

## SCHEDULES

### SCHEDULE 4

Section 17(1)

#### REGULATORY OVERSIGHT

- 1 The Pensions Act 2004 is amended as follows.
- 2 In section 11 (annual reports), in subsection (3), at the end there is inserted—
  - “(d) the exercise of the Regulator's functions in relation to public service pension schemes.”
- 3 (1) Section 13 (improvement notices) is amended as follows.
  - (2) In subsection (3)(a), after “90” there is inserted “or 90A”.
  - (3) In subsection (7)—
    - (a) in paragraph (c), the final “or” is repealed;
    - (b) at the end there is inserted “or
    - (e) section 5(4) (pension board: conflicts of interest and representation), 6 (pension board: information), 14 (information about benefits) or 16 (records) of the Public Service Pensions Act 2013.”
- 4 After section 14 there is inserted—

**“14A Appointment of skilled person to assist public service pension scheme**

  - (1) The Regulator may, if it considers it desirable for the purpose of ensuring compliance with pensions legislation, appoint a person to assist the pension board of a public service pension scheme in the discharge of its functions.
  - (2) A person appointed under this section may be any person appearing to the Regulator to have the necessary skills.
  - (3) The pension board of a public service pension scheme must have regard to the advice of a person appointed under this section.
  - (4) The costs of a person appointed under this section are to be met by the scheme manager of the scheme.
  - (5) In subsection (1) “pensions legislation” has the same meaning as in section 13.”
- 5 (1) In section 17 (power of the Regulator to recover unpaid contributions), subsection (3) is amended as follows.
  - (2) In the definition of “due date”—
    - (a) in paragraph (b), the final “and” is repealed;
    - (b) after paragraph (c) there is inserted “and

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- (d) in relation to employer contributions payable under a public service pension scheme, the date on which the contributions are due under the scheme;”.
- (3) In the definition of “employer contribution”—
- (a) in paragraph (a)—
- (i) after “occupational pension scheme” there is inserted “other than a public service pension scheme”;
- (ii) the final “and” is repealed;
- (b) after paragraph (b) there is inserted “and
- (c) in relation to a public service pension scheme, means any contributions payable under the scheme by the employer.”
- 6 In section 70 (duty to report breaches of the law), in subsection (1)—
- (a) after paragraph (a) there is inserted—
- “(aa) a member of the pension board of a public service pension scheme;”;
- (b) in paragraph (b), for “such a scheme” there is substituted “an occupational or personal pension scheme”.
- 7 After section 70 there is inserted—

*“Reporting late payment of employer contributions*

**70A Duty to report late payment of employer contributions**

- (1) Where—
- (a) any amount payable under a public service pension scheme by or on behalf of an employer in relation to the scheme by way of contributions is not paid on or before the date on which it is due under the scheme, and
- (b) the scheme manager has reasonable cause to believe that the failure is likely to be of material significance to the Regulator in the exercise of any of its functions,
- the scheme manager must give a written report of the matter to the Regulator as soon as reasonably practicable.
- (2) 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).
- (3) Section 10 of the Pensions Act 1995 (civil penalties) applies to any person who, without reasonable excuse, fails to comply with an obligation imposed on him by this section.”
- 8 (1) Section 71 (reports by skilled persons) is amended as follows.
- (2) In subsection (1)—
- (a) in paragraph (b), the final “or” is repealed;
- (b) after paragraph (b) there is inserted—

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- “(ba) in the case of a work-based scheme which is a public service pension scheme, a member of the pension board of the scheme, or”;
- (c) in paragraph (c), for “such a scheme” there is substituted “a work-based pension scheme”.
- 9 In section 72 (provision of information), in subsection (2), after paragraph (a) there is inserted—
- “(aa) a member of the pension board of a public service pension scheme,”.
- 10 In section 73 (inspection of premises), in subsection (2)—
- (a) after paragraph (d) there is inserted—
- “(da) section 16 of the Public Service Pensions Act 2013;”;
- (b) in paragraph (e), for “(d)” there is substituted “(da)”.
- 11 In section 89 (reports), at the end there is inserted—
- “(4) Before making a report under this section which relates to a public service pension scheme, the Regulator must notify the scheme manager.”
- 12 After section 89 there is inserted—

#### **“89A Reports about misappropriation etc in public service pension schemes**

- (1) If the Regulator has reasonable grounds to suspect or believe that a member of the pension board of a public service pension scheme—
- (a) has misappropriated any assets of the scheme or is likely to do so, or
- (b) has a conflict of interest in relation to investment of assets of the scheme,
- the Regulator must report the matter to the scheme manager.
- (2) For the purposes of the law of defamation, the reporting of any matter by the Regulator under subsection (1) is privileged unless the reporting is shown to be made with malice.
- (3) For the purposes of subsection (1)(b) a person does not have a conflict of interest in relation to investment of assets merely by virtue of membership of the scheme.”
- 13 (1) Section 90 (codes of practice) is amended as follows.
- (2) In subsection (4), after “code of practice” (where first occurring) there is inserted “issued under this section”.
- (3) In subsection (7), at the end there is inserted “under this section”.
- (4) At the end of the section there is inserted—
- “(8) The Regulator may not issue codes of practice under this section in relation to a public service pension scheme (but see section 90A).”
- 14 After section 90 there is inserted—

#### **“90A Codes of practice: public service pension schemes**

- (1) The Regulator may, in relation to public service pension schemes, issue codes of practice—

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- (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 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.

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- (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.”
- 15 (1) Section 91 (procedure for codes) is amended as follows.
- (2) In subsection (1), after “code of practice” there is inserted “under section 90 or 90A”.
- (3) In subsections (4)(a) and (10), after “90” there is inserted “or 90A”.
- (16) In section 92 (revocation of codes), in subsection (1), after “code of practice” there is inserted “under section 90 or 90A”.
- 17 In section 93 (procedure for regulatory functions), in subsection (2), after paragraph (b) there is inserted—
- “(ba) the power to appoint a skilled person in relation to a public service pension scheme under section 14A,”.
- 18 In section 154 (requirement to wind up schemes with sufficient assets), in subsection (14), after “public service pension scheme” there is inserted “(within the meaning of the Pension Schemes Act 1993)”.
- 19 After section 248 there is inserted—

**“248A Requirement for knowledge and understanding: pension boards of public service pension schemes**

- (1) This section applies to every individual who is a member of the pension board of a public service pension scheme.
- (2) An individual to whom this section applies must be conversant with—
- (a) the rules of the scheme, and
  - (b) any document recording policy about the administration of the scheme which is for the time being adopted in relation to the scheme.
- (3) An individual to whom this section applies must have knowledge and understanding of—
- (a) the law relating to pensions, and
  - (b) such other matters as may be prescribed.

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- (4) The degree of knowledge and understanding required by subsection (3) is that appropriate for the purposes of enabling the individual properly to exercise the functions of a member of the pension board.”

20 In section 249A (requirement for internal controls), in subsection (3)—

- (a) before paragraph (a) there is inserted—  
“(za) a public service pension scheme;”;  
(b) in paragraph (a) for “a scheme” there is substituted “any other scheme”.

21 After section 249A there is inserted—

**“249B Requirement for internal controls: public service pension schemes**

- (1) The scheme manager of a public service pension scheme must establish and operate internal controls which are adequate for the purpose of securing that the scheme is administered and managed—  
(a) in accordance with the scheme rules, and  
(b) in accordance with the requirements of the law.
- (2) Nothing in this section affects any other obligations of the scheme manager to establish or operate internal controls, whether imposed by or by virtue of any enactment, the scheme rules or otherwise.
- (3) In this section, “enactment” and “internal controls” have the same meanings as in section 249A.”

22 (1) Section 318 (interpretation) is amended as follows.

- (2) In subsection (1), after the definition of “occupational pension scheme” there is inserted—

““pension board” has the same meaning as in the Public Service Pensions Act 2013 (see section 5 of that Act);”.

- (3) After the definition of “professional adviser” in that subsection there is inserted—

““public service pension scheme” means, subject to subsection (6)—

- (a) a scheme under section 1 of the Public Service Pensions Act 2013 (new public service schemes);  
(b) a new public body pension scheme (within the meaning of that Act);  
(c) any statutory pension scheme which is connected with a scheme referred to in paragraph (a) or (b) (and for this purpose “statutory pension scheme” and “connected” have the meanings given in that Act);”.

- (4) After the definition of “the Regulator” in that subsection there is inserted—

““scheme manager”, in relation to a public service pension scheme, has the same meaning as in the Public Service Pensions Act 2013 (see section 4 of that Act);”.

- (5) After subsection (5) there is inserted—

“(6) A scheme which would otherwise fall within the definition of “public service pension scheme” in subsection (1) does not fall within that definition if—

- (a) it is an injury or compensation scheme (within the meaning of the Public Service Pensions Act 2013), or

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- (b) it is specified in an order made by the Secretary of State after consulting the Treasury.”