)(d)(3)(4) in force at 6.4.2005 by [S.I. 2005/275](#), art. 2(7), **Sch. Pt. 7**
- I66** S. 45(2)(b) in force for the purpose only of conferring power to make regulations, orders or rules, as the case may be, 10.2.2005; and for all other purposes at 6.4.2005 in so far as not already in force by [S.I. 2005/275](#), art. 2(3), **Sch. Pt. 3**

## 46 Financial support directions: clearance statements

- (1) An application may be made to the Regulator under this section for the issue of a clearance statement within paragraph (a), (b) or (c) of subsection (2) in relation to circumstances described in the application and relating to an occupational pension scheme.
- (2) A clearance statement is a statement, made by the Regulator, that in its opinion in the circumstances described in the application—
- (a) the employer in relation to the scheme would not be a service company for the purposes of section 43,
  - (b) the employer in relation to the scheme would not be insufficiently resourced for the purposes of that section, or
  - (c) it would not be reasonable to impose the requirements of a financial support direction, in relation to the scheme, on the applicant.
- (3) Where an application is made under this section, the Regulator—
- (a) may request further information from the applicant;
  - (b) may invite the applicant to amend the application to modify the circumstances described.

*Status: Point in time view as at 22/04/2011.*

*Changes to legislation: Pensions Act 2004, Part 1 is up to date with all changes known to be in force on or before 23 May 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

- (4) Where an application is made under this section, the Regulator must as soon as reasonably practicable—
  - (a) determine whether to issue the clearance statement, and
  - (b) where it determines to do so, issue the statement.
- (5) A clearance statement issued under this section binds the Regulator in relation to the exercise of the power to issue a financial support direction under section 43 in relation to the scheme to the applicant unless—
  - (a) the circumstances in relation to which the exercise of the power under that section arises are not the same as the circumstances described in the application, and
  - (b) the difference in those circumstances is material to the exercise of the power.

**Modifications etc. (not altering text)**

- C4** Pt. 1 applied in part (with modifications) (20.7.2005 for specified purposes, 1.9.2005 for specified purposes, 5.12.2005 for specified purposes) by [The Financial Assistance Scheme Regulations 2005 \(S.I. 2005/1986\)](#), regs. 1(1), 4, **Sch. 1**
- C5** Ss. 38-56 modified (1.9.2005) by [The Pensions Regulator \(Financial Support Directions etc.\) Regulations 2005 \(S.I. 2005/2188\)](#), regs. 1, **15**, 16

**Commencement Information**

- I67** S. 46 in force at 6.4.2005 by [S.I. 2005/275](#), art. 2(7), **Sch. Pt. 7**

**47 Contribution notices where non-compliance with financial support direction**

- (1) This section applies where there is non-compliance with a financial support direction issued in relation to a scheme under section 43.
- (2) The Regulator may issue a notice to any one or more of the persons to whom the direction was issued stating that the person is under a liability to pay to the trustees or managers of the scheme the sum specified in the notice (a “contribution notice”).
- (3) The Regulator may issue a contribution notice to a person only if the Regulator is of the opinion that it is reasonable to impose liability on the person to pay the sum specified in the notice.
- (4) The Regulator, when deciding for the purposes of subsection (3) whether it is reasonable to impose liability on a particular person to pay the sum specified in the notice, must have regard to such matters as the Regulator considers relevant including, where relevant, the following matters—
  - (a) whether the person has taken reasonable steps to secure compliance with the financial support direction,
  - (b) the relationship which the person has or has had with the employer (including, where the employer is a company within the meaning of subsection (11) of section 435 of the Insolvency Act 1986 (c. 45), whether the person has or has had control of the employer within the meaning of subsection (10) of that section),
  - (c) in the case of a person to whom the financial support direction was issued as a person falling within section 43(6)(b) or (c), the value of any benefits received directly or indirectly by that person from the employer,

*Status: Point in time view as at 22/04/2011.*

*Changes to legislation: Pensions Act 2004, Part 1 is up to date with all changes known to be in force on or before 23 May 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

- (d) the relationship which the person has or has had with the parties to any arrangements put in place in accordance with the direction (including, where any of those parties is a company within the meaning of subsection (11) of section 435 of the Insolvency Act 1986, whether the person has or has had control of that company within the meaning of subsection (10) of that section),
  - (e) any connection or involvement which the person has or has had with the scheme,
  - (f) the financial circumstances of the person, and
  - (g) such other matters as may be prescribed.
- (5) A contribution notice may not be issued under this section in respect of non-compliance with a financial support direction in relation to a scheme where the Board of the Pension Protection Fund has assumed responsibility for the scheme in accordance with Chapter 3 of Part 2 (pension protection).

**Modifications etc. (not altering text)**

- C4** Pt. 1 applied in part (with modifications) (20.7.2005 for specified purposes, 1.9.2005 for specified purposes, 5.12.2005 for specified purposes) by [The Financial Assistance Scheme Regulations 2005 \(S.I. 2005/1986\)](#), regs. 1(1), 4, **Sch. 1**
- C5** Ss. 38-56 modified (1.9.2005) by [The Pensions Regulator \(Financial Support Directions etc.\) Regulations 2005 \(S.I. 2005/2188\)](#), regs. 1, **15**, 16

**Commencement Information**

- I68** S. 47(1)-(3)(4)(a)-(f)(5) in force at 6.4.2005 by [S.I. 2005/275](#), art. 2(7), **Sch. Pt. 7**

**48 The sum specified in a section 47 contribution notice**

- (1) The sum specified by the Regulator in a contribution notice under section 47 may be either the whole or a specified part of the shortfall sum in relation to the scheme.
- (2) The shortfall sum in relation to a scheme is—
- (a) in a case where, at the time of non-compliance, a debt was due from the employer to the trustees or managers of the scheme under section 75 of the Pensions Act 1995 (c. 26) (“the 1995 Act”) (deficiencies in the scheme assets), the amount which the Regulator estimates to be the amount of that debt at that time, and
  - (b) in a case where, at the time of non-compliance, no such debt was due, the amount which the Regulator estimates to be the amount of the debt under section 75 of the 1995 Act which would become due if—
    - (i) subsection (2) of that section applied, and
    - (ii) the time designated by the trustees or managers of the scheme for the purposes of that subsection were the time of non-compliance.
- (3) For the purposes of this section “the time of non-compliance” means—
- (a) in the case of non-compliance with paragraph (a) of subsection (3) of section 43 (financial support directions), the time immediately after the expiry of the period specified in the financial support direction for putting in place the financial support,
  - (b) in the case of non-compliance with paragraph (b) of that subsection, the time when financial support for the scheme ceased to be in place,

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- (c) in the case of non-compliance with paragraph (c) of that subsection, the time when the prescribed event occurred in relation to which there was the failure to notify the Regulator, or
- (d) where more than one of paragraphs (a) to (c) above apply, whichever of the times specified in the applicable paragraphs the Regulator determines.

**Modifications etc. (not altering text)**

- C4** Pt. 1 applied in part (with modifications) (20.7.2005 for specified purposes, 1.9.2005 for specified purposes, 5.12.2005 for specified purposes) by [The Financial Assistance Scheme Regulations 2005 \(S.I. 2005/1986\)](#), regs. 1(1), 4, **Sch. 1**
- C5** Ss. 38-56 modified (1.9.2005) by [The Pensions Regulator \(Financial Support Directions etc.\) Regulations 2005 \(S.I. 2005/2188\)](#), regs. 1, **15**, 16

**Commencement Information**

- I69** S. 48 in force at 6.4.2005 by [S.I. 2005/275](#), art. 2(7), **Sch. Pt. 7**

**49 Content and effect of a section 47 contribution notice**

- (1) This section applies where a contribution notice is issued to a person under section 47.
- (2) The contribution notice must—
  - (a) contain a statement of the matters which it is asserted constitute the non-compliance with the financial support direction in respect of which the notice is issued, and
  - (b) specify the sum which the person is stated to be under a liability to pay.
- (3) The sum specified in the notice is to be treated as a debt due from the person to the trustees or managers of the scheme.
- (4) The Regulator may, on behalf of the trustees or managers of the scheme, exercise such powers as the trustees or managers have to recover the debt.
- (5) But during any assessment period (within the meaning of section 132) in relation to the scheme, the rights and powers of the trustees or managers of the scheme in relation to any debt due to them by virtue of a contribution notice, are exercisable by the Board of the Pension Protection Fund to the exclusion of the trustees or managers and the Regulator.
- (6) Where, by virtue of subsection (5), any amount is paid to the Board in respect of a debt due by virtue of a contribution notice, the Board must pay the amount to the trustees or managers of the scheme.
- (7) The contribution notice must identify any other persons to whom contribution notices have been or are issued in respect of the non-compliance in question and the sums specified in each of those notices.
- (8) Where the contribution notice so specifies, the person to whom the notice is issued (“P”) is to be treated as jointly and severally liable for the debt with any persons specified in the notice who are persons to whom corresponding contribution notices are issued.
- (9) For the purposes of subsection (8), a corresponding contribution notice is a notice which—



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- (a) is issued in respect of the same non-compliance with the financial support direction as the non-compliance in respect of which P’s contribution notice is issued,
  - (b) specifies the same sum as is specified in P’s contribution notice, and
  - (c) specifies that the person to whom the contribution notice is issued is jointly and severally liable with P, or with P and other persons, for the debt in respect of that sum.
- (10) A debt due by virtue of a contribution notice is not to be taken into account for the purposes of section 75(2) and (4) of the Pensions Act 1995 (c. 26) (deficiencies in the scheme assets) when ascertaining the amount or value of the assets or liabilities of a scheme.

**Modifications etc. (not altering text)**

- C4** Pt. 1 applied in part (with modifications) (20.7.2005 for specified purposes, 1.9.2005 for specified purposes, 5.12.2005 for specified purposes) by [The Financial Assistance Scheme Regulations 2005 \(S.I. 2005/1986\)](#), regs. 1(1), 4, **Sch. 1**
- C5** Ss. 38-56 modified (1.9.2005) by [The Pensions Regulator \(Financial Support Directions etc.\) Regulations 2005 \(S.I. 2005/2188\)](#), regs. 1, **15**, **16**

**Commencement Information**

- I70** S. 49 in force at 6.4.2005 by [S.I. 2005/275](#), art. 2(7), **Sch. Pt. 7**

**50 Section 47 contribution notice: relationship with employer debt**

- (1) This section applies where a contribution notice is issued to a person (“P”) under section 47 and condition A or B is met.
- (2) Condition A is met if, at the time at which the contribution notice is issued, there is a debt due from the employer to the trustees or managers of the scheme under section 75 of the Pensions Act 1995 (“the 1995 Act”) (deficiencies in the scheme assets).
- (3) Condition B is met if, after the contribution notice is issued but before the whole of the debt due by virtue of the notice is recovered, a debt becomes due from the employer to the trustees or managers of the scheme under section 75 of the 1995 Act.
- (4) The Regulator may issue a direction to the trustees or managers of the scheme not to take any or any further steps to recover the debt due to them under section 75 of the 1995 Act pending the recovery of all or a specified part of the debt due to them by virtue of the contribution notice.
- (5) If the trustees or managers fail to comply with a direction issued to them under subsection (4), section 10 of the 1995 Act (civil penalties) applies to any trustee or manager who has failed to take all reasonable steps to secure compliance.
- (6) Any sums paid—
  - (a) to the trustees or managers of the scheme in respect of any debt due to them by virtue of the contribution notice, or
  - (b) to the Board of the Pension Protection Fund in respect of any debt due to it by virtue of the contribution notice (where it has assumed responsibility for the scheme in accordance with Chapter 3 of Part 2 (pension protection)),

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*Changes to legislation: Pensions Act 2004, Part 1 is up to date with all changes known to be in force on or before 23 May 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

are to be treated as reducing the amount of the debt due to the trustees or managers or, as the case may be, to the Board under section 75 of the 1995 Act.

- (7) Where a sum is paid to the trustees or managers of the scheme or, as the case may be, to the Board in respect of the debt due under section 75 of the 1995 Act, P may make an application under this subsection to the Regulator for a reduction in the amount of the sum specified in P's contribution notice.
- (8) An application under subsection (7) must be made as soon as reasonably practicable after the sum is paid to the trustees or managers or, as the case may be, to the Board in respect of the debt due under section 75 of the 1995 Act.
- (9) Where such an application is made to the Regulator, the Regulator may, if it is of the opinion that it is appropriate to do so—
- (a) reduce the amount of the sum specified in P's contribution notice by an amount which it considers reasonable, and
  - (b) issue a revised contribution notice specifying the revised sum.
- (10) For the purposes of subsection (9), the Regulator must have regard to such matters as the Regulator considers relevant including, where relevant, the following matters—
- (a) the amount paid in respect of the debt due under section 75 of the 1995 Act since the contribution notice was issued,
  - (b) any amounts paid in respect of the debt due by virtue of that contribution notice,
  - (c) whether contribution notices have been issued to other persons in respect of the same non-compliance with the financial support direction in question as the non-compliance in respect of which P's contribution notice was issued,
  - (d) where such contribution notices have been issued, the sums specified in each of those notices and any amounts paid in respect of the debt due by virtue of those notices,
  - (e) whether P's contribution notice specifies that P is jointly and severally liable for the debt with other persons, and
  - (f) such other matters as may be prescribed.
- (11) Where—
- (a) P's contribution notice specifies that P is jointly and severally liable for the debt with other persons, and
  - (b) a revised contribution notice is issued to P under subsection (9) specifying a revised sum,

the Regulator must also issue revised contribution notices to those other persons specifying the revised sum and their joint and several liability with P for the debt in respect of that sum.

**Modifications etc. (not altering text)**

- C4** Pt. 1 applied in part (with modifications) (20.7.2005 for specified purposes, 1.9.2005 for specified purposes, 5.12.2005 for specified purposes) by [The Financial Assistance Scheme Regulations 2005 \(S.I. 2005/1986\)](#), regs. 1(1), 4, **Sch. 1**
- C5** Ss. 38-56 modified (1.9.2005) by [The Pensions Regulator \(Financial Support Directions etc.\) Regulations 2005 \(S.I. 2005/2188\)](#), regs. 1, **15, 16**

*Status: Point in time view as at 22/04/2011.*

*Changes to legislation: Pensions Act 2004, Part 1 is up to date with all changes known to be in force on or before 23 May 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

#### Commencement Information

**I71** S. 50(1)-(9)(10)(a)-(e)(11) in force at 6.4.2005 by [S.I. 2005/275](#), art. 2(7), [Sch. Pt. 7](#)

## 51 Sections 43 to 50: interpretation

[<sup>F26</sup>(1) In sections 43 to 50—

“group of companies” means a holding company and its subsidiaries (and references to a member of a group of companies are to be read accordingly); and

“holding company” and “subsidiary” have the meaning given by section 1159 of the Companies Act 2006.]

(2) For the purposes of those sections—

- (a) references to a debt due under section 75 of the Pensions Act 1995 (c. 26) include a contingent debt under that section, and
- (b) references to the amount of such a debt include the amount of such a contingent debt.

(3) For the purposes of those sections—

- (a) section 249 of the Insolvency Act 1986 (c. 45) (connected persons) applies as it applies for the purposes of any provision of the first Group of Parts of that Act,
- (b) section 435 of that Act (associated persons) applies as it applies for the purposes of that Act, and
- (c) section 74 of the Bankruptcy (Scotland) Act 1985 (c. 66) (associated persons) applies as it applies for the purposes of that Act.

#### Textual Amendments

**F26** S. 51(1) substituted (1.10.2009) by [The Companies Act 2006 \(Consequential Amendments, Transitional Provisions and Savings\) Order 2009 \(S.I. 2009/1941\)](#), art. 1(2), [Sch. 1 para. 243\(4\)](#) (with art. 10)

#### Modifications etc. (not altering text)

- C4** Pt. 1 applied in part (with modifications) (20.7.2005 for specified purposes, 1.9.2005 for specified purposes, 5.12.2005 for specified purposes) by [The Financial Assistance Scheme Regulations 2005 \(S.I. 2005/1986\)](#), regs. 1(1), 4, [Sch. 1](#)
- C5** Ss. 38-56 modified (1.9.2005) by [The Pensions Regulator \(Financial Support Directions etc.\) Regulations 2005 \(S.I. 2005/2188\)](#), regs. 1, [15](#), [16](#)

#### Commencement Information

**I72** S. 51 in force at 6.4.2005 by [S.I. 2005/275](#), art. 2(7), [Sch. Pt. 7](#)

### *Transactions at an undervalue*

## 52 Restoration orders where transactions at an undervalue

- (1) This section applies in relation to an occupational pension scheme other than—
- (a) a money purchase scheme, or

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*Status: Point in time view as at 22/04/2011.*

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- (b) a prescribed scheme or a scheme of a prescribed description.
- (2) The Regulator may make a restoration order in respect of a transaction involving assets of the scheme if—
- (a) a relevant event has occurred in relation to the employer in relation to the scheme, and
  - (b) the transaction is a transaction at an undervalue entered into with a person at a time which—
    - (i) is on or after 27th April 2004, but
    - (ii) is not more than two years before the occurrence of the relevant event in relation to the employer.
- (3) A restoration order in respect of a transaction involving assets of a scheme is such an order as the Regulator thinks fit for restoring the position to what it would have been if the transaction had not been entered into.
- (4) For the purposes of this section a relevant event occurs in relation to the employer in relation to a scheme if and when on or after the appointed day—
- (a) an insolvency event occurs in relation to the employer, or
  - (b) the trustees or managers of the scheme make an application under subsection (1) of section 129 or receive a notice from the Board of the Pension Protection Fund under subsection (5)(a) of that section (applications and notifications prior to the Board assuming responsibility for a scheme).
- (5) For the purposes of subsection (4)—
- (a) the “appointed day” means the day appointed under section 126(2) (no pension protection under Chapter 3 of Part 2 if the scheme begins winding up before the day appointed by the Secretary of State),
  - (b) section 121 (meaning of “insolvency event”) applies for the purposes of determining if and when an insolvency event has occurred in relation to the employer, and
  - (c) the reference to an insolvency event in relation to the employer does not include an insolvency event which occurred in relation to him before he became the employer in relation to the scheme.
- (6) For the purposes of this section and section 53, a transaction involving assets of a scheme is a transaction at an undervalue entered into with a person (“P”) if the trustees or managers of the scheme or appropriate persons in relation to the scheme—
- (a) make a gift to P or otherwise enter into a transaction with P on terms that provide for no consideration to be provided towards the scheme, or
  - (b) enter into a transaction with P for a consideration the value of which, in money or money’s worth, is significantly less than the value, in money or money’s worth, of the consideration provided by or on behalf of the trustees or managers of the scheme.
- (7) In subsection (6) “appropriate persons” in relation to a scheme means a person who, or several persons each of whom is a person who, at the time at which the transaction in question is entered into, is—
- (a) a person of a prescribed description, and
  - (b) entitled to exercise powers in relation to the scheme.
- (8) For the purposes of this section and section 53—
- “assets” includes future assets;

*Status: Point in time view as at 22/04/2011.*

*Changes to legislation: Pensions Act 2004, Part 1 is up to date with all changes known to be in force on or before 23 May 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

“transaction” includes a gift, agreement or arrangement and references to entering into a transaction are to be construed accordingly.

- (9) The provisions of this section apply without prejudice to the availability of any other remedy, even in relation to a transaction where the trustees or managers of the scheme or appropriate persons in question had no power to enter into the transaction.

#### **Modifications etc. (not altering text)**

- C4** Pt. 1 applied in part (with modifications) (20.7.2005 for specified purposes, 1.9.2005 for specified purposes, 5.12.2005 for specified purposes) by [The Financial Assistance Scheme Regulations 2005 \(S.I. 2005/1986\)](#), regs. 1(1), 4, **Sch. 1**
- C5** Ss. 38-56 modified (1.9.2005) by [The Pensions Regulator \(Financial Support Directions etc.\) Regulations 2005 \(S.I. 2005/2188\)](#), regs. 1, **15**, 16
- C12** S. 52 excluded (29.9.2008 at 8.00 a.m.) by [The Bradford & Bingley plc Transfer of Securities and Property etc. Order 2008 \(S.I. 2008/2546\)](#), **Sch. 3 para. 11(b)(ii)**

#### **Commencement Information**

- I73** S. 52(1)(a)(2)-(6)(7)(b)(8)(9) in force at 6.4.2005 by [S.I. 2005/275](#), art. 2(7), **Sch. Pt. 7**
- I74** S. 52(1)(b)(7)(a) in force for the purpose only of conferring power to make regulations, orders or rules, as the case may be, 10.2.2005; and for all other purposes at 6.4.2005 in so far as not already in force by [S.I. 2005/275](#), art. 2(3), **Sch. Pt. 3**

### **53 Restoration orders: supplementary**

- (1) This section applies in relation to a restoration order under section 52 in respect of a transaction involving assets of a scheme (“the transaction”).
- (2) The restoration order may in particular—
- (a) require any assets of the scheme (whether money or other property) which were transferred as part of the transaction to be transferred back—
    - (i) to the trustees or managers of the scheme, or
    - (ii) where the Board of the Pension Protection Fund has assumed responsibility for the scheme, to the Board;
  - (b) require any property to be transferred to the trustees or managers of the scheme or, where the Board has assumed responsibility for the scheme, to the Board if it represents in any person’s hands—
    - (i) any of the assets of the scheme which were transferred as part of the transaction, or
    - (ii) property derived from any such assets so transferred;
  - (c) require such property as the Regulator may specify in the order, in respect of any consideration for the transaction received by the trustees or managers of the scheme, to be transferred—
    - (i) by the trustees or managers of the scheme, or
    - (ii) where the Board has assumed responsibility for the scheme, by the Board,to such persons as the Regulator may specify in the order;
  - (d) require any person to pay, in respect of benefits received by him as a result of the transaction, such sums (not exceeding the value of the benefits received by him) as the Regulator may specify in the order—

*Status: Point in time view as at 22/04/2011.*

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- (i) to the trustees or managers of the scheme, or
  - (ii) where the Board has assumed responsibility for the scheme, to the Board.
- (3) A restoration order is of no effect to the extent that it prejudices any interest in property which was acquired in good faith and for value or any interest deriving from such an interest.
- (4) Nothing in subsection (3) prevents a restoration order requiring a person to pay a sum of money if the person received a benefit as a result of the transaction otherwise than in good faith and for value.
- (5) Where a person has acquired an interest in property from a person or has received a benefit as a result of the transaction and—
- (a) he is one of the trustees or managers or appropriate persons who entered into the transaction as mentioned in subsection (6) of section 52, or
  - (b) at the time of the acquisition or receipt—
    - (i) he has notice of the fact that the transaction was a transaction at an undervalue,
    - (ii) he is a trustee or manager, or the employer, in relation to the scheme, or
    - (iii) he is connected with, or an associate of, any of the persons mentioned in paragraph (a) or (b)(ii),
- then, unless the contrary is shown, it is to be presumed for the purposes of subsections (3) and (4) that the interest was acquired or the benefit was received otherwise than in good faith.
- (6) For the purposes of this section—
- (a) section 249 of the Insolvency Act 1986 (c. 45) (connected persons) applies as it applies for the purposes of any provision of the first Group of Parts of that Act,
  - (b) section 435 of that Act (associated persons) applies as it applies for the purposes of that Act, and
  - (c) section 74 of the Bankruptcy (Scotland) Act 1985 (c. 66) (associated persons) applies as it applies for the purposes of that Act.
- (7) For the purposes of this section “property” includes—
- (a) money, goods, things in action, land and every description of property wherever situated, and
  - (b) obligations and every description of interest, whether present or future or vested or contingent, arising out of, or incidental to, property.
- (8) References in this section to where the Board has assumed responsibility for a scheme are to where the Board has assumed responsibility for the scheme in accordance with Chapter 3 of Part 2 (pension protection).

**Modifications etc. (not altering text)**

- C4** Pt. 1 applied in part (with modifications) (20.7.2005 for specified purposes, 1.9.2005 for specified purposes, 5.12.2005 for specified purposes) by [The Financial Assistance Scheme Regulations 2005 \(S.I. 2005/1986\)](#), regs. 1(1), 4, **Sch. 1**

*Status: Point in time view as at 22/04/2011.*

*Changes to legislation: Pensions Act 2004, Part 1 is up to date with all changes known to be in force on or before 23 May 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

**C5** Ss. 38-56 modified (1.9.2005) by [The Pensions Regulator \(Financial Support Directions etc.\) Regulations 2005 \(S.I. 2005/2188\)](#), regs. 1, **15**, 16

#### **Commencement Information**

**I75** S. 53 in force at 6.4.2005 by [S.I. 2005/275](#), art. 2(7), **Sch. Pt. 7**

## **54 Content and effect of a restoration order**

- (1) This section applies where a restoration order is made under section 52 in respect of a transaction involving assets of a scheme.
- (2) Where the restoration order imposes an obligation on a person to do something, the order must specify the period within which the obligation must be complied with.
- (3) Where the restoration order imposes an obligation on a person (“A”) to transfer or pay a sum of money to a person specified in the order (“B”), the sum is to be treated as a debt due from A to B.
- (4) Where the trustees or managers of the scheme are the persons to whom the debt is due, the Regulator may on their behalf, exercise such powers as the trustees or managers have to recover the debt.
- (5) But during any assessment period (within the meaning of section 132) in relation to the scheme, the rights and powers of the trustees or managers of the scheme in relation to any debt due to them by virtue of a restoration order are exercisable by the Board of the Pension Protection Fund to the exclusion of the trustees or managers and the Regulator.
- (6) Where, by virtue of subsection (5), any amount is transferred or paid to the Board in respect of a debt due by virtue of a restoration order, the Board must pay the amount to the trustees or managers of the scheme.

#### **Modifications etc. (not altering text)**

- C4** Pt. 1 applied in part (with modifications) (20.7.2005 for specified purposes, 1.9.2005 for specified purposes, 5.12.2005 for specified purposes) by [The Financial Assistance Scheme Regulations 2005 \(S.I. 2005/1986\)](#), regs. 1(1), 4, **Sch. 1**
- C5** Ss. 38-56 modified (1.9.2005) by [The Pensions Regulator \(Financial Support Directions etc.\) Regulations 2005 \(S.I. 2005/2188\)](#), regs. 1, **15**, 16

#### **Commencement Information**

**I76** S. 54 in force at 6.4.2005 by [S.I. 2005/275](#), art. 2(7), **Sch. Pt. 7**

## **55 Contribution notice where failure to comply with restoration order**

- (1) This section applies where—
  - (a) a restoration order is made under section 52 in respect of a transaction involving assets of a scheme (“the transaction”), and
  - (b) a person fails to comply with an obligation imposed on him by the order which is not an obligation to transfer or pay a sum of money.
- (2) The Regulator may issue a notice to the person stating that the person is under a liability to pay the sum specified in the notice (a “contribution notice”)—

*Status: Point in time view as at 22/04/2011.*

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- (a) to the trustees or managers of the scheme, or
  - (b) where the Board of the Pension Protection Fund has assumed responsibility for the scheme in accordance with Chapter 3 of Part 2 (pension protection), to the Board.
- (3) The sum specified by the Regulator in a contribution notice may be either the whole or a specified part of the shortfall sum in relation to the scheme.
- (4) The shortfall sum in relation to the scheme is the amount which the Regulator estimates to be the amount of the decrease in the value of the assets of the scheme as a result of the transaction having been entered into.

#### **Modifications etc. (not altering text)**

- C4** Pt. 1 applied in part (with modifications) (20.7.2005 for specified purposes, 1.9.2005 for specified purposes, 5.12.2005 for specified purposes) by [The Financial Assistance Scheme Regulations 2005 \(S.I. 2005/1986\)](#), regs. 1(1), 4, **Sch. 1**
- C5** Ss. 38-56 modified (1.9.2005) by [The Pensions Regulator \(Financial Support Directions etc.\) Regulations 2005 \(S.I. 2005/2188\)](#), regs. 1, **15**, 16

#### **Commencement Information**

- I77** S. 55 in force at 6.4.2005 by [S.I. 2005/275](#), art. 2(7), **Sch. Pt. 7**

## **56 Content and effect of a section 55 contribution notice**

- (1) This section applies where a contribution notice is issued to a person under section 55.
- (2) The contribution notice must—
- (a) contain a statement of the matters which it is asserted constitute the failure to comply with the restoration order under section 52 in respect of which the notice is issued, and
  - (b) specify the sum which the person is stated to be under a liability to pay.
- (3) Where the contribution notice states that the person is under a liability to pay the sum specified in the notice to the trustees or managers of the scheme, the sum is to be treated as a debt due from the person to the trustees or managers of the scheme.
- (4) In such a case, the Regulator may, on behalf of the trustees or managers of the scheme, exercise such powers as the trustees or managers have to recover the debt.
- (5) But during any assessment period (within the meaning of section 132) in relation to the scheme, the rights and powers of the trustees or managers of the scheme in relation to any debt due to them by virtue of a contribution notice, are exercisable by the Board of the Pension Protection Fund to the exclusion of the trustees or managers and the Regulator.
- (6) Where, by virtue of subsection (5), any amount is paid to the Board in respect of a debt due by virtue of a contribution notice, the Board must pay the amount to the trustees or managers of the scheme.
- (7) Where the contribution notice states that the person is under a liability to pay the sum specified in the notice to the Board, the sum is to be treated as a debt due from the person to the Board.



*Status: Point in time view as at 22/04/2011.*

*Changes to legislation: Pensions Act 2004, Part 1 is up to date with all changes known to be in force on or before 23 May 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

**Modifications etc. (not altering text)**

- C4** Pt. 1 applied in part (with modifications) (20.7.2005 for specified purposes, 1.9.2005 for specified purposes, 5.12.2005 for specified purposes) by [The Financial Assistance Scheme Regulations 2005 \(S.I. 2005/1986\)](#), regs. 1(1), 4, **Sch. 1**
- C5** Ss. 38-56 modified (1.9.2005) by [The Pensions Regulator \(Financial Support Directions etc.\) Regulations 2005 \(S.I. 2005/2188\)](#), regs. 1, **15**, 16

**Commencement Information**

- I78** S. 56 in force at 6.4.2005 by [S.I. 2005/275](#), art. 2(7), **Sch. Pt. 7**

*Sections 38 to 56: partnerships and limited liability partnerships*

**57 Sections 38 to 56: partnerships and limited liability partnerships**

- (1) For the purposes of any of sections 38 to 56, regulations may modify any of the definitions mentioned in subsection (2) (as applied by any of those sections) in relation to—
- a partnership or a partner in a partnership;
  - a limited liability partnership or a member of such a partnership.
- (2) The definitions mentioned in subsection (1) are—
- section 249 of the Insolvency Act 1986 (c. 45) (connected persons),
  - section 435 of that Act (associated persons),
  - section 74 of the Bankruptcy (Scotland) Act 1985 (c. 66) (associated persons), and
  - [<sup>F27</sup>section 1159 of the Companies Act 2006] (meaning of “subsidiary” and “holding company” etc).
- (3) Regulations may also provide that any provision of sections 38 to 51 applies with such modifications as may be prescribed in relation to—
- any case where a partnership is or was—
    - the employer in relation to an occupational pension scheme, or
    - for the purposes of any of those sections, connected with or an associate of the employer;
  - any case where a limited liability partnership is—
    - the employer in relation to an occupational pension scheme, or
    - for the purposes of any of those sections, connected with or an associate of the employer.
- (4) Regulations may also provide that any provision of sections 52 to 56 applies with such modifications as may be prescribed in relation to a partnership or a limited liability partnership.
- (5) For the purposes of this section—
- “partnership” includes a firm or entity of a similar character formed under the law of a country or territory outside the United Kingdom, and
  - references to a partner are to be construed accordingly.
- (6) For the purposes of this section, “limited liability partnership” means—

*Status: Point in time view as at 22/04/2011.*

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- [<sup>F28</sup>(a) a limited liability partnership registered under the Limited Liability Partnerships Act 2000, or]
- (b) an entity which is of a similar character to such a limited liability partnership and which is formed under the law of a country or territory outside the United Kingdom,

and references to a member of a limited liability partnership are to be construed accordingly.

- (7) This section is without prejudice to—
- (a) section 307 (power to modify this Act in relation to certain categories of scheme), and
- (b) section 318(4) (power to extend the meaning of “employer”).

#### Textual Amendments

- F27** Words in s. 57(2)(d) substituted (1.10.2009) by [The Companies Act 2006 \(Consequential Amendments, Transitional Provisions and Savings\) Order 2009 \(S.I. 2009/1941\)](#), art. 1(2), **Sch. 1 para. 243(5)(a)** (with art. 10)
- F28** S. 57(6)(a) substituted (1.10.2009) by [The Companies Act 2006 \(Consequential Amendments, Transitional Provisions and Savings\) Order 2009 \(S.I. 2009/1941\)](#), art. 1(2), **Sch. 1 para. 243(5)(b)** (with art. 10)

#### Commencement Information

- I79** S. 57(1)-(4) in force for the purpose only of conferring power to make regulations, orders or rules, as the case may be, 10.2.2005; and for all other purposes at 6.4.2005 in so far as not already in force by [S.I. 2005/275](#), art. 2(3), **Sch. Pt. 3**
- I80** S. 57(5)-(7) in force at 6.4.2005 by [S.I. 2005/275](#), art. 2(7), **Sch. Pt. 7**

### *Applications under the Insolvency Act 1986*

#### **58 Regulator’s right to apply under section 423 of Insolvency Act 1986**

- (1) In this section “section 423” means section 423 of the Insolvency Act 1986 (transactions defrauding creditors).
- (2) The Regulator may apply for an order under section 423 in relation to a debtor if—
- (a) the debtor is the employer in relation to an occupational pension scheme, and
- (b) condition A or condition B is met in relation to the scheme.
- (3) Condition A is that an actuarial valuation under section 143 obtained by the Board of the Pension Protection Fund in respect of the scheme indicates that the value of the assets of the scheme at the relevant time, as defined by that section, was less than the amount of the protected liabilities, as defined by section 131, at that time.
- (4) Condition B is that an actuarial valuation, as defined by section 224(2), obtained by the trustees or managers of the scheme indicates that the statutory funding objective in section 222 is not met.
- (5) In a case where the debtor—
- (a) has been adjudged bankrupt,
- (b) is a body corporate which is being wound up or is in administration, or

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- (c) is a partnership which is being wound up or is in administration, subsection (2) does not enable an application to be made under section 423 except with the permission of the court.
- (6) An application made under this section is to be treated as made on behalf of every victim of the transaction who is—
- (a) a trustee or member of the scheme, or
  - (b) the Board.
- (7) This section does not apply where the valuation mentioned in subsection (3) or (4) is made by reference to a date that falls before the commencement of this section.
- (8) Expressions which are defined by section 423 for the purposes of that section have the same meaning when used in this section.

#### **Commencement Information**

**181** S. 58 in force at 6.4.2005 by [S.I. 2005/275](#), art. 2(7), [Sch. Pt. 7](#)

### *Register of schemes*

#### **59 Register of occupational and personal pension schemes**

- (1) The Regulator must compile and maintain a register of occupational pension schemes and personal pension schemes which are, or have been, registrable schemes (referred to in this Act as “the register”).
- (2) In this section and sections 62 to 65 “registrable scheme” means an occupational pension scheme, or a personal pension scheme, of a prescribed description.
- (3) In respect of each registrable scheme, the Regulator must record in the register—
- (a) the registrable information most recently provided to it in respect of the scheme, and
  - (b) if the Regulator has received—
    - (i) a notice under section 62(5) (scheme which is wound up or ceases to be registrable),
    - (ii) a copy of a notice under section 160 (transfer notice), or
    - (iii) any notice, or copy of a notice, under any provision in force in Northern Ireland corresponding to a provision mentioned in subparagraph (i) or (ii),that fact.
- (4) In respect of each scheme which has been a registrable scheme, but
- (a) has been, or is treated as having been, wound up, or
  - (b) has ceased to be a registrable scheme,
- the Regulator must maintain in the register the registrable information last provided to it in respect of the scheme.
- (5) Information recorded in the register must be so recorded in such manner as the Regulator considers appropriate.
- (6) In particular, the register may consist of more than one part.

*Status: Point in time view as at 22/04/2011.*

*Changes to legislation: Pensions Act 2004, Part 1 is up to date with all changes known to be in force on or before 23 May 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

- (7) In this section references to “registrable information”, in relation to a scheme to which any provision in force in Northern Ireland corresponding to section 60(2) (“the corresponding Northern Ireland provision”) applies, are to information of any description within the corresponding Northern Ireland provision.

#### Commencement Information

**I82** S. 59(1)(3)-(7) in force at 6.4.2005 by [S.I. 2005/275, art. 2\(7\)](#), [Sch. Pt. 7](#)

**I83** S. 59(2) in force at 10.2.2005 for specified purposes and at 1.4.2005 in so far as not already in force by [S.I. 2005/275, art. 2\(2\)](#), [Sch. Pt. 2](#)

## 60 Registrable information

- (1) For the purposes of sections 59 to 65 “registrable information”, in relation to an occupational or personal pension scheme, means information within subsection (2).
- (2) That information is—
- (a) the name of the scheme;
  - (b) the address of the scheme;
  - (c) the full names and addresses of each of the trustees or managers of the scheme;
  - (d) the status of the scheme with respect to the following matters—
    - (i) whether new members may be admitted to the scheme;
    - (ii) whether further benefits may accrue to, or in respect of, members under the scheme;
    - (iii) whether further contributions may be paid towards the scheme;
    - (iv) whether any members of the scheme are active members;
  - (e) the categories of benefits under the scheme;
  - (f) in the case of an occupational pension scheme—
    - (i) the name and address of each relevant employer, and
    - (ii) any other name by which any relevant employer has been known at any time on or after the relevant date;
  - (g) in the case of an occupational pension scheme, the number of members of the scheme on the later of—
    - (i) the last day of the scheme year which ended most recently, and
    - (ii) the day on which the scheme became a registrable scheme; and
  - (h) such other information as may be prescribed.
- (3) Regulations may make provision about the interpretation of any of the descriptions in subsection (2).
- (4) For the purposes of subsection (2)(f)—
- “relevant employer” means any person—
- (a) who is, or
  - (b) who, at any time on or after 6th April 1975, has been,
- the employer in relation to the scheme;
- “relevant date”, in relation to a relevant employer, means—
- (a) 6th April 1975, or

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- (b) if later, the date on which the relevant employer first became the employer in relation to the scheme.

**Modifications etc. (not altering text)**

**C13** S. 60(4) modified (6.4.2005) by [The Register of Occupational and Personal Pension Schemes Regulations 2005 \(S.I. 2005/597\)](#), regs. 1(1), **3(3)**

**Commencement Information**

**I84** S. 60(1)(2)(a)-(g)(4) in force at 6.4.2005 by [S.I. 2005/275](#), art. 2(7), **Sch. Pt. 7**

**I85** S. 60(2)(h)(3) in force for the purpose only of conferring power to make regulations, orders or rules, as the case may be, 10.2.2005; and for all other purposes at 6.4.2005 in so far as not already in force by [S.I. 2005/275](#), art. 2(3), **Sch. Pt. 3**

**61 The register: inspection, provision of information and reports etc**

- (1) Regulations may provide—
- (a) for—
- (i) information recorded in the register,
- (ii) extracts from the register, or
- (iii) copies of the register or of extracts from it,
- to be provided to prescribed persons in prescribed circumstances, and
- (b) for the inspection of—
- (i) the register,
- (ii) extracts from the register, or
- (iii) copies of the register or of extracts from it,
- by prescribed persons in prescribed circumstances.
- (2) Regulations under subsection (1) may, in particular—
- (a) confer functions on—
- (i) the Secretary of State, or
- (ii) a person authorised by him for the purposes of the regulations;
- (b) make provision with respect to the disclosure of information obtained by virtue of the regulations.
- (3) Regulations which contain any provision made by virtue of subsection (2)(b) may, in particular, modify section 82 (restricted information).
- (4) The Secretary of State may direct the Regulator to submit to him statistical and other reports concerning—
- (a) information recorded in the register, and
- (b) the operation of the Regulator's functions in relation to the register.
- (5) A direction under subsection (4) may specify—
- (a) the form in which, and
- (b) the times at which,
- reports required by the direction are to be submitted.
- (6) The Secretary of State may publish any report submitted to him by virtue of a direction under subsection (4) in such manner as he considers appropriate.

*Status: Point in time view as at 22/04/2011.*

*Changes to legislation: Pensions Act 2004, Part 1 is up to date with all changes known to be in force on or before 23 May 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

#### Commencement Information

- I86** S. 61(1)-(3) in force for the purpose only of conferring power to make regulations, orders or rules, as the case may be, 10.2.2005; and for all other purposes at 6.4.2005 in so far as not already in force by [S.I. 2005/275, art. 2\(3\)](#), [Sch. Pt. 3](#)
- I87** S. 61(4)-(6) in force at 6.4.2005 by [S.I. 2005/275, art. 2\(7\)](#), [Sch. Pt. 7](#)

## 62 The register: duties of trustees or managers

- (1) Subsection (2) applies where—
  - (a) a registrable scheme is established, or
  - (b) an occupational or personal pension scheme otherwise becomes a registrable scheme.
- (2) The trustees or managers of the scheme must, before the end of the initial notification period—
  - (a) notify the Regulator that the scheme is a registrable scheme, and
  - (b) provide to the Regulator all the registrable information with respect to the scheme.
- (3) In subsection (2), the “initial notification period” means the period of three months beginning with—
  - (a) the date on which the scheme is established, or
  - (b) if later, the date on which it becomes a registrable scheme.
- (4) Where there is a change in any registrable information in respect of a registrable scheme, the trustees or managers of the scheme must as soon as reasonably practicable, notify the Regulator—
  - (a) of that fact, and
  - (b) of the new registrable information.
- (5) Where a registrable scheme—
  - (a) ceases to be a registrable scheme, or
  - (b) is wound up (otherwise than under section 161(2) (effect of Board assuming responsibility for scheme)),
 the trustees or managers of the scheme must as soon as reasonably practicable, notify the Regulator of that fact.
- (6) If subsection (2), (4) or (5) is not complied with, section 10 of the Pensions Act 1995 (c. 26) (civil penalties) applies to any trustee or manager who has failed to take all reasonable steps to secure compliance.

#### Commencement Information

- I88** S. 62 in force at 6.4.2005 by [S.I. 2005/275, art. 2\(7\)](#), [Sch. Pt. 7](#)

## 63 Duty of the Regulator to issue scheme return notices

- (1) The Regulator must issue scheme return notices in accordance with this section requiring scheme returns to be provided in respect of registrable schemes.

*Status: Point in time view as at 22/04/2011.*

*Changes to legislation: Pensions Act 2004, Part 1 is up to date with all changes known to be in force on or before 23 May 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

- (2) In respect of each registrable scheme, the Regulator—
  - (a) must issue the first scheme return notice in accordance with subsection (3), and
  - (b) must issue subsequent scheme return notices in accordance with subsection (4).
- (3) The return date specified in a scheme return notice issued in respect of a scheme under subsection (2)(a)—
  - (a) must fall within the period of three years beginning with—
    - (i) the date on which the Regulator receives a notice under section 62(2)(a) in respect of the scheme, or
    - (ii) if earlier, the date on which the Regulator first becomes aware that the scheme is a registrable scheme, and
  - (b) if the trustees or managers have complied with paragraph (b) of section 62(2), must fall after the end of the period of one year beginning with the date on which they provided the information required by that paragraph to the Regulator.
- (4) The return date specified in a scheme return notice issued in respect of a scheme under subsection (2)(b) must fall—
  - (a) within the period of three years, but
  - (b) after the end of the period of one year,  
beginning with the return date specified in the previous scheme return notice issued in respect of the scheme.

**Commencement Information**

**I89** S. 63 in force at 6.4.2005 by [S.I. 2005/275](#), art. 2(7), [Sch. Pt. 7](#)

**64 Duty of trustees or managers to provide scheme return**

- (1) The trustees or managers of a registrable scheme in respect of which a scheme return notice is issued must, on or before the return date, provide a scheme return to the Regulator.
- (2) If a scheme return in respect of a scheme is not provided in compliance with subsection (1), section 10 of the Pensions Act 1995 (c. 26) (civil penalties) applies to any trustee or manager of the scheme who has failed to take all reasonable steps to secure compliance.

**Commencement Information**

**I90** S. 64 in force at 6.4.2005 by [S.I. 2005/275](#), art. 2(7), [Sch. Pt. 7](#)

**65 Scheme returns: supplementary**

- (1) This section has effect for the purposes of sections 63 and 64.
- (2) In those sections and this section, in relation to a scheme return notice—

*Status: Point in time view as at 22/04/2011.*

*Changes to legislation: Pensions Act 2004, Part 1 is up to date with all changes known to be in force on or before 23 May 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

“return date” means the date specified under subsection (3)(b) in the scheme return notice;

“scheme return” means a document in the form (if any) specified in the scheme return notice, containing the information required by the notice.

- (3) A scheme return notice must specify—
- (a) the descriptions of information required by it, and
  - (b) the return date,
- and may specify the form in which that information is to be provided.
- (4) A scheme return notice in respect of a registrable scheme—
- (a) must require all registrable information in relation to the scheme, and
  - (b) may require other information which the Regulator reasonably requires for the purposes of the exercise of its functions in relation to the scheme.
- (5) The return date specified in a scheme return notice must fall after the end of the period of 28 days beginning with the date on which the notice is issued.
- (6) A scheme return notice must be in writing and is treated as issued in respect of a registrable scheme when it is sent to the trustees or managers of the scheme.

#### Commencement Information

**I91** S. 65 in force at 6.4.2005 by [S.I. 2005/275](#), art. 2(7), [Sch. Pt. 7](#)

### *Register of prohibited trustees*

#### **66 Register of prohibited trustees**

- (1) The Regulator must keep in such manner as it thinks fit a register of all persons who are prohibited under section 3 of the Pensions Act 1995 (“the prohibition register”).
- (2) Arrangements made by the Regulator for the prohibition register must secure that the contents of the register are not disclosed or otherwise made available to members of the public except in accordance with section 67.
- (3) Nothing in subsection (2) requires the Regulator to exclude any matter from a report published under section 89 (reports of Regulator’s consideration of cases).

#### Commencement Information

**I92** S. 66 in force at 6.4.2005 by [S.I. 2005/275](#), art. 2(7), [Sch. Pt. 7](#)

#### **67 Accessibility of register of prohibited trustees**

- (1) The Regulator must make arrangements to secure that the prohibition register is open, during its normal working hours, for inspection in person and without notice at—
  - (a) the principal office used by it for the carrying out of its functions, and
  - (b) such other of its offices (if any) as it considers to be places where it would be reasonable for a copy of the register to be kept open for inspection.



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*Status: Point in time view as at 22/04/2011.*

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- (2) If a request is made to the Regulator—
- (a) to state whether a particular person identified in the request is a person appearing in the prohibition register as prohibited in respect of an occupational trust scheme specified in the request,
  - (b) to state whether a particular person so identified is a person appearing in that register as prohibited in respect of a particular description of occupational trust schemes so specified, or
  - (c) to state whether a particular person so identified is a person appearing in that register as prohibited in respect of all occupational trust schemes,
- the Regulator must promptly comply with the request in such manner as it considers reasonable.
- (3) The Regulator may, in such manner as it considers appropriate, publish a summary of the prohibition register if (subject to subsections (6) to (8)) the summary—
- (a) contains all the information described in subsection (4),
  - (b) arranges that information in the manner described in subsection (5),
  - (c) does not (except by identifying a person as prohibited in respect of all occupational trust schemes, in respect of a particular description of such schemes or in respect of a particular such scheme) identify any of the schemes in respect of which persons named in the summary are prohibited, and
  - (d) does not disclose any other information contained in the register.
- (4) That information is—
- (a) the full names and titles, so far as the Regulator has a record of them, of all the persons appearing in the register as persons who are prohibited,
  - (b) the dates of birth of such of those persons as are persons whose dates of birth are matters of which the Regulator has a record, and
  - (c) in the case of each person whose name is included in the published summary, whether that person appears in the register—
    - (i) as prohibited in respect of only one occupational trust scheme,
    - (ii) as prohibited in respect of one or more particular descriptions of such schemes, but not in respect of all such schemes, or
    - (iii) as prohibited in respect of all such schemes.
- (5) For the purposes of paragraph (c) of subsection (4), the information in the published register must be arranged in three separate lists, one for each of the descriptions of prohibition specified in the sub-paragraphs of that paragraph.
- (6) The Regulator must ensure, in the case of any published summary, that a person is not identified in the summary as a prohibited person if it appears to the Regulator that the determination by virtue of which that person appears in the register—
- (a) is the subject of any pending reference, review, appeal or legal proceedings which could result in that person's removal from the register, or
  - (b) is a determination which might still become the subject of any such reference, review, appeal or proceedings.
- (7) The Regulator must ensure, in the case of any published summary, that the particulars relating to a person do not appear in a particular list mentioned in subsection (5) if it appears to the Regulator that a determination by virtue of which that person's particulars would appear in that list—

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- (a) is the subject of any pending reference, review, appeal or legal proceedings which could result in such a revocation or other overturning of a prohibition of that person as would require his particulars to appear in a different list, or
  - (b) is a determination which might still become the subject of any such reference, review, appeal or proceedings.
- (8) Where subsection (7) prevents a person’s particulars from being included in a particular list in the published summary, they must be included, instead, in the list (if any) in which they would have been included if the prohibition to which the reference, review, appeal or proceedings relate or might relate had already been revoked or otherwise overturned.
- (9) For the purposes of this section a determination is one which might still become the subject of a reference, review, appeal or proceedings if, and only if, in the case of that determination—
- (a) the time for the making of an application for a review or reference, or for the bringing of an appeal or other proceedings, has not expired, and
  - (b) there is a reasonable likelihood that such an application might yet be made, or that such an appeal or such proceedings might yet be brought.
- (10) In this section—
- “name”, in relation to a person any of whose names is recorded by the Regulator as an initial, means that initial;
  - “occupational trust scheme” means an occupational pension scheme established under a trust.

**Commencement Information**

**193** S. 67 in force at 6.4.2005 by [S.I. 2005/275](#), art. 2(7), **Sch. Pt. 7**

*Collecting information relevant to the Board of the Pension Protection Fund*

**68 Information relevant to the Board**

The Regulator may collect any information which appears to it to be relevant to the exercise of the functions of the Board of the Pension Protection Fund.

**Commencement Information**

**194** S. 68 in force at 6.4.2005 by [S.I. 2005/275](#), art. 2(7), **Sch. Pt. 7**

**69 Duty to notify the Regulator of certain events**

- (1) Except where the Regulator otherwise directs, the appropriate person must give notice of any notifiable event to the Regulator.
- (2) In subsection (1) “notifiable event” means—
  - (a) a prescribed event in respect of an eligible scheme, or
  - (b) a prescribed event in respect of the employer in relation to an eligible scheme.
- (3) For the purposes of subsection (1)—

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- (a) in the case of an event within subsection (2)(a), each of the following is “the appropriate person”—
    - (i) the trustees or managers of the scheme,
    - (ii) a person of a prescribed description, and
  - (b) in relation to an event within subsection (2)(b), each of the following is “the appropriate person”—
    - (i) the employer in relation to the scheme,
    - (ii) a person of a prescribed description.
- (4) A notice under subsection (1)—
- (a) must be in writing, and
  - (b) subject to subsection (5), must be given as soon as reasonably practicable after the person giving it becomes aware of the notifiable event.
- (5) Regulations may require a notice under subsection (1) to be given before the beginning of the prescribed period ending with the notifiable event in question.
- (6) No duty to which a person is subject is to be regarded as contravened merely because of any information or opinion contained in a notice under this section.
- This is subject to section 311 (protected items).
- (7) Where the trustees or managers of a scheme fail to comply with an obligation imposed on them by subsection (1), section 10 of the Pensions Act 1995 (c. 26) (civil penalties) applies in relation to any trustee or manager who has failed to take all reasonable steps to secure compliance with that subsection.
- (8) That section also applies to any other person who, without reasonable excuse, fails to comply with an obligation imposed on him by subsection (1).
- (9) In this section—
- “eligible scheme” has the meaning given by section 126;
  - “event” includes a failure to act.

#### Commencement Information

**I95** S. 69(1)(3)(a)(i)(b)(i)(4)(6)-(9) in force at 6.4.2005 by [S.I. 2005/275](#), art. 2(7), [Sch. Pt. 7](#)

**I96** S. 69(2)(3)(a)(ii)(b)(ii)(5) in force for the purpose only of conferring power to make regulations, orders or rules, as the case may be, 10.2.2005; and for all other purposes at 6.4.2005 in so far as not already in force by [S.I. 2005/275](#), art. 2(3), [Sch. Pt. 3](#)

### *Reporting breaches of the law*

## **70 Duty to report breaches of the law**

- (1) Subsection (2) imposes a reporting requirement on the following persons—
- (a) a trustee or manager of an occupational or personal pension scheme;
  - (b) a person who is otherwise involved in the administration of such a scheme;
  - (c) the employer in relation to an occupational pension scheme;
  - (d) a professional adviser in relation to such a scheme;

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- (e) a person who is otherwise involved in advising the trustees or managers of an occupational or personal pension scheme in relation to the scheme.
- (2) Where the person has reasonable cause to believe that—
- (a) a duty which is relevant to the administration of the scheme in question, and is imposed by or by virtue of an enactment or rule of law, has not been or is not being complied with, and
  - (b) the failure to comply is likely to be of material significance to the Regulator in the exercise of any of its functions,
- he must give a written report of the matter to the Regulator as soon as reasonably practicable.
- (3) No duty to which a person is subject is to be regarded as contravened merely because of any information or opinion contained in a written report under this section.
- This is subject to section 311 (protected items).
- (4) Section 10 of the Pensions Act 1995 (c. 26) (civil penalties) applies to any person who, without reasonable excuse, fails to comply with an obligation imposed on him by this section.

#### **Commencement Information**

**I97** S. 70 in force at 6.4.2005 by [S.I. 2005/275](#), art. 2(7), [Sch. Pt. 7](#)

### *Reports by skilled persons*

## **71 Reports by skilled persons**

- (1) The Regulator may issue a notice (a “report notice”) to—
  - (a) the trustees or managers of a work-based pension scheme,
  - (b) any employer in relation to such a scheme, or
  - (c) any person who is otherwise involved in the administration of such a scheme,
 requiring them or, as the case may be, him to provide the Regulator with a report on one or more specified matters which are relevant to the exercise of any of the Regulator’s functions.
- (2) A report notice must require the person appointed to make the report to be a person—
  - (a) nominated or approved by the Regulator, and
  - (b) appearing to the Regulator to have the skills necessary to make a report on the matter or matters concerned.
- (3) A report notice may require the report to be provided to the Regulator—
  - (a) in a specified form;
  - (b) before a specified date.
- (4) The costs of providing a report in accordance with a report notice must be met by the person to whom the notice is issued (“the notified person”).
- (5) But a report notice may require a specified person (other than the Regulator) to reimburse to the notified person the whole or any part of the costs of providing the report.

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- (6) Where, by virtue of subsection (5), an amount is required to be reimbursed by a specified person to the notified person, that amount is to be treated as a debt due from the specified person to the notified person.
- (7) If the trustees or managers of a work-based pension scheme fail to comply with a report notice issued to them, section 10 of the Pensions Act 1995 (civil penalties) applies to any trustee or manager who has failed to take all reasonable steps to secure compliance.
- (8) That section also applies to any other person who, without reasonable excuse, fails to comply with a report notice issued to him.
- (9) Where a report notice is issued, any person who is providing (or who at any time has provided) services to the notified person in relation to a matter on which the report is required must give the person appointed to make the report such assistance as he may reasonably require.
- (10) The duty imposed by subsection (9) is enforceable, on the application of the Regulator, by an injunction or, in Scotland, by an order for specific performance under section 45 of the Court of Session Act 1988 (c. 36).
- (11) In this section—
  - “specified”, in relation to a report notice, means specified in the notice;
  - “work-based pension scheme” has the same meaning as in section 5 (Regulator’s objectives).

#### **Commencement Information**

**I98** S. 71 in force at 6.4.2005 by S.I. 2005/275, art. 2(7), Sch. Pt. 7

### *Gathering information*

#### **72 Provision of information**

- (1) The Regulator may, by notice in writing, require any person to whom subsection (2) applies to produce any document, or provide any other information, which is—
  - (a) of a description specified in the notice, and
  - (b) relevant to the exercise of the Regulator’s functions.
- (2) This subsection applies to—
  - (a) a trustee or manager of an occupational or personal pension scheme,
  - (b) a professional adviser in relation to an occupational pension scheme,
  - (c) the employer in relation to—
    - (i) an occupational pension scheme, or
    - (ii) a personal pension scheme where direct payment arrangements exist in respect of one or more members of the scheme who are employees, and
  - (d) any other person appearing to the Regulator to be a person who holds, or is likely to hold, information relevant to the exercise of the Regulator’s functions.

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- (3) Where the production of a document, or the provision of information, is required by a notice given under subsection (1), the document must be produced, or information must be provided, in such a manner, at such a place and within such a period as may be specified in the notice.

#### **Commencement Information**

**I99** S. 72 in force at 6.4.2005 by S.I. 2005/275, art. 2(7), Sch. Pt. 7

### **73 Inspection of premises**

- (1) An inspector may, for the purposes of investigating whether, in the case of any occupational pension scheme, the occupational scheme provisions are being, or have been, complied with, at any reasonable time enter premises liable to inspection.
- (2) In subsection (1), the “occupational scheme provisions” means provisions contained in or made by virtue of—
- (a) any of the following provisions of this Act—
    - this Part;
    - Part 3 (scheme funding);
    - sections 241 to 243 (member-nominated trustees and directors);
    - sections 247 to 249 (requirement for knowledge and understanding);
    - section 252 (UK-based scheme to be trust with effective rules);
    - section 253 (non-European scheme to be trust with UK-resident trustee);
    - section 255 (activities of occupational pension schemes);
    - section 256 (no indemnification for fines or civil penalties);
    - sections 259 and 261 (consultation by employers);
    - Part 7 (cross-border activities within European Union);
    - Part 9 (miscellaneous and supplementary);
  - (b) either of the following provisions of the Welfare Reform and Pensions Act 1999 (c. 30)—
    - section 33 (time for discharge of pension credit liability);
    - section 45 (information);
  - (c) any of the provisions of Part 1 of the Pensions Act 1995 (c. 26) (occupational pension schemes), other than—
    - (i) sections 51 to 54 (indexation), and
    - (ii) sections 62 to 65 (equal treatment);
  - (d) any of the following provisions of the Pension Schemes Act 1993 (c. 48)—
    - Chapter 4 of Part 4 (transfer values);
    - Chapter 5 of Part 4 (early leavers: cash transfer sums and contribution refunds);
    - Chapter 2 of Part 4A (pension credit transfer values);
    - section 113 (information);
    - section 175 (levy);
  - (e) any provisions in force in Northern Ireland corresponding to any provisions within paragraphs (a) to (d).

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- (3) An inspector may, for the purposes of investigating whether, in the case of a stakeholder scheme—
- (a) sections 1 and 2(4) of the Welfare Reform and Pensions Act 1999 (stakeholder pension schemes: registration etc), or
  - (b) any corresponding provisions in force in Northern Ireland,
- are being, or have been, complied with, at any reasonable time enter premises liable to inspection.
- (4) An inspector may, for the purposes of investigating whether, in the case of any trust-based personal stakeholder scheme, the trust-based scheme provisions are being, or have been, complied with, at any reasonable time enter premises liable to inspection.
- (5) In subsection (4)—
- “trust-based personal stakeholder scheme” means a personal pension scheme which—
- (a) is a stakeholder scheme, and
  - (b) is established under a trust;
- the “trust-based scheme provisions” means any provisions contained in or made by virtue of—
- (a) any provision which applies in relation to trust-based personal stakeholder schemes by virtue of paragraph 1 of Schedule 1 to the Welfare Reform and Pensions Act 1999 (c. 30), as the provision applies by virtue of that paragraph, or
  - (b) any corresponding provision in force in Northern Ireland.
- (6) 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 that administration, is being carried out there.
- (7) In this section, “stakeholder scheme” means an occupational pension scheme or a personal pension scheme which is or has been registered under—
- (a) section 2 of the Welfare Reform and Pensions Act 1999 (register of stakeholder schemes), or
  - (b) any corresponding provision in force in Northern Ireland.

**Commencement Information**

**I100** S. 73 in force at 6.4.2005 by [S.I. 2005/275](#), art. 2(7), [Sch. Pt. 7](#)

**74 Inspection of premises in respect of employers' obligations**

- (1) An inspector may, for the purposes of investigating whether an employer is complying, or has complied, with the requirements under—
- (a) section 3 of the Welfare Reform and Pensions Act 1999 (duty of employers to facilitate access to stakeholder pension schemes), or
  - (b) any corresponding provision in force in Northern Ireland,

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at any reasonable time enter premises liable to inspection.

- (2) Premises are liable to inspection for the purposes of subsection (1) if the inspector has reasonable grounds to believe that—
- (a) employees of the employer are employed there,
  - (b) documents relevant to the administration of the employer’s business are being kept there, or
  - (c) the administration of the employer’s business, or work connected with that administration, is being carried out there.
- (3) In subsections (1) and (2), “employer” has the meaning given by section 3(9) of the Welfare Reform and Pensions Act 1999 (or, where subsection (1)(b) applies, by any corresponding provision in force in Northern Ireland).
- (4) An inspector may, for the purposes of investigating whether, in the case of any direct payment arrangements relating to a personal pension scheme, any of the following provisions—
- (a) regulations made by virtue of sections 260 and 261 (consultation by employers),
  - (b) section 111A of the Pension Schemes Act 1993 (c. 48) (monitoring of employers' payments to personal pension schemes), or
  - (c) any corresponding provisions in force in Northern Ireland,
- is being, or has been, complied with, at any reasonable time enter premises liable to inspection.
- (5) Premises are liable to inspection for the purposes of subsection (4) if the inspector has reasonable grounds to believe that—
- (a) employees of the employer are employed there,
  - (b) documents relevant to the administration of—
    - (i) the employer’s business,
    - (ii) the direct payment arrangements, or
    - (iii) the scheme to which those arrangements relate,
 are being kept there, or
  - (c) either of the following is being carried out there—
    - (i) the administration of the employer’s business, the arrangements or the scheme;
    - (ii) work connected with that administration.
- (6) In the application of subsections (4) and (5) in relation to any provision mentioned in subsection (4)(c) (a “corresponding Northern Ireland provision”), references in those subsections to—
- direct payment arrangements,
  - a personal pension scheme,
  - the employer, or
  - employees of the employer,
- are to be read as having the meanings that they have for the purposes of the corresponding Northern Ireland provision.



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#### **Commencement Information**

**I101** S. 74 in force at 6.4.2005 by [S.I. 2005/275](#), art. 2(7), [Sch. Pt. 7](#)

### **75 Inspection of premises: powers of inspectors**

- (1) Subsection (2) applies where, for a purpose mentioned in subsection (1), (3) or (4) of section 73 or subsection (1) or (4) of section 74, an inspector enters premises which are liable to inspection for the purposes of that provision.
- (2) While there, the inspector—
  - (a) may make such examination and inquiry as may be necessary for the purpose for which he entered the premises,
  - (b) may require any person on the premises to produce, or secure the production of, any document relevant to compliance with the regulatory provisions for his inspection,
  - (c) may take copies of any such document,
  - (d) may take possession of any document appearing to be a document relevant to compliance with the regulatory provisions or take in relation to any such document any other steps which appear necessary for preserving it or preventing interference with it,
  - (e) may, in the case of any such document which consists of information which is stored in electronic form and is on, or accessible from, the premises, require the information to be produced in a form—
    - (i) in which it can be taken away, and
    - (ii) in which it is legible or from which it can readily be produced in a legible form, and
  - (f) may, as to any matter relevant to compliance with the regulatory 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.

#### **Commencement Information**

**I102** S. 75 in force at 6.4.2005 by [S.I. 2005/275](#), art. 2(7), [Sch. Pt. 7](#)

### **76 Inspection of premises: supplementary**

- (1) This section applies for the purposes of sections 73 to 75.
- (2) Premises which are a private dwelling-house not used by, or by permission of, the occupier for the purposes of a trade or business are not liable to inspection.
- (3) Any question whether—
  - (a) anything is being or has been done or omitted which might by virtue of any of the regulatory provisions give rise to a liability for a civil penalty under or by virtue of section 10 of the Pensions Act 1995 (c. 26) or section 168(4) of the Pension Schemes Act 1993 (c. 48) (or under or by virtue of any provision in force in Northern Ireland corresponding to either of them), or

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- (b) an offence is being or has been committed under any of the regulatory provisions,  
is to be treated as a question whether the regulatory provision is being, or has been, complied with.
- (4) An inspector applying for admission to any premises for the purposes of section 73 or 74 must, if so required, produce his certificate of appointment.
- (5) When exercising a power under section 73, 74 or 75 an inspector may be accompanied by such persons as he considers appropriate.
- (6) Any document of which possession is taken under section 75 may be retained—
- (a) if the document is relevant to proceedings against any person for any offence which are commenced before the end of the retention period, until the conclusion of those proceedings, and
  - (b) otherwise, until the end of the retention period.
- (7) In subsection (6), “the retention period” means the period comprising—
- (a) the period of 12 months beginning with the date on which possession was taken of the document, and
  - (b) any extension of that period under subsection (8).
- (8) The Regulator may, by a direction made before the end of the retention period (including any extension of it under this subsection), extend it by such period not exceeding 12 months as the Regulator considers appropriate.
- (9) “The regulatory provisions”, in relation to an inspection under subsection (1), (3) or (4) of section 73 or subsection (1) or (4) of section 74, means the provision or provisions referred to in that subsection.

#### **Commencement Information**

**I103** S. 76 in force at 6.4.2005 by [S.I. 2005/275](#), art. 2(7), [Sch. Pt. 7](#)

## **77 Penalties relating to sections 72 to 75**

- (1) A person who, without reasonable excuse, neglects or refuses to provide information or produce a document when required to do so under section 72 is guilty of an offence.
- (2) A person who without reasonable excuse—
- (a) intentionally delays or obstructs an inspector exercising any power under section 73, 74 or 75,
  - (b) neglects or refuses to produce, or secure the production of, any document when required to do so under section 75, 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

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offence by reference to any period of time following the preceding conviction of the offence.

- (5) Any person who intentionally and without reasonable excuse alters, suppresses, conceals or destroys any document which he is or is liable to be required to produce under section 72 or 75 is guilty of an offence.
- (6) Any person guilty of an offence under subsection (5) is liable—
- (a) on summary conviction, to a fine not exceeding the statutory maximum;
  - (b) on conviction on indictment, to a fine or imprisonment for a term not exceeding two years, or both.

#### Commencement Information

**I104** S. 77 in force at 6.4.2005 by S.I. 2005/275, art. 2(7), Sch. Pt. 7

## 78 Warrants

- (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 Regulator that there are reasonable grounds for believing—
- (a) that there is on, or accessible from, any premises any document—
    - (i) whose production has been required under section 72 or 75, or any corresponding provision in force in Northern Ireland, and
    - (ii) which has not been produced in compliance with that requirement,
  - (b) that there is on, or accessible from, any premises any document whose production could be so required and, if its production were so required, the document—
    - (i) would not be produced, but
    - (ii) would be removed, or made inaccessible, from the premises, hidden, tampered with or destroyed, or
  - (c) that—
    - (i) an offence has been committed,
    - (ii) a person will do any act which constitutes a misuse or misappropriation of the assets of an occupational pension scheme or a personal pension scheme,
    - (iii) a person is liable to pay a penalty under or by virtue of section 10 of the Pensions Act 1995 (c. 26) (civil penalties) or section 168(4) of the Pension Schemes Act 1993 (c. 48) (civil penalties for breach of regulations), or under or by virtue of any provision in force in Northern Ireland corresponding to either of them, or
    - (iv) a person is liable to be prohibited from being a trustee of an occupational or personal pension scheme under section 3 of the Pensions Act 1995 (prohibition orders), including that section as it applies by virtue of paragraph 1 of Schedule 1 to the Welfare Reform and Pensions Act 1999 (c. 30) (stakeholder schemes), or under or by virtue of any corresponding provisions in force in Northern Ireland,
- and that there is on, or accessible from, any premises any document which relates 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

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required under section 72 or 75 or any corresponding provision 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—
    - (i) take possession of any document appearing to be such a document as is mentioned in subsection (1), or
    - (ii) take in relation to such a document any other steps which appear necessary for preserving it or preventing interference with it,
  - (c) to take copies of any such document,
  - (d) to require any person named in the warrant to provide an explanation of any such document or to state where it may be found or how access to it may be obtained, and
  - (e) in the case of any such document which consists of information which is stored in electronic form and is on, or accessible from, the premises, to require the information to be produced in a form—
    - (i) in which it can be taken away, and
    - (ii) in which it is legible or from which it can readily be produced in a legible form.
- (3) In subsection (1), any reference in paragraph (a) or (b) to a document does not include any document which is relevant to whether a person has complied with—
- (a) subsection (3) of section 238 (information and advice to employees) or regulations under subsection (4) of that section, or
  - (b) any provision in force in Northern Ireland which corresponds to that subsection (3) or is made under provision corresponding to that subsection (4),
- and is not relevant to the exercise of the Regulator’s functions for any other reason.
- (4) For the purposes of subsection (1)(c)(iii), any liability to pay a penalty under—
- (a) section 10 of the Pensions Act 1995 (c. 26), or
  - (b) any corresponding provision in force in Northern Ireland,
- which might arise out of a failure to comply with any provision within subsection (3) (a) or (b) is to be disregarded.
- (5) References in subsection (2) to such a document as is mentioned in subsection (1) are to be read in accordance with subsections (3) and (4).
- (6) When executing a warrant under this section, an inspector may be accompanied by such persons as he considers appropriate.
- (7) A warrant under this section continues in force until the end of the period of one month beginning with the day on which it is issued.
- (8) Any document of which possession is taken under this section may be retained—
- (a) if the document is relevant to proceedings against any person for any offence which are commenced before the end of the retention period, until the conclusion of those proceedings, and
  - (b) otherwise, until the end of the retention period.
- (9) In subsection (8), “the retention period” means the period comprising—

*Status: Point in time view as at 22/04/2011.*

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- (a) the period of 12 months beginning with the date on which possession was taken of the document, and
  - (b) any extension of that period under subsection (10).
- (10) The Regulator may, by a direction made before the end of the retention period (including any extension of it under this subsection), extend it by such period not exceeding 12 months as the Regulator considers appropriate.
- (11) In the application of this section in Scotland—
- (a) the reference to a justice of the peace is to be read as a reference to the sheriff, and
  - (b) the references in subsections (1) and (2)(a) to information are to be read as references to evidence.

**Commencement Information**

**I105** S. 78 in force at 6.4.2005 by [S.I. 2005/275](#), art. 2(7), [Sch. Pt. 7](#)

**79 Sections 72 to 78: interpretation**

- (1) This section applies for the purposes of sections 72 to 78.
- (2) “Document” includes information recorded in any form, and any reference to production of a document, in relation to information recorded otherwise than in a legible form, is to producing a copy of the information—
  - (a) in a legible form, or
  - (b) in a form from which it can readily be produced in a legible form.
- (3) “Inspector” means a person appointed by the Regulator as an inspector.

**Commencement Information**

**I106** S. 79 in force at 6.4.2005 by [S.I. 2005/275](#), art. 2(7), [Sch. Pt. 7](#)

*Provision of false or misleading information*

**80 Offences of providing false or misleading information**

- (1) Any person who knowingly or recklessly provides the Regulator 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—
    - (i) section 62 (the register: duties of trustees or managers),
    - (ii) section 64 (duty of trustees or managers to provide scheme return),
    - (iii) section 72 (provision of information), or
    - (iv) section 75 (inspection of premises: powers of inspectors),
  - (b) is provided in applying for registration of a pension scheme under section 2 of the Welfare Reform and Pensions Act 1999 (c. 30) (registration of stakeholder pension schemes), or

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- (c) is provided otherwise than as mentioned in paragraph (a) or (b) 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 Regulator for the purpose of exercising its functions under this Act or the Pensions Act 1995 (c. 26).
- (2) Any person guilty of an offence under subsection (1) is liable—
- (a) on summary conviction, to a fine not exceeding the statutory maximum;
  - (b) on conviction on indictment, to a fine or imprisonment for a term not exceeding two years, or both.

**Commencement Information**

**I107** S. 80 in force at 6.4.2005 by [S.I. 2005/275](#), art. 2(7), [Sch. Pt. 7](#)

*Use of information*

**81 Use of information**

Information—

- (a) contained in the register, or
  - (b) otherwise held by the Regulator in the exercise of any of its functions,
- may be used by the Regulator for the purposes of, or for any purpose connected with or incidental to, the exercise of its functions.

**Commencement Information**

**I108** S. 81 in force at 6.4.2005 by [S.I. 2005/275](#), art. 2(7), [Sch. Pt. 7](#)

*Disclosure of information*

**82 Restricted information**

- (1) Restricted information must not be disclosed—
- (a) by the Regulator, or
  - (b) by any person who receives the information directly or indirectly from the Regulator.
- (2) Subsection (1) is subject to—
- (a) subsection (3), and
  - (b) sections 71(9), 83 to 88 and 235.
- (3) Subject to section [F<sup>29</sup>88(5)], restricted information may be disclosed with the consent of the person to whom it relates and (if different) the person from whom the Regulator obtained it.
- (4) For the purposes of this section and sections 83 to 87, “restricted information” means any information obtained by the Regulator in the exercise of its functions which relates to the business or other affairs of any person, except for information—

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- (a) which at the time of the disclosure is or has already been made available to the public from other sources, or
  - (b) which is in the form of a summary or collection of information so framed as not to enable information relating to any particular person to be ascertained from it.
- (5) Any person who discloses information in contravention of this section is guilty of an offence and liable—
- (a) on summary conviction, to a fine not exceeding the statutory maximum [<sup>F30</sup>, or imprisonment for a term not exceeding 12 months, or both];
  - (b) on conviction on indictment, to a fine or imprisonment for a term not exceeding two years, or both.
- [<sup>F31</sup>(6) In relation to an offence under subsection (5) committed before the commencement of section 282 of the Criminal Justice Act 2003 (short sentences) the reference in subsection (5)(a) to 12 months has effect as if it were a reference to six months.
- (7) Subsection (6) does not extend to Scotland.]

#### Textual Amendments

- F29** Word in s. 82(3) substituted (26.1.2009) by [Pensions Act 2008 \(c. 30\)](#), **ss. 62(2)**, 149(1); S.I. 2009/82, art. 2(1)(a)
- F30** Words in s. 82(5)(a) inserted (26.1.2009) by [Pensions Act 2008 \(c. 30\)](#), **ss. 64(1)**, 149(1); S.I. 2009/82, art. 2(1)(a)
- F31** S. 82(6)(7) inserted (26.1.2009) by [Pensions Act 2008 \(c. 30\)](#), **ss. 64(2)**, 149(1); S.I. 2009/82, art. 2(1)(a)

#### Modifications etc. (not altering text)

- C14** S. 82(2) modified (6.4.2005) by [The Register of Occupational and Personal Pension Schemes Regulations 2005 \(S.I. 2005/597\)](#), regs. 1(1), **5(3)**

#### Commencement Information

- I109** S. 82 in force at 6.4.2005 by [S.I. 2005/275](#), art. 2(7), **Sch. Pt. 7**

## 83 Information supplied to the Regulator by corresponding overseas authorities

- (1) Subject to subsection (2), for the purposes of section 82, “restricted information” includes information which has been supplied to the Regulator, for the purposes of its functions, by an authority which exercises functions corresponding to the functions of the Regulator in a country or territory outside the United Kingdom.
- (2) Sections 84 to 87 do not apply to such information as is mentioned in subsection (1), and such information must not be disclosed except—
- (a) as provided in section 82(3),
  - (b) for the purpose of enabling or assisting the Regulator to discharge its functions, or
  - (c) by or on behalf of—
    - (i) the Regulator, or
    - (ii) any public authority (within the meaning of section 6 of the Human Rights Act 1998 (c. 42)) which receives the information directly or indirectly from the Regulator,

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for any of the purposes specified in section 17(2)(a) to (d) of the Anti-terrorism, Crime and Security Act 2001 (c. 24) (criminal proceedings and investigations).

- (3) Section 18 of the Anti-terrorism, Crime and Security Act 2001 (restriction on disclosure of information for overseas purposes) has effect in relation to a disclosure authorised by subsection (2) as it has effect in relation to a disclosure authorised by any of the provisions to which section 17 of that Act applies.

#### Commencement Information

**I110** S. 83 in force at 6.4.2005 by [S.I. 2005/275](#), art. 2(7), [Sch. Pt. 7](#)

### 84 Disclosure for facilitating exercise of functions by the Regulator

- (1) Section 82 does not preclude the disclosure of restricted information in any case in which disclosure is for the purpose of enabling or assisting the Regulator to exercise its functions.
- (2) Subsection (3) applies where, in order to enable or assist the Regulator properly to exercise any of its functions, the Regulator considers it necessary to seek advice from any qualified person on any matter of law, accountancy, valuation or other matter requiring the exercise of professional skill.
- (3) Section 82 does not preclude the disclosure by the Regulator to a person qualified to provide that advice of such information as appears to the Regulator to be necessary to ensure that he is properly informed with respect to the matters on which his advice is sought.
- [<sup>F32</sup>(4) Section 82 does not preclude the disclosure by the Regulator to the Personal Accounts Delivery Authority of such information as appears to the Regulator to be necessary to enable the Authority to provide assistance or advice to the Regulator under section 79(2) of the Pensions Act 2008.]

#### Textual Amendments

**F32** S. 84(4) inserted (26.11.2008) by [Pensions Act 2008 \(c. 30\)](#), [ss. 83](#), 149(2)

#### Commencement Information

**I111** S. 84 in force at 6.4.2005 by [S.I. 2005/275](#), art. 2(7), [Sch. Pt. 7](#)

### 85 Disclosure for facilitating exercise of functions by the Board

Section 82 does not preclude the disclosure of restricted information in any case in which disclosure is for the purpose of enabling or assisting the Board of the Pension Protection Fund to exercise its functions.

#### Commencement Information

**I112** S. 85 in force at 6.4.2005 by [S.I. 2005/275](#), art. 2(7), [Sch. Pt. 7](#)



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## 86 Disclosure for facilitating exercise of functions by other supervisory authorities

- (1) Section 82 does not preclude the disclosure by the Regulator of restricted information to any person specified in the first column of Schedule 3 if the Regulator considers that the disclosure would enable or assist that person to exercise the functions specified in relation to him in the second column of that Schedule.
- (2) The Secretary of State may after consultation with the Regulator—
  - (a) by order amend Schedule 3 by—
    - (i) adding any person exercising regulatory functions and specifying functions in relation to that person,
    - (ii) removing any person for the time being specified in the Schedule, or
    - (iii) altering the functions for the time being specified in the Schedule in relation to any person, or
  - (b) by order restrict the circumstances in which, or impose conditions subject to which, disclosure may be made to any person for the time being specified in the Schedule.

### Commencement Information

**I113** S. 86(1) in force at 6.4.2005 by [S.I. 2005/275](#), art. 2(7), [Sch. Pt. 7](#)

**I114** S. 86(2) in force at 6.4.2006 by [S.I. 2006/560](#), art. 2(3), [Sch. Pt. 3](#)

## 87 Other permitted disclosures

- (1) Section 82 does not preclude the disclosure by the Regulator of restricted information to—
  - (a) the Secretary of State,
  - (b) the Commissioners of Inland Revenue or their officers, or
  - (c) the Department for Social Development in Northern Ireland,if the disclosure appears to the Regulator to be desirable or expedient in the interests of members of occupational pension schemes or personal pension schemes or in the public interest.
- (2) Section 82 does not preclude the disclosure of restricted information—
  - (a) by or on behalf of—
    - (i) the Regulator, or
    - (ii) any public authority (within the meaning of section 6 of the Human Rights Act 1998 (c. 42)) which receives the information directly or indirectly from the Regulator,  
for any of the purposes specified in section 17(2)(a) to (d) of the Anti-terrorism, Crime and Security Act 2001 (c. 24) (criminal proceedings and investigations),
  - (b) in connection with any proceedings arising out of—
    - (i) this Act,
    - (ii) the Welfare Reform and Pensions Act 1999 (c. 30),
    - (iii) the Pensions Act 1995 (c. 26), or
    - (iv) the Pension Schemes Act 1993 (c. 48),

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- or any corresponding enactment in force in Northern Ireland, or any proceedings for breach of trust in relation to an occupational pension scheme,
- (c) with a view to the institution of, or otherwise for the purposes of, proceedings under—
- (i) section 7 or 8 of the Company Directors Disqualification Act 1986 (c. 46), or
  - (ii) Article 10 or 11 <sup>F33</sup>... of the Company Directors Disqualification (Northern Ireland) Order 2002 (S.I. 2002/3150 (N.I. 4)),
- (d) in connection with any proceedings under—
- (i) the Insolvency Act 1986 (c. 45), or
  - (ii) the Insolvency (Northern Ireland) Order 1989 (S.I. 1989/2405 (N.I. 19)),
- which the Regulator has instituted or in which it has a right to be heard,
- (e) with a view to the institution of, or otherwise for the purposes of, any disciplinary proceedings relating to the exercise of his professional duties by a solicitor, an actuary, an accountant or an insolvency practitioner,
- (f) with a view to the institution of, or otherwise for the purposes of, any disciplinary proceedings relating to the exercise by a public servant of his functions,
- (g) for the purpose of enabling or assisting an authority in a country outside the United Kingdom to exercise functions corresponding to those of the Regulator under this Act, the Welfare Reform and Pensions Act 1999 (c. 30), the Pensions Act 1995 (c. 26) or the Pension Schemes Act 1993 (c. 48), or
- (h) in pursuance of [<sup>F34</sup>an EU] obligation.
- (3) In subsection (2)(f), “public servant” means an officer or servant of the Crown or of any prescribed authority.
- (4) Section 82 does not preclude the disclosure by the Regulator of restricted information to—
- (a) the Director of Public Prosecutions,
  - (b) the Director of Public Prosecutions for Northern Ireland,
  - (c) the Lord Advocate,
  - (d) a procurator fiscal, or
  - (e) a constable.
- (5) Section 82 does not preclude the disclosure of restricted information in any case where the disclosure is required by or by virtue of an enactment.
- (6) Section 82 does not preclude the disclosure of restricted information in any case where the disclosure is to a Regulator-appointed trustee of an occupational pension scheme for the purpose of enabling or assisting him to exercise his functions in relation to the scheme.
- (7) In subsection (6), “Regulator-appointed trustee” means a trustee appointed by the Regulator under section 7 or 23(1) of the Pensions Act 1995 or any corresponding provision in force in Northern Ireland.
- (8) Section 82 does not preclude the disclosure by any person mentioned in subsection (1) or (4) of restricted information obtained by the person by virtue of that subsection, if the disclosure is made with the consent of the Regulator.

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- (9) Section 82 does not preclude the disclosure by any person specified in the first column of Schedule 3 of restricted information obtained by the person by virtue of section 86(1), if the disclosure is made—
- (a) with the consent of the Regulator, and
  - (b) for the purpose of enabling or assisting the person to exercise any functions specified in relation to him in the second column of the Schedule.
- (10) Before deciding whether to give its consent to such a disclosure as is mentioned in subsection (8) or (9), the Regulator must take account of any representations made to it, by the person seeking to make the disclosure, as to the desirability of the disclosure or the necessity for it.
- (11) Section 18 of the Anti-terrorism, Crime and Security Act 2001 (c. 24) (restriction on disclosure of information for overseas purposes) has effect in relation to a disclosure authorised by subsection (2) as it has effect in relation to a disclosure authorised by any of the provisions to which section 17 of that Act applies.

#### Textual Amendments

**F33** Words in s. 87(2)(c)(ii) omitted (1.10.2009) by virtue of [The Companies Act 2006 \(Consequential Amendments, Transitional Provisions and Savings\) Order 2009 \(S.I. 2009/1941\)](#), art. 1(2), **Sch. 1 para. 243(6)** (with art. 10)

**F34** Words in Act substituted (22.4.2011) by [The Treaty of Lisbon \(Changes in Terminology\) Order 2011 \(S.I. 2011/1043\)](#), arts. 2, 3, 6 (with arts. 3(2)(3), 4(2), 6(4)(5))

#### Commencement Information

**I115** S. 87 in force at 6.4.2005 by [S.I. 2005/275](#), art. 2(7), **Sch. Pt. 7**

## <sup>F35</sup>88 Tax information etc

- (1) This section applies to information held by the Revenue and Customs if it is held by them in connection with a function of the Revenue and Customs that relates to any of these matters—
- (a) tax or duty;
  - (b) national insurance contributions;
  - (c) the national minimum wage.
- (2) An officer of Revenue and Customs may disclose to the Regulator information to which this section applies, if the disclosure is made for the purpose of enabling or assisting the Regulator to discharge its functions.
- (3) Where information to which this section applies is disclosed to the Regulator by virtue of subsection (2) above or section 19 of the Anti-terrorism, Crime and Security Act 2001 (disclosure of information held by revenue departments), it must, subject to subsections (4) and (5), be treated for the purposes of section 82 as restricted information.
- (4) Information to which this section applies which is disclosed to the Regulator as mentioned in subsection (3) may not be disclosed by the Regulator or any person who receives the information directly or indirectly from the Regulator except—
- (a) to, or in accordance with authority given by, the Commissioners for Her Majesty's Revenue and Customs,

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- (b) with a view to the institution of, or otherwise for the purposes of, any criminal proceedings,
  - (c) with a view to the institution of any other proceedings by the Regulator, or for the purposes of any such proceedings instituted by the Regulator,
  - (d) in accordance with section 84, otherwise than for the purposes of any proceedings, or
  - (e) in the form of a summary or collection of information so framed as not to enable information relating to any particular person to be ascertained from it.
- (5) Accordingly sections 82(3), 83, 85 to 87 and 235, and paragraph 4 of Schedule 10, do not apply to such information, and section 84 applies subject to subsection (4)(d).
- (6) In subsection (4)(c) and (d), “proceedings” includes the issue of notices or any other enforcement action taken by the Regulator under Chapter 2 of Part 1 of the Pensions Act 2008 or any other enactment.
- (7) In this section “the Revenue and Customs” and a “function of the Revenue and Customs” have the same meaning as in section 18 of the Commissioners for Revenue and Customs Act 2005 (confidentiality).]

#### Textual Amendments

**F35** S. 88 substituted (26.1.2009) by [Pensions Act 2008 \(c. 30\)](#), **ss. 62(1)**, 149(1); [S.I. 2009/82](#), **art. 2(1)(a)**

#### Commencement Information

**I116** S. 88 in force at 6.4.2005 by [S.I. 2005/275](#), **art. 2(7)**, **Sch. Pt. 7**

### Reports

#### 89 Publishing reports etc

- (1) The Regulator may, if it considers it appropriate to do so in any particular case, publish a report of the consideration given by it to the exercise of its functions in relation to that case and the results of that consideration.
- (2) The publication of a report under subsection (1) may be in such form and manner as the Regulator considers appropriate.
- (3) For the purposes of the law of defamation, the publication of any matter by the Regulator is privileged unless the publication is shown to be made with malice.

#### Commencement Information

**I117** S. 89 in force at 6.4.2005 by [S.I. 2005/275](#), **art. 2(7)**, **Sch. Pt. 7**

### Codes of practice

#### 90 Codes of practice

- (1) The Regulator may issue codes of practice—

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- (a) containing practical guidance in relation to the exercise of functions under the pensions legislation, and
  - (b) regarding the standards of conduct and practice expected from those who exercise such functions.
- (2) The Regulator must issue one or more such codes of practice relating to the following matters—
- (a) what constitutes a “reasonable” period for the purposes of any provision of the pensions legislation (other than any enactment contained in or made by virtue of Part 2) which requires any action to be taken within such a period;
  - [<sup>F36</sup>(aa) the circumstances in which the Regulator expects to issue contribution notices under section 38 as a result of being of the opinion that the material detriment test is met in relation to an act or failure;]
  - (b) the discharge of the duty imposed by section 69 (duty to notify Regulator of certain events);
  - (c) the discharge of the duty imposed by section 70 (duty to report breaches of the law);
  - (d) the discharge of duties imposed on trustees or managers of occupational pension schemes by, or by virtue of, Part 3 (scheme funding);
  - (e) the discharge of the duties imposed by sections 241 and 242 (member-nominated trustees and directors);
  - (f) the obligations imposed by sections 247 and 248 (requirements for knowledge and understanding: individual and corporate trustees);
  - (g) the discharge of the duty imposed by section 49(9)(b) of the Pensions Act 1995 (c. 26) (duty of trustees or managers of occupational pension schemes to report material failures by employers to pay contributions deducted from employee’s earnings timeously);
  - (h) the discharge of the duties imposed by sections 67 to 67I of that Act (the subsisting rights provisions);
  - (i) the discharge of the duty imposed by section 88(1) of that Act (duties of trustees and managers of money purchase schemes to report failures to pay employer contributions etc timeously);
  - (j) the discharge of the duty imposed by section 111A(7A) of the Pension Schemes Act 1993 (c. 48) (duty of trustees or managers of personal pension schemes to report material failures to pay employer contributions timeously);
  - (k) such other matters as are prescribed for the purposes of this section.
- (3) The Regulator may from time to time revise the whole or any part of a code of practice issued under this section and issue that revised code.
- (4) A failure on the part of any person to observe any provision of a code of practice does not of itself render that person liable to any legal proceedings.
- This is subject to section 13(3)(a) and (8) (power for improvement notice to direct that person complies with code of practice and civil penalties for failure to comply).
- (5) A code of practice issued under this section is admissible in evidence in any legal proceedings and, if any provision of such a code appears to the court or tribunal concerned to be relevant to any question arising in the proceedings, it must be taken into account in determining that question.
- (6) In this section—

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“legal proceedings” includes proceedings of the Pensions Ombudsman, proceedings of the Ombudsman for the Board of the Pension Protection Fund and proceedings of the Board of the Pension Protection Fund under section 207 or 208; and

“the pensions legislation” means any enactment contained in or made by virtue of—

- (a) the Pension Schemes Act 1993 (c. 48),
- (b) Part 1 of the Pensions Act 1995 (c. 26), other than sections 62 to 66A of that Act (equal treatment),
- (c) Part 1 or section 33 of the Welfare Reform and Pensions Act 1999 (c. 30), or
- (d) this Act.

- (7) Sections 91 and 92 make provision about the procedure to be followed when a code of practice is issued or revoked.

#### Textual Amendments

**F36** S. 90(2)(aa) inserted (26.11.2008) by [Pensions Act 2008 \(c. 30\)](#), s. 149(2)(3), [Sch. 9 para. 3](#)

#### Modifications etc. (not altering text)

**C15** S. 90(6) modified (30.12.2005) by [The Occupational Pension Schemes \(Regulatory Own Funds\) Regulations 2005 \(S.I. 2005/3380\)](#), regs. 1, [13](#)

#### Commencement Information

**I118** S. 90(1)(2)(a)-(j)(3)-(7) in force at 6.4.2005 by [S.I. 2005/275](#), art. 2(7), [Sch. Pt. 7](#)

**I119** S. 90(2)(k) in force at 14.11.2005 by [S.I. 2005/2447](#), [art. 2\(1\)](#)

## 91 Procedure for issue and publication of codes of practice

- (1) Where the Regulator proposes to issue a code of practice it must prepare and publish a draft of the code.
- (2) Where the Regulator publishes a draft under subsection (1), it must consult—
  - (a) such persons as it considers appropriate, and
  - (b) any other persons the Secretary of State requires it to consult.
- (3) Having considered any representations made on the draft, the Regulator must make such modifications to it as it considers appropriate.
- (4) Subsections (2) and (3) do not apply—
  - (a) to a code made for the purpose only of consolidating other codes issued under section 90, or
  - (b) to a code if the Secretary of State considers consultation inexpedient by reason of urgency.
- (5) If the Regulator determines to proceed with a draft, it must send it to the Secretary of State who—
  - (a) if he approves of it, must lay it before Parliament, and
  - (b) if he does not approve of it, must publish details of his reasons for withholding approval.

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- (6) Where a draft is laid before Parliament under subsection (5)(a)—
- (a) if within the period mentioned in subsection (7) either House so resolves, no further proceedings may be taken on the draft code;
  - (b) if no such resolution is passed, the Regulator must issue the code in the form of the draft.
- (7) The period referred to in subsection (6)(a) is the period of 40 days—
- (a) beginning with the day on which the draft is laid before Parliament (or, if it is laid before the two Houses on different days, with the later of the two days), and
  - (b) ignoring any period during which Parliament is dissolved or prorogued or during which both Houses are adjourned for more than four days.
- (8) The fact that no further proceedings may be taken on a draft code in accordance with subsection (6)(a) does not prevent the laying of a new draft.
- (9) A code issued in accordance with subsection (6)(b) shall come into effect on such day as the Secretary of State may by order appoint.
- Without prejudice to section 315, such an order may contain such transitional provisions or savings as appear to the Secretary of State to be necessary or expedient in connection with the code of practice brought into operation.
- (10) The Regulator must arrange for any code issued by it under section 90 to be published in the way appearing to it to be appropriate.
- (11) The Regulator may charge a reasonable fee for providing a person with a copy of a code published under this section.
- (12) This section applies to a revised code as it applies to the first issue of a code.

**Modifications etc. (not altering text)**

- C16** S. 91(9) power exercised: 6.4.2005 appointed by [S.I. 2005/1108](#), art. 2(1)  
**C17** S. 91(9) power exercised: 30.6.2005 appointed by [S.I. 2005/1720](#), art. 2(1)  
**C18** S. 91(9) power exercised: 22.11.2006 appointed by [S.I. 2006/3079](#), art. 2  
**C19** S. 91(9) power fully exercised: 24.1.2007 appointed by [S.I. 2007/76](#), art. 2  
**C20** S. 91(9) power exercised: 28.7.2008 appointed by [S.I. 2008/1882](#), art. 2  
**C21** S. 91(9) power exercised: 29.6.2009 appointed by [S.I. 2009/1565](#), art. 2  
**C22** S. 91(9) power exercised: 26.11.2009 appointed by [S.I. 2009/3068](#), art. 2

**Commencement Information**

- I120** S. 91(1)-(9) in force at 17.12.2004 by [S.I. 2004/3350](#), art. 2, [Sch.](#)  
**I121** S. 91(10)-(12) in force at 6.4.2005 by [S.I. 2005/275](#), art. 2(7), [Sch. Pt. 7](#)

**92 Revocation of codes of practice**

- (1) A code of practice may be revoked by the Secretary of State by order.
- (2) An order under this section may be made only with the consent of the Regulator.

*Status: Point in time view as at 22/04/2011.*

*Changes to legislation: Pensions Act 2004, Part 1 is up to date with all changes known to be in force on or before 23 May 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

- (3) Without prejudice to section 315, an order under this section may contain such savings as appear to the Secretary of State to be necessary or expedient in connection with the revocation of the code.

**Commencement Information**

**I122** S. 92 in force at 6.4.2005 by S.I. 2005/275, art. 2(7), Sch. Pt. 7

*Exercise of regulatory functions*

**93 The Regulator’s procedure in relation to its regulatory functions**

- (1) The Regulator must determine the procedure that it proposes to follow in relation to the exercise of its regulatory functions.
- (2) For the purposes of this Part the “regulatory functions” of the Regulator are—
- (a) the power to issue an improvement notice under section 13,
  - (b) the power to issue a third party notice under section 14,
  - (c) the reserved regulatory functions (see Schedule 2),
  - (d) the power to issue a clearance statement under section 42,
  - (e) the power to issue a notice under section 45(1) approving the details of arrangements,
  - (f) the power to issue a clearance statement under section 46,
  - (g) the power to vary or revoke under section 101 (to the extent that it does not fall within paragraph (c)),
  - (h) the power to make an order under section 154(8),
  - (i) the power to make an order under section 219(4),
  - (j) the power to grant or revoke authorisation under section 288,
  - (k) the power to grant or revoke approval under section 289,
  - (l) the power to issue a notice under section 293(5),
  - (m) the power by direction under section 2(3)(a) of the Welfare Reform and Pensions Act 1999 (c. 30) to refuse to register a scheme under section 2 of that Act,
  - (n) the power to make an order under section 7 of the Pensions Act 1995 (c. 26) appointing a trustee (to the extent that it does not fall within paragraph (c)),
  - (o) the power to make an order under section 23 of that Act appointing an independent trustee,
  - (p) the power to give directions under section 72B of that Act (directions facilitating winding up), and
  - (q) such other functions of the Regulator as may be prescribed.
- (3) The Determinations Panel must determine the procedure to be followed by it in relation to any exercise by it on behalf of the Regulator of—
- (a) the power to determine whether to exercise a regulatory function, and
  - (b) where the Panel so determines to exercise a regulatory function, the power to exercise the function in question.
- (4) The procedure determined under this section—



*Status: Point in time view as at 22/04/2011.*

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- (a) must provide for the procedure required under—
    - (i) section 96 (standard procedure), and
    - (ii) section 98 (special procedure), and
  - (b) may include such other procedural requirements as the Regulator or, as the case may be, the Panel considers appropriate.
- (5) This section is subject to—
- (a) sections 99 to 104 (the remaining provisions concerning the procedure in relation to the regulatory functions), and
  - (b) any regulations made by the Secretary of State under paragraph 19 of Schedule 1.

#### Commencement Information

**I123** S. 93(1)(2)(a)-(p)(3)-(5) in force at 6.4.2005 by [S.I. 2005/275](#), art. 2(7), [Sch. Pt. 7](#)

**I124** S. 93(2)(q) in force for the purpose only of conferring power to make regulations, orders or rules, as the case may be, 10.2.2005; and for all other purposes at 6.4.2005 in so far as not already in force by [S.I. 2005/275](#), art. 2(3), [Sch. Pt. 3](#)

## 94 Publication of procedure in relation to regulatory functions

- (1) The Regulator must issue a statement of the procedure determined under section 93.
- (2) The Regulator must arrange for the statement to be published in the way appearing to it to be appropriate.
- (3) The Regulator may charge a reasonable fee for providing a person with a copy of the statement.
- (4) If the procedure determined under section 93 is changed in a material way, the Regulator must publish a revised statement.
- (5) The Regulator must, without delay, give the Secretary of State a copy of any statement which it issues under this section.

#### Commencement Information

**I125** S. 94 in force at 6.4.2005 by [S.I. 2005/275](#), art. 2(7), [Sch. Pt. 7](#)

## 95 Application of standard and special procedure

- (1) The Regulator must comply with the standard procedure (see section 96) or, where section 97 applies, the special procedure (see section 98) in a case where—
  - (a) the Regulator considers that the exercise of one or more of the regulatory functions may be appropriate, or
  - (b) an application is made under or by virtue of—
    - (i) any of the provisions listed in section 10(6), or
    - (ii) any prescribed provision of this or any other enactment,for the Regulator to exercise a regulatory function.

*Status: Point in time view as at 22/04/2011.*

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- (2) For the purposes of section 96, references to the regulatory action under consideration in a particular case are—
- (a) in a case falling within subsection (1)(a), references to the exercise of the one or more regulatory functions which the Regulator considers that it may be appropriate to exercise, and
  - (b) in a case falling within subsection (1)(b), references to the exercise of the regulatory function which is the subject-matter of the application.
- (3) Neither section 96 (standard procedure) nor section 98 (special procedure) apply in relation to a determination whether to exercise a regulatory function on a review under section 99 (compulsory review of regulatory action).

#### Commencement Information

**I126** S. 95(1)(a)(b)(i)(2)(3) in force at 6.4.2005 by [S.I. 2005/275](#), art. 2(7), [Sch. Pt. 7](#)

## 96 Standard procedure

- (1) The procedure determined under section 93 must make provision for the standard procedure.

[<sup>F37</sup>(1A) In any case where—

- (a) a warning notice is given to any person in respect of a contribution notice under section 38, and
- (b) the contribution notice under consideration would be issued wholly or partly by reference to the Regulator's opinion that the material detriment test is met in relation to an act or failure,

the standard procedure must provide for the following matters.

(1B) The matters are—

- (a) a requirement for the warning notice to explain the general effect of section 38B, and
- (b) a requirement for the person to be given an opportunity before the contribution notice is issued to show the matters mentioned in subsection (2) of that section.]

(2) The “standard procedure” is a procedure which provides for—

- (a) the giving of notice to such persons as it appears to the Regulator would be directly affected by the regulatory action under consideration (a “warning notice”),
- (b) those persons to have an opportunity to make representations,
- (c) the consideration of any such representations and the determination whether to take the regulatory action under consideration,
- (d) the giving of notice of the determination to such persons as appear to the Regulator to be directly affected by it (a “determination notice”),
- (e) the determination notice to contain details of the right of referral to the Tribunal under subsection (3),
- (f) the form and further content of warning notices and determination notices and the manner in which they are to be given, and
- (g) the time limits to be applied at any stage of the procedure.

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*Status: Point in time view as at 22/04/2011.*

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- (3) Where the standard procedure applies, the determination which is the subject-matter of the determination notice may be referred to the Tribunal <sup>F38</sup>... by—
- (a) any person to whom the determination notice is given as required under subsection (2)(d), and
  - (b) any other person who appears to the Tribunal to be directly affected by the determination.
- (4) Subsection (3) does not apply where the determination which is the subject-matter of the determination notice is a determination to issue a clearance statement under section 42 or 46.
- (5) Where the determination which is the subject-matter of the determination notice is a determination to exercise a regulatory function and subsection (3) applies, the Regulator must not exercise the function—
- (a) during the period within which the determination may be referred to the Tribunal <sup>F39</sup>..., and
  - (b) if the determination is so referred, until the reference, and any appeal against the Tribunal's determination, has been finally disposed of.
- (6) Subsection (5) does not apply where the determination is a determination to exercise any of the following functions—
- (a) the power to make a direction under section 76(8) extending the retention period for documents taken into possession under section 75;
  - (b) the power to make a direction under section 78(10) extending the retention period for documents taken into possession under that section;
  - (c) the power to make an order under section 154(8);
  - (d) the power to make an order under section 219(4);
  - (e) the power to grant or revoke authorisation under section 288;
  - (f) the power to grant or revoke approval under section 289;
  - (g) the power to issue a notice under section 293(5);
  - (h) the power to make an order under section 3(1) of the Pensions Act 1995 (c. 26) prohibiting a person from being a trustee;
  - (i) the power to make an order under section 3(3) of that Act revoking such an order;
  - (j) the power to make an order under section 4(1) of that Act suspending a trustee;
  - (k) the power to make an order under section 4(2) of that Act extending the period for which an order under section 4(1) of that Act has effect;
  - (l) the power to make an order under section 4(5) of that Act revoking an order under section 4(1) of that Act suspending a trustee;
  - (m) the power to make an order under section 7 of that Act appointing a trustee;
  - (n) the power under section 9 of that Act to exercise by order the same jurisdiction and powers as the High Court or the Court of Session for vesting property in, or transferring property to, trustees in consequence of the appointment or removal of a trustee;
  - (o) the power to make an order under section 23 of that Act appointing an independent trustee;
  - (p) the power under section 29(5) of that Act to give a notice waiving a disqualification under section 29 of that Act;
  - (q) the power under section 30(2) of that Act to exercise by order the same jurisdiction and powers as the High Court or the Court of Session for vesting

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- property in, or transferring property to, the trustees where a trustee becomes disqualified under section 29 of that Act;
- (r) the power to give directions under section 72B of that Act facilitating a winding up;
  - (s) the power by direction under section 99(4) of the Pension Schemes Act 1993 (c. 48) to grant an extension of the period within which the trustees or managers of a scheme are to carry out certain duties;
  - (t) the power by direction under section 101J(2) of that Act to extend the period for compliance with a transfer notice;
  - (u) such other regulatory functions as may be prescribed;
  - (v) the power under section 101(1)(b) to vary or revoke in relation to the exercise of any of the regulatory functions mentioned in paragraphs (a) to (u) other than those mentioned in paragraph (i) or (l).

[<sup>F40</sup>(7) In this section “the Tribunal”, in relation to any reference under subsection (3), means—

- (a) the First-tier Tribunal, in any case where it is determined by or under Tribunal Procedure Rules that the First-tier Tribunal is to hear the reference;
- (b) the Upper Tribunal, in any other case.]

#### Textual Amendments

- F37** S. 96(1A)(1B) inserted (29.6.2009) by *Pensions Act 2008 (c. 30)*, s. 149(1), **Sch. 9 para. 4**; S.I. 2009/1566, art. 2(1)(b)(i)
- F38** Words in s. 96(3) omitted (6.4.2010) by virtue of *The Transfer of Tribunal Functions Order 2010 (S.I. 2010/22)*, art. 1(2)(e), **Sch. 2 para. 75(a)** (with Sch. 5)
- F39** Words in s. 96(5)(a) omitted (6.4.2010) by virtue of *The Transfer of Tribunal Functions Order 2010 (S.I. 2010/22)*, art. 1(2)(e), **Sch. 2 para. 75(b)** (with Sch. 5)
- F40** S. 96(7) inserted (6.4.2010) by *The Transfer of Tribunal Functions Order 2010 (S.I. 2010/22)*, art. 1(2)(e), **Sch. 2 para. 75(c)** (with Sch. 5)

#### Commencement Information

- I127** S. 96(1)-(5)(6)(a)-(t)(v) in force at 6.4.2005 by S.I. 2005/275, art. 2(7), **Sch. Pt. 7**

## 97 Special procedure: applicable cases

- (1) The special procedure in section 98 (and not the standard procedure) applies to—
- (a) a case falling within subsection (2),
  - (b) a case falling within subsection (3), and
  - (c) a case falling within subsection (4).
- (2) A case falls within this subsection if—
- (a) the Regulator considers that it may be necessary to exercise a regulatory function listed in subsection (5) immediately because there is, or the Regulator considers it likely that if a warning notice were to be given there would be, an immediate risk to—
    - (i) the interests of members under an occupational or personal pension scheme, or
    - (ii) the assets of such a scheme,

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- (b) the Regulator accordingly dispenses with the giving of a warning notice and an opportunity to make representations as described in section 96(2)(a) and (b), and
  - (c) the Regulator determines to exercise the function immediately on the basis that it is necessary to do so because there is, or the Regulator considers it likely that if the function were not exercised immediately there would be, an immediate risk to—
    - (i) the interests of members under an occupational or personal pension scheme, or
    - (ii) the assets of such a scheme.
- (3) A case falls within this subsection if—
  - (a) the Regulator gives a warning notice as described in section 96(2)(a) in relation to a determination whether to exercise a regulatory function listed in subsection (5), and
  - (b) before it has considered the representations of those persons to whom the warning notice is given, the Regulator determines to exercise the function immediately on the basis that it is necessary to do so because there is, or the Regulator considers it likely that if the function were not exercised immediately there would be, an immediate risk to—
    - (i) the interests of members under an occupational or personal pension scheme, or
    - (ii) the assets of such a scheme.
- (4) A case falls within this subsection if the Regulator—
  - (a) gives a warning notice as described in section 96(2)(a) in relation to a determination whether to exercise a regulatory function which—
    - (i) is listed in subsection (5), and
    - (ii) is not a function listed in section 96(6) (functions which may be exercised immediately under the standard procedure),
  - (b) considers the representations of those persons to whom the warning notice is given, and
  - (c) determines to exercise the function immediately on the basis that it is necessary to do so because there is, or the Regulator considers it likely that if the function were not exercised immediately there would be, an immediate risk to—
    - (i) the interests of members under an occupational or personal pension scheme, or
    - (ii) the assets of such a scheme.
- (5) The regulatory functions referred to in subsections (2), (3) and (4) are—
  - (a) the power to make or extend a restraining order under section 20;
  - (b) the power to make a freezing order under section 23;
  - (c) the power to make an order under section 25(3) extending the period for which a freezing order has effect;
  - (d) the power to make an order under section 26 validating action taken in contravention of a freezing order;
  - (e) the power to make an order under section 28 directing that specified steps are taken;

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- (f) the power to make an order under section 30 giving a direction where a freezing order ceases to have effect;
- (g) the power to make an order under section 31(3) directing the notification of members;
- (h) the power to make an order under section 231 modifying a scheme, giving directions or imposing a schedule of contributions;
- (i) the power to make an order under section 3(1) of the Pensions Act 1995 (c. 26) prohibiting a person from being a trustee;
- (j) the power to make an order under section 3(3) of that Act revoking such an order;
- (k) the power to make an order under section 4(1) of that Act suspending a trustee;
- (l) the power to make an order under section 4(5) of that Act revoking such an order;
- (m) the power to make an order under section 7 of that Act appointing a trustee;
- (n) the power under section 9 of that Act to exercise by order the same jurisdiction and powers as the High Court or the Court of Session for vesting property in, or transferring property to, trustees in consequence of the appointment or removal of a trustee;
- (o) the power to make an order under section 11 of that Act directing or authorising an occupational pension scheme to be wound up;
- (p) the power to make an order under section 23 of that Act appointing an independent trustee;
- (q) the power under section 29(5) of that Act to give a notice waiving a disqualification under section 29 of that Act;
- (r) the power under section 30(2) of that Act to exercise by order the same jurisdiction and powers as the High Court or the Court of Session for vesting property in, or transferring property to, the trustees where a trustee becomes disqualified under section 29 of that Act;
- (s) the power to make an order under section 67G(2) of that Act by virtue of which any modification of, or grant of rights under, an occupational pension scheme is void to any extent;
- (t) the power to make an order under section 67H(2) of that Act prohibiting, or specifying steps to be taken in relation to, the exercise of a power to modify an occupational pension scheme;
- [<sup>F41</sup>(ta) a power under section 24H of the Pension Schemes Act 1993;]
- (u) such other regulatory functions as may be prescribed;
- (v) the power under section 101(1)(b) to vary or revoke in relation to the exercise of any of the regulatory functions mentioned in paragraphs (a) to (u) other than those mentioned in paragraph (j) or (l).

#### Textual Amendments

**F41** S. 97(5)(ta) inserted (1.3.2009 for specified purposes, 6.4.2009 in so far as not already in force) by [Pensions Act 2007 \(c. 22\)](#), [ss. 14\(6\)](#), [30\(2\)\(a\)](#); [S.I. 2009/406](#), [art. 2\(a\)\(b\)](#)

#### Commencement Information

**I128** S. 97(1)-(4)(5)(a)-(t)(v) in force at 6.4.2005 by [S.I. 2005/275](#), [art. 2\(7\)](#), [Sch. Pt. 7](#)

*Status: Point in time view as at 22/04/2011.*

*Changes to legislation: Pensions Act 2004, Part 1 is up to date with all changes known to be in force on or before 23 May 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

**1129** S. 97(5)(u) in force for the purpose only of conferring power to make regulations, orders or rules, as the case may be, 10.2.2005; and for all other purposes at 6.4.2005 in so far as not already in force by S.I. 2005/275, art. 2(3), **Sch. Pt. 3**

## 98 Special procedure

- (1) The procedure determined under section 93 must make provision for the special procedure.
- (2) The “special procedure” is a procedure which provides for—
  - (a) the giving of notice of the determination to exercise the regulatory function to such persons as appear to the Regulator to be directly affected by it (a “determination notice”),
  - (b) the determination notice to contain details of the requirement for the Regulator to review the determination under section 99(1) and of any subsequent right of referral to the Tribunal under section 99(7),
  - (c) the persons to whom the determination notice was given (as required under paragraph (a)) to have an opportunity to make representations in relation to the determination before it is reviewed under section 99(1),
  - (d) the consideration of any such representations before the determination on the review,
  - (e) the giving of a notice in accordance with section 99(4) of the determination on the review (a “final notice”),
  - (f) the final notice to contain details of the right of referral to the Tribunal under section 99(7),
  - (g) the form and further content of determination notices and final notices and the manner in which they are to be given, and
  - (h) the time limits to be applied at any stage of the procedure.

### Commencement Information

**1130** S. 98 in force at 6.4.2005 by S.I. 2005/275, art. 2(7), **Sch. Pt. 7**

## 99 Compulsory review

- (1) In a case where the special procedure applies, the Regulator must review the determination to exercise the regulatory function.
- (2) The review must be determined as soon as reasonably practicable.
- (3) The Regulator’s powers on a review under this section include power to—
  - (a) confirm, vary or revoke the determination,
  - (b) confirm, vary or revoke any order, notice or direction made, issued or given as a result of the determination,
  - (c) substitute a different determination, order, notice or direction,
  - (d) deal with the matters arising on the review as if they had arisen on the original determination, and
  - (e) make savings and transitional provision.

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- (4) When the Regulator has completed a review under this section a notice of its determination on the review must be given to such persons as appear to it to be directly affected by its determination on the review.
- (5) If the final notice contains a determination to exercise a different regulatory function to the function which was the subject-matter of the determination notice, then the final notice may not be given unless—
  - (a) such persons as appear to the Regulator to be directly affected by the exercise of the regulatory function have been given an opportunity to make representations, and
  - (b) the Regulator has considered any such representations before it makes its determination on the review.
- (6) Subsection (5) does not apply if the regulatory function is listed in section 97(5) and the Regulator determines to exercise it immediately on the basis that it is necessary to do so because there is, or the Regulator considers it likely that if the function were not exercised immediately there would be, an immediate risk to—
  - (a) the interests of members under an occupational or personal pension scheme, or
  - (b) the assets of such a scheme.
- (7) The determination which is the subject-matter of a final notice may be referred to the Tribunal <sup>F42</sup>... by—
  - (a) any person to whom the final notice is given as required under subsection (4), and
  - (b) any other person who appears to the Tribunal to be directly affected by the determination.
- (8) Where that determination is a determination to exercise a different regulatory function to the function which was the subject-matter of the determination notice, the Regulator must not exercise the regulatory function—
  - (a) during the period within which the determination may be referred to the Tribunal <sup>F43</sup>..., and
  - (b) if the determination is so referred, until the reference, and any appeal against the Tribunal's determination, has been finally disposed of.
- (9) Subsection (8) does not apply where—
  - (a) the regulatory function in question is a function listed in section 96(6) (functions which may be exercised immediately under the standard procedure), or
  - (b) the regulatory function in question is a function listed in section 97(5) (functions which may be exercised immediately under the special procedure) and the Regulator determines to exercise it immediately on the basis described in subsection (6).
- (10) The functions of the Regulator under this section are exercisable on behalf of the Regulator by the Determinations Panel (and are not otherwise exercisable by or on behalf of the Regulator).
- (11) The Panel must determine the procedure that it proposes to follow in relation to the exercise of those functions.



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(12) Section 94 (publication of Regulator’s procedure) applies in relation to the procedure determined under subsection (11) as it applies to the procedure determined under section 93 (procedure in relation to the regulatory functions).

[<sup>F44</sup>(13) In this section “the Tribunal”, in relation to any reference under subsection (7), means—

- (a) the First-tier Tribunal, in any case where it is determined by or under Tribunal Procedure Rules that the First-tier Tribunal is to hear the reference;
- (b) the Upper Tribunal, in any other case.]

#### Textual Amendments

- F42** Words in s. 99(7) omitted (6.4.2010) by virtue of [The Transfer of Tribunal Functions Order 2010 \(S.I. 2010/22\)](#), art. 1(2)(e), **Sch. 2 para. 76(a)** (with Sch. 5)
- F43** Words in s. 99(8)(a) omitted (6.4.2010) by virtue of [The Transfer of Tribunal Functions Order 2010 \(S.I. 2010/22\)](#), art. 1(2)(e), **Sch. 2 para. 76(b)** (with Sch. 5)
- F44** S. 99(13) inserted (6.4.2010) by [The Transfer of Tribunal Functions Order 2010 \(S.I. 2010/22\)](#), art. 1(2)(e), **Sch. 2 para. 76(c)** (with Sch. 5)

#### Commencement Information

- I131** S. 99 in force at 6.4.2005 by [S.I. 2005/275](#), art. 2(7), **Sch. Pt. 7**

### 100 Duty to have regard to the interests of members etc

- (1) The Regulator must have regard to the matters mentioned in subsection (2)—
- (a) when determining whether to exercise a regulatory function—
    - (i) in a case where the requirements of the standard or special procedure apply, or
    - (ii) on a review under section 99, and
  - (b) when exercising the regulatory function in question.
- (2) Those matters are—
- (a) the interests of the generality of the members of the scheme to which the exercise of the function relates, and
  - (b) the interests of such persons as appear to the Regulator to be directly affected by the exercise.

#### Commencement Information

- I132** S. 100 in force at 6.4.2005 by [S.I. 2005/275](#), art. 2(7), **Sch. Pt. 7**

### 101 Powers to vary or revoke orders, notices or directions etc

- (1) The Regulator may vary or revoke—
- (a) any determination by the Regulator whether to exercise a regulatory function, or
  - (b) any order, notice or direction made, issued or given by the Regulator in the exercise of a regulatory function.

*Status: Point in time view as at 22/04/2011.*

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- (2) Subsection (1)(b) does not apply to—
- (a) an order under section 3(3) of the Pensions Act 1995 (c. 26) revoking a prohibition order under that section,
  - (b) an order under section 4(5) of that Act revoking a suspension order under that section,
  - (c) a direction under section 2(3) of the Welfare Reform and Pensions Act 1999 (c. 30) refusing to register a scheme under section 2 of that Act or removing a scheme from the register of stakeholder pension schemes, or
  - (d) such other orders, notices or directions made, issued or given by the Regulator, in the exercise of a regulatory function, as may be prescribed.
- (3) A variation or revocation of an order, a notice or a direction must be made by an order, a notice or a direction (as the case may be).
- (4) A variation or revocation made under this section must take effect from a specified time which must not be a time earlier than the time when the variation or revocation is made.
- (5) The power to vary or revoke under this section—
- (a) is not to be treated for the purposes of subsection (1) as a regulatory function, and
  - (b) is in addition to any such power which is conferred on the Regulator by, or by virtue of, this or any other enactment.

#### Commencement Information

**I133** S. 101(1)(2)(a)-(c)(3)-(5) in force at 6.4.2005 by [S.I. 2005/275](#), [art. 2\(7\)](#), [Sch. Pt. 7](#)

#### *[<sup>F45</sup>References to a tribunal]*

#### Textual Amendments

**F45** S. 102 cross-heading substituted (6.4.2010): (E.W.S.) by [The Transfer of Tribunal Functions Order 2010 \(S.I. 2010/22\)](#), [art. 1\(2\)\(e\)](#), [Sch. 2 para. 77](#) (with [Sch. 5](#)) and (N.I.) by [Pensions Regulator Tribunal \(Transfer of Functions\) Act \(Northern Ireland\) 2010 \(c. 4\)](#), [s. 5\(2\)](#), [Sch. 1 para. 6](#) (with [Sch. 2](#)); [S.R. 2010/101](#), [art. 2](#)

#### <sup>F46</sup>**102 The Pensions Regulator Tribunal**

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#### Textual Amendments

**F46** S. 102 omitted (E.W.S.) (6.4.2010) by virtue of [The Transfer of Tribunal Functions Order 2010 \(S.I. 2010/22\)](#), [art. 1\(2\)\(e\)](#), [Sch. 2 para. 78](#) (with [Sch. 5](#)) and repealed (N.I.) (6.4.2010) by [Pensions Regulator Tribunal \(Transfer of Functions\) Act \(Northern Ireland\) 2010 \(c. 4\)](#), [s. 5\(2\)](#), [Sch. 1 para. 7](#), [Sch. 3](#) (with [Sch. 2](#)); [S.R. 2010/101](#), [art. 2](#)

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## [<sup>F47</sup>102A Offences

- (1) This section applies in respect of proceedings before a tribunal in relation to a decision of the Regulator.
- (2) A person is guilty of an offence if that person, without reasonable excuse, refuses or fails—
  - (a) to attend following the issue of a summons by the tribunal; or
  - (b) to give evidence.
- (3) A person guilty of an offence under subsection (2) is liable on summary conviction to a fine not exceeding level 5 on the standard scale.
- (4) A person is guilty of an offence if that person, without reasonable excuse—
  - (a) alters, suppresses, conceals or destroys a document which that person is or is liable to be required to produce for the purposes of proceedings before the tribunal; or
  - (b) refuses to produce a document when so required.
- (5) A person guilty of an offence under subsection (4) is liable—
  - (a) on summary conviction, to a fine not exceeding the statutory maximum;
  - (b) on conviction on indictment, to imprisonment for a term not exceeding two years or a fine or both.
- (6) In this section “document” includes information recorded in any form and, in relation to information recorded otherwise than in a legible form, references to its production include references to producing a copy of the information in a legible form, or in a form from which it can readily be produced in a legible form.]

### Textual Amendments

**F47** S. 102A inserted (E.W.S.) (6.4.2010) by [The Transfer of Tribunal Functions Order 2010 \(S.I. 2010/22\)](#), art. 1(2)(e), [Sch. 2 para. 79](#) (with Sch. 5)

## 103 References [<sup>F48</sup>in relation to decisions of Regulator]

<sup>F49</sup>(1) . . . . .

<sup>F49</sup>(2) . . . . .

[<sup>F50</sup>(2A) This section applies to references to a tribunal in relation to a decision of the Regulator.]

- (3) On a reference, [<sup>F51</sup>the tribunal concerned] may consider any evidence relating to the subject-matter of the reference, whether or not it was available to the Regulator at the material time.
- (4) On a reference, [<sup>F52</sup>the tribunal concerned] must determine what (if any) is the appropriate action for the Regulator to take in relation to the matter referred to [<sup>F53</sup>it].
- (5) On determining a reference, [<sup>F54</sup>the tribunal concerned] must remit the matter to the Regulator with such directions (if any) as [<sup>F55</sup>it] considers appropriate for giving effect to its determination.
- (6) Those directions may include directions to the Regulator—

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- (a) confirming the Regulator’s determination and any order, notice or direction made, issued or given as a result of it;
  - (b) to vary or revoke the Regulator’s determination, and any order, notice or direction made, issued or given as a result of it;
  - (c) to substitute a different determination, order, notice or direction;
  - (d) to make such savings and transitional provision as the <sup>F56</sup>tribunal concerned] considers appropriate.
- (7) The Regulator must act in accordance with the determination of, and any direction given by, the <sup>F57</sup>tribunal concerned] (and accordingly sections 96 to 99 (standard and special procedure) do not apply).
- (8) The <sup>F57</sup>tribunal concerned] may, on determining a reference, make recommendations as to the procedure followed by the Regulator or the Determinations Panel.
- (9) An order of the <sup>F57</sup>tribunal concerned] may be enforced—
- (a) as if it were an order of a county court, or
  - (b) in Scotland, as if it were an order of the Court of Session.

**Textual Amendments**

- F48** Words in s. 103 heading substituted (6.4.2010) by [The Transfer of Tribunal Functions Order 2010 \(S.I. 2010/22\)](#), art. 1(2)(e), **Sch. 2 para. 80(a)** (with Sch. 5)
- F49** S. 103(1)(2) omitted (6.4.2010) by virtue of [The Transfer of Tribunal Functions Order 2010 \(S.I. 2010/22\)](#), art. 1(2)(e), **Sch. 2 para. 80(b)** (with Sch. 5)
- F50** S. 103(2A) inserted (6.4.2010) by [The Transfer of Tribunal Functions Order 2010 \(S.I. 2010/22\)](#), art. 1(2)(e), **Sch. 2 para. 80(c)** (with Sch. 5)
- F51** Words in s. 103(3) substituted (6.4.2010) by [The Transfer of Tribunal Functions Order 2010 \(S.I. 2010/22\)](#), art. 1(2)(e), **Sch. 2 para. 80(d)** (with Sch. 5)
- F52** Words in s. 103(4) substituted (6.4.2010) by [The Transfer of Tribunal Functions Order 2010 \(S.I. 2010/22\)](#), art. 1(2)(e), **Sch. 2 para. 80(e)(i)** (with Sch. 5)
- F53** Word in s. 103(4) substituted (6.4.2010) by [The Transfer of Tribunal Functions Order 2010 \(S.I. 2010/22\)](#), art. 1(2)(e), **Sch. 2 para. 80(e)(ii)** (with Sch. 5)
- F54** Words in s. 103(5) substituted (6.4.2010) by [The Transfer of Tribunal Functions Order 2010 \(S.I. 2010/22\)](#), art. 1(2)(e), **Sch. 2 para. 80(e)(i)** (with Sch. 5)
- F55** Word in s. 103(5) substituted (6.4.2010) by [The Transfer of Tribunal Functions Order 2010 \(S.I. 2010/22\)](#), art. 1(2)(e), **Sch. 2 para. 80(e)(ii)** (with Sch. 5)
- F56** Words in s. 103(6)(d) substituted (6.4.2010) by [The Transfer of Tribunal Functions Order 2010 \(S.I. 2010/22\)](#), art. 1(2)(e), **Sch. 2 para. 80(f)** (with Sch. 5)
- F57** Words in s. 103(7)-(9) substituted (6.4.2010) by [The Transfer of Tribunal Functions Order 2010 \(S.I. 2010/22\)](#), art. 1(2)(e), **Sch. 2 para. 80(f)** (with Sch. 5)

**Commencement Information**

- I134** S. 103(1)(a)(b)(2)-(9) in force at 6.4.2005 by [S.I. 2005/275](#), art. 2(7), **Sch. Pt. 7**

<sup>F58</sup>**104 Appeal on a point of law**

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*Status: Point in time view as at 22/04/2011.*

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#### Textual Amendments

**F58** S. 104 omitted (6.4.2010) by virtue of [The Transfer of Tribunal Functions Order 2010 \(S.I. 2010/22\)](#), art. 1(2)(e), [Sch. 2 para. 81](#) (with [Sch. 5](#))

### <sup>F59</sup> 105 Redetermination etc by the Tribunal

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#### Textual Amendments

**F59** S. 105 omitted (6.4.2010) by virtue of [The Transfer of Tribunal Functions Order 2010 \(S.I. 2010/22\)](#), art. 1(2)(e), [Sch. 2 para. 82](#) (with [Sch. 5](#))

### 106 Legal assistance scheme

- (1) The Lord Chancellor may by regulations establish a scheme governing the provision of legal assistance in connection with proceedings before [<sup>F60</sup>a tribunal in relation to a decision of the Regulator].
- (2) The legal assistance scheme may, in particular, make provision as to—
  - (a) the kinds of legal assistance that may be provided;
  - (b) the persons by whom legal assistance may be provided;
  - (c) the manner in which applications for legal assistance are to be made;
  - (d) the criteria on which eligibility for legal assistance is to be determined;
  - (e) the persons or bodies by whom applications are to be determined;
  - (f) appeals against refusals of applications;
  - (g) the revocation or variation of decisions;
  - (h) its administration and the enforcement of its provisions.
- (3) Legal assistance under the scheme may be provided subject to conditions or restrictions.
- (4) Those conditions may include conditions as to the making of contributions by the person to whom the assistance is provided.
- (5) The Lord Chancellor must fund, out of money provided by Parliament, the costs of the scheme including the costs of legal assistance provided under it.
- (6) In this Part “the legal assistance scheme” means any scheme in force by virtue of subsection (1).

#### Textual Amendments

**F60** Words in s. 106(1) substituted (6.4.2010): (E.W.S.) by [The Transfer of Tribunal Functions Order 2010 \(S.I. 2010/22\)](#), art. 1(2)(e), [Sch. 2 para. 83](#) (with [Sch. 5](#)) and (N.I.) by [Pensions Regulator Tribunal \(Transfer of Functions\) Act \(Northern Ireland\) 2010 \(c. 4\)](#), s. 5(2), [Sch. 1 para. 8](#) (with [Sch. 2](#)); S.R. 2010/101, art. 2

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#### **Commencement Information**

- I135** S. 106(1)-(4) in force for the purpose only of conferring power to make regulations, orders or rules, as the case may be, 10.2.2005; and for all other purposes at 6.4.2005 in so far as not already in force by [S.I. 2005/275, art. 2\(3\)](#), **Sch. Pt. 3**
- I136** S. 106(5)(6) in force in so far as not already in force (6.4.2005) by [S.I. 2005/275, art. 2\(7\)](#), **Sch. Pt. 7**

**Status:**

Point in time view as at 22/04/2011.

**Changes to legislation:**

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