



Pensions Act 2004

2004 CHAPTER 35

PART 1

THE PENSIONS REGULATOR

Codes of practice

90 Codes of practice

- (1) The Regulator may issue codes of practice—
 - (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;
 - [^{F1}(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 [^{F2}, the employer insolvency test or the employer resources 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);
 - [^{F3}(ba) the discharge of the duties imposed by section 69A (duty to give notices and statements to the Regulator in respect 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);

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- (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 [^{F4}certain 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);
 - [^{F5}(ja) the process for making an application for authorisation of a Master Trust scheme under Part 1 of the Pension Schemes Act 2017;
 - (jb) the matters that the Pensions Regulator expects to take into account in deciding whether it is satisfied that a Master Trust scheme meets the authorisation criteria under that Part (see section 5 of the Pension Schemes Act 2017);]
 - [^{F6}(jc) the process for making an application under Part 1 of the Pension Schemes Act 2021 for authorisation of a collective money purchase scheme;
 - (jd) the matters that the Pensions Regulator expects to take into account in deciding whether it is satisfied that a pension scheme meets the authorisation criteria under that Part (see section 9 of the Pension Schemes Act 2021);]
 - (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 [^{F7}issued under this section] 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—

“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),

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- (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),
^{F8}
...
 - (d) this Act.
 - (e) [^{F9}Schedule 18 to the Pensions Act 2014, ^{F10}...
 - (f) the Pension Schemes Act 2015][^{F11}, ^{F12}...
 - (g) the Pension Schemes Act 2017][^{F13}, or
 - (h) Part 1 of the Pension Schemes Act 2021.]
- (7) Sections 91 and 92 make provision about the procedure to be followed when a code of practice is issued or revoked [^{F14}under this section].
- [^{F15}(8) The Regulator may not issue codes of practice under this section in relation to a public service pension scheme (but see section 90A).]

Textual Amendments

- F1** S. 90(2)(aa) inserted (26.11.2008) by [Pensions Act 2008 \(c. 30\)](#), s. 149(2)(3), **Sch. 9 para. 3**
- F2** Words in s. 90(2)(aa) inserted (31.5.2021) by [Pension Schemes Act 2021 \(c. 1\)](#), s. 131(1), **Sch. 7 para. 8(a)**; S.I. 2021/620, reg. 2(2)(d)
- F3** S. 90(2)(ba) inserted (1.10.2021) by [Pension Schemes Act 2021 \(c. 1\)](#), s. 131(1), **Sch. 7 para. 8(b)**; S.I. 2021/950, reg. 2(4)(e)
- F4** Words in s. 90(2)(i) substituted (6.4.2015) by [Pension Schemes Act 2015 \(c. 8\)](#), s. 89(3)(a), **Sch. 2 para. 30(2)** (with s. 87)
- F5** S. 90(2)(ja)(jb) inserted (1.2.2018) by [Pension Schemes Act 2017 \(c. 17\)](#), s. 44(2), **Sch. 3 para. 9(2)**; S.I. 2018/62, reg. 2
- F6** S. 90(2)(jc)(jd) inserted (11.2.2021 for specified purposes, 13.12.2021 in so far as not already in force) by [Pension Schemes Act 2021 \(c. 1\)](#), s. 131(1)(3)(a), **Sch. 3 para. 13(2)**; S.I. 2021/1394, reg. 2(a)
- F7** Words in s. 90(4) inserted (1.4.2015) by [Public Service Pensions Act 2013 \(c. 25\)](#), s. 41(2), **Sch. 4 para. 13(2)** (with [Sch. 11 para. 8](#)); S.I. 2015/4, art. 4(1)(b) (with art. 4(2))
- F8** Word in s. 90(6) omitted (6.4.2015) by virtue of [Pension Schemes Act 2015 \(c. 8\)](#), s. 89(3)(a), **Sch. 2 para. 30(3)(a)** (with s. 87)
- F9** Words in s. 90(6) inserted (6.4.2015) by [Pension Schemes Act 2015 \(c. 8\)](#), s. 89(3)(a), **Sch. 2 para. 30(3)(b)** (with s. 87)
- F10** Word in s. 90(6) omitted (1.2.2018) by virtue of [Pension Schemes Act 2017 \(c. 17\)](#), s. 44(2), **Sch. 3 para. 9(3)(a)**; S.I. 2018/62, reg. 2
- F11** Words in s. 90(6) inserted (1.2.2018) by [Pension Schemes Act 2017 \(c. 17\)](#), s. 44(2), **Sch. 3 para. 9(3)(b)**; S.I. 2018/62, reg. 2
- F12** Word in s. 90(6) omitted (11.2.2021 for specified purposes, 13.12.2021 in so far as not already in force) by virtue of [Pension Schemes Act 2021 \(c. 1\)](#), s. 131(1)(3)(a), **Sch. 3 para. 13(3)(a)**
- F13** Words in s. 90(6) inserted (11.2.2021 for specified purposes, 13.12.2021 in so far as not already in force) by [Pension Schemes Act 2021 \(c. 1\)](#), s. 131(1)(3)(a), **Sch. 3 para. 13(3)(b)**; S.I. 2021/1394, reg. 2(a)
- F14** Words in s. 90(7) inserted (1.4.2015) by [Public Service Pensions Act 2013 \(c. 25\)](#), s. 41(2), **Sch. 4 para. 13(3)** (with [Sch. 11 para. 8](#)); S.I. 2015/4, art. 4(1)(b) (with art. 4(2))
- F15** S. 90(8) inserted (1.4.2015) by [Public Service Pensions Act 2013 \(c. 25\)](#), s. 41(2), **Sch. 4 para. 13(4)** (with [Sch. 11 para. 8](#)); S.I. 2015/4, art. 4(1)(b) (with art. 4(2))

Modifications etc. (not altering text)

- C1** S. 90(6) modified (30.12.2005) by [The Occupational Pension Schemes \(Regulatory Own Funds\) Regulations 2005 \(S.I. 2005/3380\)](#), regs. 1, 13

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Commencement Information

- I1** 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](#)
I2 S. 90(2)(k) in force at 14.11.2005 by [S.I. 2005/2447](#), [art. 2\(1\)](#)

[^{F16}90A Codes of practice: public service pension schemes

- (1) The Regulator may, in relation to public service pension schemes, issue codes of practice—
 - (a) containing practical guidance in relation to the exercise of functions under relevant 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) the discharge of the duties imposed by sections 70 and 70A (duties to report breaches of the law and late payment of employer contributions);
 - (b) the obligations imposed by section 248A (requirements for knowledge and understanding: pension boards of public service pension schemes);
 - (c) the discharge of the duty imposed by section 249B (internal controls);
 - (d) the discharge of duties imposed under section 113 of the Pension Schemes Act 1993 (disclosure of information to members);
 - (e) the discharge of the duty imposed by section 49(9)(b) of the Pensions Act 1995 (duty of trustees or managers of occupational pension schemes to report material failures by employers to pay contributions deducted from employee's earnings timeously);
 - (f) the discharge of the duty imposed by section 50 of the Pensions Act 1995 (internal dispute resolution);
 - (g) the discharge of duties imposed by virtue of section 5(4) of the Public Service Pensions Act 2013 (pensions board: conflicts of interest and representation) and other duties relating to conflicts of interest;
 - (h) the discharge of duties imposed under section 6 (pension board: information) of that Act and other duties relating to the publication of information about governance and administration;
 - (i) the discharge of duties imposed under section 14 of that Act (information about benefits);
 - (j) the discharge of duties imposed under section 16 (records) of that Act and other duties relating to record-keeping;
 - (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 issued under this section 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 (within the meaning of section 90) and, if any provision of such a code

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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) A code of practice issued under this section may be—
 - (a) combined with a code of practice issued under section 90;
 - (b) combined with one or more other codes of practice issued under this section.
- (7) A code of practice issued under this section may relate to all public service pension schemes or any one or more of them.
- (8) In this section, “relevant pensions legislation” means—
 - (a) the enactments constituting “pensions legislation” within the meaning of section 90, and
 - (b) sections 5(4) (pension board: conflicts of interest and representation), 6 (pension board: information), 14 (information about benefits) and 16 (records) of the Public Service Pensions Act 2013.
- (9) Sections 91 and 92 make provision about the procedure to be followed when a code of practice is issued or revoked under this section.]

Textual Amendments

F16 S. 90A inserted (1.11.2013) by [Public Service Pensions Act 2013 \(c. 25\), s. 41\(2\), Sch. 4 para. 14](#) (with [Sch. 11 para. 8](#)); [S.I. 2013/2818, art. 3\(d\)](#)

91 Procedure for issue and publication of codes of practice

- (1) Where the Regulator proposes to issue a code of practice [^{F17}under section 90 or 90A] 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 [^{F18}or 90A], 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.
- (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;

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- (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 [^{F19}or 90A] 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.

Textual Amendments

- F17** Words in s. 91(1) inserted (1.11.2013) by [Public Service Pensions Act 2013 \(c. 25\)](#), s. 41(2), [Sch. 4 para. 15\(2\)](#) (with [Sch. 11 para. 8](#)); [S.I. 2013/2818](#), art. 3(d)
- F18** Words in s. 91(4)(a) inserted (1.11.2013) by [Public Service Pensions Act 2013 \(c. 25\)](#), s. 41(2), [Sch. 4 para. 15\(3\)](#) (with [Sch. 11 para. 8](#)); [S.I. 2013/2818](#), art. 3(d)
- F19** Words in s. 91(10) inserted (1.11.2013) by [Public Service Pensions Act 2013 \(c. 25\)](#), s. 41(2), [Sch. 4 para. 15\(3\)](#) (with [Sch. 11 para. 8](#)); [S.I. 2013/2818](#), art. 3(d)

Modifications etc. (not altering text)

- C2** S. 91(9) power exercised: 6.4.2005 appointed by [S.I. 2005/1108](#), art. 2(1)
- C3** S. 91(9) power exercised: 30.6.2005 appointed by [S.I. 2005/1720](#), art. 2(1)
- C4** S. 91(9) power exercised: 22.11.2006 appointed by [S.I. 2006/3079](#), art. 2
- C5** S. 91(9) power fully exercised: 24.1.2007 appointed by [S.I. 2007/76](#), art. 2
- C6** S. 91(9) power exercised: 28.7.2008 appointed by [S.I. 2008/1882](#), art. 2
- C7** S. 91(9) power exercised: 29.6.2009 appointed by [S.I. 2009/1565](#), art. 2
- C8** S. 91(9) power exercised: 26.11.2009 appointed by [S.I. 2009/3068](#), art. 2

Commencement Information

- I3** S. 91(1)-(9) in force at 17.12.2004 by [S.I. 2004/3350](#), art. 2, [Sch.](#)
- I4** 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 [^{F20}under section 90 or 90A] may be revoked by the Secretary of State by order.

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- (2) An order under this section may be made only with the consent of the Regulator.
- (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.

Textual Amendments

F20 Words in s. 92(1) inserted (1.11.2013) by [Public Service Pensions Act 2013 \(c. 25\)](#), s. 41(2), [Sch. 4 para. 16](#) (with [Sch. 11 para. 8](#)); [S.I. 2013/2818](#), art. 3(d)

Commencement Information

I5 S. 92 in force at 6.4.2005 by [S.I. 2005/275](#), art. 2(7), [Sch. Pt. 7](#)

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Changes and effects yet to be applied to the whole Act associated Parts and Chapters:

Whole provisions yet to be inserted into this Act (including any effects on those provisions):

- s. 18(5A) inserted by [2014 c. 19 s. 52\(2\)](#)
- s. 18(6) words inserted by [2014 c. 19 s. 52\(3\)](#)
- s. 18(8) words inserted by [2014 c. 19 s. 52\(3\)](#)
- s. 23(1A) inserted by [2015 c. 8 Sch. 2 para. 26\(3\)](#)
- s. 23(10A) inserted by [2015 c. 8 Sch. 2 para. 26\(5\)](#)
- s. 38(1)-(1B) substituted for s. 38(1) by [2015 c. 8 Sch. 2 para. 27](#)
- s. 38(7)(da) inserted by [2021 c. 1 s. 104\(2\)](#)
- s. 43(1)-(1B) substituted for s. 43(1) by [2015 c. 8 Sch. 2 para. 28\(2\)](#)
- s. 52(1)-(1B) substituted for s. 52(1) by [2015 c. 8 Sch. 2 para. 29](#)
- s. 80(1)(a)(iib) inserted by [2021 c. 1 s. 109\(3\)](#)
- s. 102(2)(a) words in s. 102(2) renumbered as s. 102(2)(a) by [2008 c. 30 s. 44\(5\)\(a\)](#)
- s. 102(2)(b) inserted by [2008 c. 30 s. 44\(5\)\(b\)](#)
- s. 103(1A) inserted by [2008 c. 30 s. 44\(6\)](#)
- s. 117A inserted by [2008 c. 30 Sch. 10 para. 3](#)
- s. 126(1)-(1B) substituted for s. 126(1) by [2015 c. 8 Sch. 2 para. 31](#)
- s. 188(1)(ba) inserted by [2008 c. 30 Sch. 10 para. 6](#)
- s. 189A inserted by [2008 c. 30 Sch. 10 para. 7](#)
- s. 209(9) added by [2008 c. 30 Sch. 10 para. 8](#)
- s. 291(4)(f) and word inserted by [2021 c. 1 Sch. 3 para. 19\(b\)](#)
- s. 318(3)(a)(viii)-(x) inserted by [2015 c. 8 Sch. 2 para. 38\(3\)\(a\)](#)
- s. 318(3)(b)(vi)-(viii) inserted by [2015 c. 8 Sch. 2 para. 38\(3\)\(b\)](#)
- Sch. 4 para. 7(5)(b) inserted by [2008 c. 30 s. 44\(8\)\(b\)](#)
- Sch. 4 para. 13(3) inserted by [2008 c. 30 s. 44\(9\)\(b\)](#)
- Sch. 4 para. 7(5)(a) words in Sch. 4 para. 7(5) renumbered as Sch. 4 para. 7(5)(a) by [2008 c. 30 s. 44\(8\)\(a\)](#)
- Sch. 7 para. 21(2)(c)-(cc) substituted for Sch. 7 para. 21(2)(b)(c) by [2008 c. 30 Sch. 8 para. 11](#) (This amendment not applied to [legislation.gov.uk](#). Sch. 8 para. 10 (3.1.2012) omitted without ever being in force by virtue of [2011 c. 19](#), Sch. 4 para. 20; [S.I. 2011/3034 art. 3\(i\)\(iv\)](#))