

PENSIONS ACT 2008

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 1: Pension scheme membership for jobholders

22. The aim of Part 1 of the Act is to achieve increased overall participation of workers in employer facilitated pensions saving and implementation of a minimum standard of pension saving for the worker concerned.

Chapter 1: Employers' duties

Section 1: Jobholders

23. This section defines “jobholder” for the purpose of the employer duty as workers who ordinarily work in Great Britain, are aged between 16 and 75 and who earn qualifying earnings (see sections 13 and 15). This section also provides that where a jobholder has more than one employer, the employer duty provisions apply separately in relation to each employment.

Section 2: Continuity of scheme membership

24. This section prevents an employer in any way facilitating the end of a jobholder’s active membership of a qualifying scheme (by action or omission) without putting the member into another qualifying scheme (within a time period to be prescribed by Secretary of State). For example, an employer would not be able to withhold information from the scheme if by that action of the employer the jobholder ceased to be a member. This means that employers have an ongoing duty to ensure that jobholders always have access to a qualifying scheme. This duty does not apply if the jobholder ends membership of their own accord, and the duty only applies so long as the jobholder is employed by the employer.

Section 3: Automatic enrolment

25. *Section 3* introduces the employer obligation to automatically enrol jobholders aged between 22 and state pension age into a scheme that fulfils the criteria for an “automatic enrolment scheme” (see *section 17*). Automatic enrolment must take place when the individual first meets the relevant criteria (i.e. is a jobholder and is over 22) in that employment. This is known as the “automatic enrolment date” (*subsection (7)*).
26. The section contains a power which allows the Secretary of State to set out in regulations the steps the employer must take to arrange for the jobholder to be automatically enrolled (*subsection (2)*).
27. This obligation does not apply if, within a prescribed period, the jobholder has been an active member of a qualifying scheme in that employment, but chose to end membership (*subsection (4)*). This is to prevent jobholders being automatically enrolled into a scheme soon after they decided to leave.

28. The employer may be required, as part of the automatic enrolment process set out in regulations, to provide prescribed information to any person, in particular the trustees or managers of an occupational pension scheme or the provider of a personal pension scheme (*subsection (5)*). This will enable the provision of information about a jobholder to the scheme to enable their enrolment.
29. There is a power which enables the Secretary of State to make regulations under subsection (2) to deem an agreement to exist between the jobholder and the provider where the employer fulfils their employer duty obligation by automatically enrolling the jobholder into a personal pension scheme that meets prescribed conditions (*subsection (6)*).

Section 4: Postponement of automatic enrolment

30. *Section 3* establishes that the effective date of automatic enrolment must be the first day on which the jobholder becomes eligible. *Section 4*, however, provides for the possibility of delaying initial automatic enrolment in circumstances described in regulations. The period of permitted deferral will be established in regulations.
31. Employers that are permitted to delay automatic enrolment may be required to ensure that members remain in such a scheme for a prescribed period of time, unless the jobholder leaves that employment or chooses to leave the scheme. This will enable the member to make up pension savings foregone during the initial delay period.
32. The powers conferred by section 4 are exercisable in relation to any automatic enrolment under section 3 and not just enrolment in the initial period of implementation.

Section 5: Automatic re-enrolment

Section 6: Timing of automatic re-enrolment

33. These sections set out the duty and the timing for employers to periodically automatically re-enrol, into an automatic enrolment scheme, jobholders who are aged at least 22 and under pensionable age and who are not already members of qualifying schemes.
34. As with automatic enrolment, this obligation does not apply if the jobholder chose to end membership in the same employment, within a prescribed period before the re-enrolment date (*section 5(4)*) or gave notice to opt out under *section 8*. This enables the delay of re-enrolment if it falls soon after the jobholder has chosen to leave the scheme.
35. *Section 6* requires regulations to determine that re-enrolment will not occur more frequently than once every three years. The three year interval may be by reference to the jobholder or the employer. The section then goes on to set out exceptions whereby regulations may be made to enable re-enrolment to take place more frequently than once in a three year period.

Section 7: Jobholder's right to opt in

36. There may be jobholders who are not participating in workplace saving because they opted out or cancelled their active membership, or do not qualify for automatic enrolment because they are aged between 16 and 22 or between pensionable age and age 75.
37. *Section 7* allows such jobholders to require their employer to make arrangements to enrol them into an automatic enrolment scheme by giving the employer notice. The jobholder can give notice to opt in under this section more than once in a 12 month period, although the employer is not obliged to accept more than one notice in 12 months. Therefore employers are not required to keep enrolling a jobholder who has opted out a number of times in the same year.

38. This process, the details of the notice required and the date from which membership must be effected are to be prescribed in regulations (*subsection (4)*).

Section 8: Jobholder's right to opt out

39. This section establishes the right of a jobholder who has been automatically enrolled (or re-enrolled) into an automatic enrolment pension scheme to opt out of that membership by providing a signed notice to their employer within a prescribed period indicating that they choose not to participate. The form and content of this notice will be set out in regulations, as will the prescribed period during which they can choose to opt out, to whom the jobholder must give notice of opt out and arrangements which must be made to give effect to an opt out decision. The opt out notice must include information relating to the effect of opting out on the jobholder. Opting out in this context refers to the specific decision not to participate in a pension scheme from the point of enrolment. Once in a scheme, an active member is free subsequently to cancel membership at any time and this section does not interfere with that established right.
40. Once a jobholder has opted out they will be treated as if they had never become a member of that qualifying scheme through that automatic enrolment. In effect this means that they will not have any rights in the scheme and any contributions collected from the jobholder and the employer (*subsection (2(b))*) will be refunded. However, when a jobholder chooses to opt out after being enrolled or re-enrolled in a pension scheme, any refund of contributions due is only for the current period of membership and not for previously accrued rights from past periods of active membership (*subsection (1)*).
41. Regulations will also establish how and by when refunds must be made and how they are calculated.

Section 9: Workers without qualifying earnings

42. There may be people who do not qualify for automatic enrolment and who are not participating in workplace saving. Although they ordinarily work in Great Britain and are aged at least 16 and under 75, (two of the three qualifying conditions for a jobholder in section 1) they do not have qualifying earnings, as defined in *section 13*.
43. *Section 9* allows workers without qualifying earnings to require their employer to make arrangements to enrol them into a pension scheme by giving notice. The worker may give notice to opt in under this section as many times as they like, although the employer is only obliged to act on one request in a 12 month period. This doesn't prohibit the employer allowing workers to join the scheme at other times by agreement. An employer is not obliged to make any matching contribution but may choose to do so.
44. The enrolment process, the details of the notice required and the date from which membership must be effected are to be prescribed in regulations (*subsection (3)*).
45. For the purposes of this section a pension scheme may be either an occupational pension scheme, or a personal pension scheme registered under the FA 2004. Also, a personal pension scheme must have direct payment arrangements between the worker and the employer. "Direct payment arrangements" are either where the employer makes a contribution and sends it to the worker's scheme or where the employer deducts contributions from the worker's earnings and forwards these to the worker's scheme on behalf of the worker.

Section 10: Information to be given to workers

46. This section requires the Secretary of State to set out in regulations the circumstances in which a prescribed person must give information to individuals about how the employer duty may affect them. This will include information about the effect of automatic

enrolment, re-enrolment, postponement of automatic enrolment, giving notice to opt in and the right to opt out.

Section 11: Information to be given to the Pensions Regulator

47. *Section 11* gives the Secretary of State power to make regulations requiring employers to provide information to the Pensions Regulator about how they are complying, or intend to comply, with the employer duties, including information relating to the pension schemes that are to be used. This section will enable the process by which employers will be required to register with the Regulator. An example of information that may be required through that process is information identifying the scheme into which an employer has automatically enrolled jobholders.
48. This section works with the provisions in Chapters 2 and 4 of this Part, by enabling the Regulator to obtain the information needed to support the compliance regime.

Section 12: Introduction of employers' duties

49. This section provides a regulation-making power which, combined with the Secretary of State's power to bring sections 2 to 9 into force under section 149(1), allows the Secretary of State to make provision requiring some employers to start discharging their duties under this Chapter (including those on continuity of scheme membership, automatic enrolment and re-enrolment, and allowing opt-in and opt-out) before other employers. This will allow the introduction of the employer duties to be staged over a period of time.

Section 13: Qualifying earnings

50. This section defines qualifying earnings. *Subsection (1)* defines them by reference to an earnings band, with lower and upper limits of £5,035 and £33,540 per annum (see section 14 for duties to review and if necessary amend these limits), on which pensions contributions will be calculated for money purchase schemes. Earning qualifying earnings (i.e. above £5,035) is a criterion of being a jobholder and so is a factor in determining whether a worker is to be automatically enrolled. *Subsection (2)* deals with cases where qualifying earnings are to be calculated otherwise than on an annual basis.
51. The section then defines "earnings" as sums comprising: wages/salary, commissions, bonuses, overtime and certain statutory benefits. The section enables the Secretary of State to set out (in regulations) other sums that can be considered as part of "earnings".

Section 14: Review of qualifying earnings band

52. This section provides that the Secretary of State must review annually the value of the "qualifying earnings" lower and upper limits annually against the general level of earnings and must amend the limits if they have not maintained their value measured against earnings.

Section 15: Pay reference period

53. The pay reference period is the period of earnings over which the calculation is made to work out (a) whether the jobholder should be automatically enrolled (i.e. with earnings more than £5,035 per annum) and (b) to calculate the level of contributions that the jobholder and employer need to pay for money purchase schemes. While the qualifying earnings band established in section 13(1) is expressed in annual terms this section allows the Secretary of State to prescribe other periods, where section 13(2) will apply. Because of the different types of workers and different pay periods used by employers, there is a need to enable the pay reference period to be tailored to specific worker and payment type. For example, agency workers might require a much shorter calculation period than salaried employees.

Section 16: Qualifying schemes

54. This section defines a qualifying scheme. Qualifying schemes are those that meet minimum standards and quality requirements, which can be used by employers in discharging their obligations under section 2.
55. A qualifying scheme can be either an occupational pension scheme or a personal pension scheme. Qualifying schemes must meet the quality requirement for the scheme type (see sections 20 to 27). They must also be registered under Chapter 2 of Part 4 of the FA 2004, which means that they are registered for tax relief.
56. *Subsection (2)* enables regulations to disapply the requirement to be tax registered for schemes based outside the UK if they meet further requirements to be prescribed in regulations. The further requirements are likely to refer to schemes operating outside the UK with members who will receive UK tax relief on their contributions.
57. The Secretary of State may in regulations set out the circumstances in which a scheme, that would otherwise qualify, is not a qualifying scheme. This can be where the payments and contributions – for example annual management charges - that must be made to the scheme exceed a prescribed amount (*subsection (2)(a) and (b)*); or the scheme provides average salary benefits and contains prescribed features (*subsection (2)(c)*).

Section 17: Automatic enrolment schemes

58. There will be additional requirements on schemes that are used for the purposes of automatic enrolment, automatic re-enrolment and allowing opt in (as described at section 7). These schemes must be qualifying occupational pension schemes or qualifying personal pension schemes and must also enable automatic enrolment to take place. An automatic enrolment scheme must not require jobholders who are enrolled to express a choice, or provide information, in order to remain active members. For example, a jobholder will not be required to make a choice about the fund into which their contributions may be invested. Nor can the scheme refuse membership on the grounds that the jobholder does not provide information. An automatic enrolment scheme must also satisfy any further conditions that may be prescribed in secondary legislation.

Section 18: Occupational pension schemes

59. For the purposes of this Part, occupational pension schemes are those which fall within the definitions from UK or European legislation (set out in *paragraphs (a) and (b)*) or are of a prescribed description if they are based outside the European Economic Area (EEA).

Section 19: Personal pension schemes

60. Personal pension schemes are defined as those that fall outside the definition of an occupational pension scheme (see section 18).

Section 20: Quality requirement: UK money purchase schemes

61. In order to be deemed a qualifying scheme a UK occupational money purchase scheme must require an employer contribution equivalent to at least 3% of qualifying earnings and total contributions paid by the employer and jobholder equivalent to at least 8% (including tax relief).
62. The PA 2007 contains repeals of the contracting out arrangements for money purchase schemes currently provided for under the PSA 1993. However, in the event that those repeals have not yet been brought into force when the employer duties commence, *subsection (2)* enables regulations to be made to modify the contributions required for

money purchase schemes with members whose employment is contracted-out of the State Second Pension Scheme.

63. *Subsection (3)* contains a regulation-making power that allows the Secretary of State to set an amount below which trustees and employers could choose to decline to accept contributions. This could be used, for example, to enable schemes to not have to deal with such minor amounts of contributions which are uneconomic to administer.

Section 21: Quality requirement: UK defined benefits schemes

Section 22: Test scheme standard

Section 23: Test scheme

64. *Section 21* provides that the quality requirement for defined benefit schemes depends on whether or not the jobholder is in contracted-out employment, as defined under the PSA 1993. If a jobholder is in contracted-out employment, evidenced by a certificate issued under section 7(1) of the PSA 1993, the scheme satisfies the quality requirement in relation to that jobholder. *Subsection (3)* enables the Secretary of State to change, by order, the quality requirement where the jobholder is in contracted-out employment. The quality requirement may be changed so that the scheme no longer qualifies on the evidence of contracting out alone but is required to meet a modified version of the test scheme standard (see *sections 22 and 23*) with an accrual rate of no more than 1/80th, should this prove necessary in the future.
65. For jobholders who are members of a defined benefit scheme and are not in contracted-out employment, the scheme must meet the test scheme standard. *Section 22* provides that a scheme satisfies the test scheme standard if it provides benefits that are broadly equivalent to or better than the benefits provided by a model test scheme – set out in section 23. The comparison to the test scheme must be made by the employer for all of the jobholders they employ who are active members of the scheme and are not in contracted-out employment.
66. In making a comparison when applying this section, the pensions of relevant members must be considered together as a whole (section 22, *subsection (3)*). There is a regulation-making power (*subsection (4)*) enabling the Secretary of State to set out detail on how comparison with the model test scheme will be done and the regulations may provide for the comparison to be conducted in accordance with guidance (*subsection (5)*). Regulations may provide that an actuary will be required to confirm that the scheme meets the test (*subsections (6) and (7)*).
67. The model test scheme on which the comparison is made is set out at section 23. It provides a pension for life based on no more than 40 years of accruals at an annual rate of 1/120th of average qualifying earnings.

Section 24: Quality requirement: UK hybrid schemes

68. Hybrid schemes have a mix of defined benefit and money purchase elements. In order to qualify they will be required to satisfy the quality requirement for either money purchase schemes (section 20) or defined benefit schemes (section 21). The quality requirements set out in *subsection (1)(a)* and *(b)*, which are those for money purchase schemes and defined benefits schemes, respectively, can be modified by regulations in their application to certain hybrid schemes
69. Employers will be directed to the quality requirement they should use for a hybrid scheme in rules made by the Secretary of State under *subsections (2) to (4)*.

Section 25: Quality requirement: non-UK occupational pension schemes

70. *Section 25* enables the Secretary of State to make regulations about the quality criteria of non-UK based occupational pension schemes.

Section 26: Quality requirement: personal pension schemes

71. *Section 26* provides the conditions which a personal pension scheme must meet in order to satisfy the quality requirement. In order to qualify, personal pension schemes must only provide money purchase benefits (*subsection (3)*). The employer must be required to contribute an amount equivalent to at least 3% of qualifying earnings (*subsection (4)*) and the jobholder must be required to make up any shortfall in contributions up to a contributions total of an amount equivalent to 8% of qualifying earnings in the pay reference period (*subsections (5) and (6)*). There will need to be agreements between the scheme and the employer and the jobholder confirming the contributions required. The employer must be required to pass over contributions to the scheme on the basis of direct payment arrangements as defined by the PSA 1993 (*subsection (7)*).
72. As with money purchase schemes (section 20) there is also a provision to alter contribution levels should the repeal of contracting-out not have occurred by the time these duties commence.
73. *Subsection (9)* contains a regulation-making power that allows the Secretary of State to set an amount below which trustees and employers could choose to decline to accept contributions. This could be used, for example, to enable schemes to not have to deal with such minor amounts of contributions which are uneconomic to administer.

Section 27: Quality requirement: other personal pension schemes

74. This section allows the Secretary of State to prescribe in secondary legislation quality requirements for non-UK personal pension schemes.

Section 28: Sections 20, 24 and 26: Certification that quality requirement is satisfied

75. This section enables the Secretary of State through regulations to provide that a money purchase scheme, or a hybrid scheme to the extent that it must meet the money purchase quality requirement, is to be taken to meet the relevant quality requirement if there is a certificate in force.
76. The certificate must state that, in the opinion of the person certifying the scheme, it is able to satisfy the quality requirements under sections 20, 24(1)(a) or 26 (depending on whether the scheme is an occupational money purchase scheme, a hybrid scheme, or a personal pension scheme) for the duration of the certificate in relation to those of an employer's jobholders who are active scheme members.
77. The process and requirements of making a certificate will be detailed in regulations.
78. The effect of certification is subject to any provision made in regulations under subsection (6)(f) in relation to cases where a scheme is found in the event to have failed to meet prescribed conditions. Under subsection (7) regulations may for example require payments to be made into a scheme before it will be taken to have satisfied the relevant quality requirement.
79. The Secretary of State may repeal this section by order.

Section 29: Transitional periods for money purchase and personal pension schemes

80. This section sets out how employers operating qualifying occupational money purchase schemes and personal pension schemes will be able to phase in their contributions over two transitional periods.

81. This is achieved by setting lower contributions in the quality requirements over two transitional periods. Both transitional periods shall last at least 1 year and the exact duration of both will be prescribed in regulations.
82. In the first period, scheme rules must require employer contributions of at least 1% and a total contribution of at least 2% of the jobholder's qualifying earnings in the pay reference period. For the second period, the minimum contributions will increase to 2% from the employer and 5% overall.

Section 30: Transitional period for defined benefits and hybrid schemes

83. This section sets out the phasing arrangements for employers operating defined benefit or hybrid schemes. It enables those employers to delay automatic enrolment, for a specific group of jobholders for a transitional period that will be prescribed in regulations.
84. *Subsection (2)* defines the conditions which must be satisfied so as to be in this specific group of jobholders. They must be existing workers of the employer who have previously been and remain able to join a qualifying defined benefit or hybrid scheme.
85. The employer must automatically enrol such jobholders into a qualifying defined benefit or hybrid scheme by the end of the transitional period. If, before the transitional period ends, a jobholder ceases to be able to join a defined benefit or hybrid scheme or if the scheme they are eligible for ceases to qualify (*subsection (4)*), then the employer must automatically enrol the jobholder into alternative qualifying provision.
86. If the alternative scheme is another defined benefit or hybrid scheme, the employer must ensure membership is effective from the date on which the original scheme ceased to qualify or be available for the jobholder (i.e. the scheme closure date - *subsection (5)*). *Subsection (6)* provides that if the alternative scheme is a money purchase scheme then the employer must make membership effective from the original automatic enrolment date by paying backdated employer contributions.

Section 31: Effect of freezing order or assessment period

87. This section provides that active membership of a qualifying scheme does not cease for a jobholder or worker (this includes where a jobholder or worker has opted in to the scheme under section 9) for the purposes of the employer duties when the accrual of benefits in that scheme has been frozen either by an order imposed by the Pensions Regulator or because of an assessment by the Pension Protection Fund. Nor will the scheme cease to be a qualifying scheme in such circumstances.

Section 32: Power of trustees to modify by resolution

88. *Subsection (1)(a)* enables trustees to make changes to a scheme necessary to comply with the conditions in section 17(2) (automatic enrolment schemes). For example, making a scheme suitable for automatic enrolment by removing any condition of membership which requires a choice of investment to be made.
89. *Subsection (1)(b)* allows changes specified in *subsection (2)* to be made to enable contributions payable to a scheme to be increased to comply with section 20 or with section 24(1)(a). The permitted changes are to increase the contribution rate, the basis on which it is calculated or the frequency of its payment. However, changes cannot be made without consent of the employer.
90. *Subsection (3)* makes separate provision for those schemes where there is more than one employer
91. Regulations may prevent certain schemes from using this provision to modify their rules to facilitate automatic enrolment.

Section 33: Deduction of contributions

92. An employer who automatically enrolls, re-enrolls or arranges opt in for a jobholder into a scheme is permitted to deduct the jobholder's contributions from the jobholder's pay from the date on which they are to become active members and give this to the scheme. This means that a deduction from earnings made by an employer in order to comply with the employer duty is not otherwise an unlawful deduction from earnings under the Employment Rights Act 1996, section 13.

Chapter 2: Compliance

Section 34: Effect of failure to comply

93. *Section 34* provides that no private right of action for breach of statutory duty arises against an employer who has failed to comply with requirements set out in the employer duty provisions (sections 2 to 11 or regulations under those sections). Under the Act the Pensions Regulator is the sole body responsible for taking action against such breaches.
94. *Subsection (2)* provides that nothing in Chapter 2, nor in the employer duty provisions, is intended to affect any right of action which might arise otherwise than under these provisions. This means for example that if contributions are set out in an employment contract, the individual would retain the right to pursue missing contributions as they would any other breach of contract.

Section 35: Compliance notices

Section 36: Third party compliance notices

95. This Act introduces powers for the Pensions Regulator to issue compliance notices. Where the Regulator is of the opinion that a contravention of the employer duties has occurred, a compliance notice will be the formal method of communicating the actions that should be taken to comply and the consequences of not doing so. Compliance notices would generally be the first step in the graduated compliance regime.
96. *Section 35* gives the Pensions Regulator the power to issue a compliance notice to a person who has breached an employer duty. Employer duties are the duties under sections 2 to 11 which apply to employers but the duty to provide information under section 10 may also apply to other persons specified in regulations. A compliance notice would direct the recipient to put right their breach of the employer duty.
97. A compliance notice may require the recipient to take specific steps to place the jobholder in the same position, as nearly as possible, as if the breach had not occurred.
98. *Section 36* provides that a "third party compliance notice" can be issued to a person (the "third party") if the Regulator is of the opinion that person has contributed to a breach of the employer duties (by someone else who is subject to the duties). A third party compliance notice would direct the recipient to put right the action or inaction that had contributed to the breach of the duty.
99. An example of where a third party compliance notice might be issued is if a scheme or pension provider has failed to process the enrolment information it has received from the employer, and this prevents the employer from meeting the enrolment duty.

Section 37: Unpaid contributions notices

100. In addition to compliance notices, *section 37* provides the Pensions Regulator with the power to issue an unpaid contributions notice to an employer if it is of the opinion that an employer has failed to pay the required contributions on time.
101. *Section 37* makes provision for what an unpaid contributions notice is, to which contributions it is applicable and what information may be included in the notice.

Section 38: Calculation and payment of contributions

102. *Section 38* makes provision for the calculation of unpaid contributions. It provides that a compliance notice or an unpaid contributions notice may require the employer to calculate the amount of contributions that have not been paid into the scheme.
103. Where contributions are made within a prescribed period after a certain date, the unpaid contributions notice may require the employer to pay their own contributions with the worker having the option to pay their own but not being obliged to do so. However, where contributions are not made during that prescribed period of time, the employer will be required to pay all outstanding contributions.
104. *Section 38* also enables the Regulator to estimate the amount of unpaid contributions using information other than that provided by the employer (for example, information held by HM Revenue and Customs or the employee's scheme) and to require employers to pay interest on unpaid contributions.

Section 39: Meaning of relevant contributions

105. *Section 39* provides that the definition of relevant contributions includes both contributions payable directly by an employer into a scheme and contributions payable by an employer on behalf of a worker out of deductions from the worker's earnings. The section also provides that the meaning of relevant contributions is applicable for both jobholders and for workers without qualifying earnings under section 9.

Section 40: Fixed penalty notices

Section 41: Escalating penalty notices

Section 42: Penalty notices: recovery

106. *Sections 40* to *42* provide the Regulator with powers to issue penalty notices where the Regulator is of the opinion that there has been a failure to comply with a compliance notice, a third party compliance notice, an unpaid contributions notice, a notice requiring certain information (section 72 of the PA 2004) or any of the provisions listed in *section 40(2)*.
107. A fixed penalty notice (section 40) will require the person to whom it is issued to pay a penalty of up to £50,000 within a specified timeframe. Regulations will set out the actual penalty rate.
108. An escalating penalty notice (section 41) can be issued in cases where there is continuing failure to comply – such as where a fixed penalty notice has been ignored. The penalty will escalate at a rate prescribed in regulations but will not exceed £10,000 per day.
109. An escalating penalty notice cannot be issued if the Regulator is in the process of undertaking a review of a compliance notice, a third party compliance notice or an unpaid contributions notice, following an application for review by the person to whom such a notice was issued. The Regulator may not issue an escalating penalty notice if the person has exercised his right to make a referral (appeal) to the Pensions Regulator Tribunal against a fixed penalty notice and the referral has not yet been determined.
110. The Pensions Regulator can recover any outstanding fixed or escalating penalties. If the County Court (England and Wales) or Sheriff Court (Scotland) so orders, the money payable can be recovered by execution against goods. Any such penalties recovered by the Regulator must be paid into the Consolidated Fund.

Section 43: Review of notices

111. *Section 43* provides that the Regulator may review a notice issued under Chapter 2 if it is asked to do so by the person to whom the notice was issued, or if the Regulator considers it to be appropriate.
112. Regulations may prescribe the time period in which the person to whom the notice was issued can apply for review of a notice and the period in which the Regulator may otherwise review the notice.
113. *Subsections (4) and (5)* provide that the Regulator must suspend the effect of a notice until a review is completed, and must take into consideration any representations made by the person to whom the notice was issued.
114. *Subsection (6)* sets out the Regulator's powers in reviewing a compliance notice. The Regulator may confirm, vary or revoke the notice, or it can choose to replace the notice with a different one.

Section 44: References to the Pensions Regulator Tribunal

115. *Section 44(1)* provides that a person who has received a fixed or escalating penalty notice may submit an appeal to the Pensions Regulator Tribunal against the issue of the notice and/or the amount of the penalty.
116. *Subsection (2)* provides that a person making a reference (appeal) to the Pensions Regulator Tribunal must first request a formal review by the Regulator, unless the Regulator itself initiates a review. The Regulator may, however, decide not to undertake a review.
117. *Subsection (3)* suspends the effect of any notice which is the subject of a reference (appeal) to the Pensions Regulator Tribunal.

Section 45: Offences of failing to comply

Section 46: Offences by bodies corporate

Section 47: Offences by partnerships and unincorporated associations

118. *Sections 45 to 47* make it a criminal offence for employers wilfully to fail to comply with specified duties.
119. These duties are automatic enrolment (section 3(2)), re-enrolment of eligible jobholders into an automatic enrolment scheme (section 5(2)) and the requirement to enrol jobholders into an automatic enrolment scheme at the jobholders' request (section 7(3)).
120. *Section 45* provides that a person who commits such an offence could face imprisonment for up to two years and/or a fine. If convicted in a magistrates' court, the maximum penalty is a fine not exceeding the statutory maximum.
121. *Sections 46 and 47* enable the following to be prosecuted for the section 45 offence:
 - specified individuals within a body corporate, as well as the body corporate itself (section 46);
 - partnerships and individual partners (section 47); and
 - unincorporated associations and officers within these (section 47).

Section 48: Offences of providing false or misleading information

122. *Section 48* amends section 80(1)(a) of the PA 2004 to include the offence of providing the Regulator with false or misleading information about the actions taken by the

employer for the purpose of complying with the employer duties (under regulations under section 11 of this Act).

Section 49: Monitoring of employers' payments to personal pension schemes

123. Section 111A of the PSA 1993 makes provision about monitoring arrangements under which an employer pays contributions to personal pension schemes in respect of an employee. It also provides that fraudulent evasion of such arrangements is an offence. [Section 49](#) extends that section to apply to arrangements in respect of jobholders, defined in this Act, who would not otherwise fall within the definition of "employee", but who do fall under the definition of "workers".

Chapter 3: Safeguards: Employment and pre-employment

124. [Sections 50 to 59](#) represent a package of pre-employment and employment safeguards to ensure that individuals' entitlements under this Act can be protected. This package contains three key elements. Sections 50 to 53 introduce a prohibition on employers attempting to screen out job applicants on the basis that they want to be a member of a pension scheme. Section 54 introduces a prohibition on employers acting (or attempting) to induce employees to opt out from, or cease, membership of a qualifying workplace pension scheme. Both these prohibitions will be enforced by the Regulator. Sections 55 to 59 provide employees with a range of employment rights to enable them to present a complaint to an employment tribunal if they feel they have been put at a disadvantage or dismissed as a result of their pension choices. The Regulator will not have a role in the enforcement of these.

Section 50: Prohibited recruitment conduct

Section 51: Compliance notices

Section 52: Penalty notices

Section 53: Review of notices and references to Pensions Regulator Tribunal

125. [Sections 50 to 53](#) introduce a prohibition on certain recruitment conduct and provide the Pensions Regulator with powers to notify employers of breaches of this prohibition and subsequently issue penalties. Section 50 provides that the prohibition is contravened if, in an application for employment, an employer makes a statement or asks a question that indicates that the application might be conditional on whether or not an applicant might opt out of auto-enrolment. A typical example would be if it was found that a job advertisement indicated that the applicant might stand more chance of success if he was prepared to opt out of auto-enrolment.
126. [Section 51](#) enables the Pensions Regulator to issue a compliance notice to an employer where it is of the opinion that the employer has contravened section 50 and outlines what the notice may contain. Notices may inform the employer what it must do in order to remedy their non-compliance with section 50 or prevent it re-occurring. For example, an employer might be required by a notice to change the wording of an application form or other recruitment material for the future.
127. The notice may also set out the time periods within which employers have to take certain actions such as provide information about the contravention of the prohibition and how they have now complied with the notice. Compliance notices may also state that if an employer fails to comply with the requirements of the notice, the Regulator may issue a penalty notice.
128. [Section 52](#) sets out that the Regulator can issue penalty notices in respect of sections 50 and failure to comply with compliance notices issued under 51. The penalty must not exceed £50,000 and the person to whom the notice is issued (the employer) must pay

the penalty within a specified period. *Subsection (4)* sets out what information must be in the penalty notice.

129. The Pensions Regulator will have the power to recover any penalties payable and any penalty recovered must be paid into the Consolidated Fund.
130. [Section 53](#) sets out that the Regulator will have the ability to review both compliance and penalty notices, issued under sections 51 and 52, in relation to the recruitment conduct prohibition in section 50.
131. As with penalty notices issued under sections 40 or 41 an employer will have the right of appeal to the Pensions Regulator Tribunal in respect of the issue of a penalty notice in relation to the recruitment conduct prohibition, or the amount of the penalty payable under that notice.

Section 54: Inducements

132. [Section 54](#) introduces a prohibition on employers attempting to induce their workers to opt out from, or cease, membership of a qualifying workplace pension scheme and gives the Regulator the power to take compliance action against a contravention. An employer contravenes this prohibition if they take any action for the sole or main purpose of inducing a worker or jobholder to give up membership of a relevant scheme, without becoming an active member of another relevant scheme within the prescribed period under section 2(3).
133. The section also provides a power for a time limit, within which (i) a complaint to the Regulator must be made about a contravention of the provision or (ii) the Regulator must inform the employer of an investigation of a contravention. This time limit will be set out in regulations.

Section 55: The right not to suffer detriment

Section 56: Enforcement of the right

134. [Section 55](#) provides a statutory right for workers not to be subjected to any detriment by an act done on specified grounds. For example, this right would protect a worker who might have been denied promotion or training opportunities because of their decision not to opt out of pension scheme membership
135. *Subsection (4)* provides that if the detriment in question amounts to dismissal, this section does not apply.
136. [Section 56](#) provides that workers have a right to bring claims that they have been subjected to a detriment to an employment tribunal. If the tribunal upholds a claim, it can make an award of compensation to be paid by the employer to the worker.

Section 57: Right of employee not to be unfairly dismissed

137. [Section 57](#) inserts a new provision (section 104D) into the Employment Rights Act 1996, which protects an employee from being dismissed on grounds mirroring those specified in the right not to suffer detriment (section 55), for example, where an employee is dismissed for refusing to opt out of pension scheme membership.
138. As with the right not to suffer detriment, an employee who is dismissed on these specified grounds shall be regarded as having been unfairly dismissed, regardless of whether the employee concerned actually meets the eligibility criteria for the employer duty.

Section 58: Restrictions on agreements to limit operation of this Part

139. *Subsection (1)* renders void any agreement between a worker and their employer to either (a) exclude or limit the operation of any provision in Part 1 of this Act or (b) preclude a person from bringing proceedings under section 55 (i.e. enforcement of the right not to suffer detriment) before an employment tribunal.
140. Under the terms of this provision, an agreement between the worker and employer will be void and unenforceable by the employer, who will be further restricted (under *subsection (2)*) from recovering the financial or other benefit given in exchange for it.
141. *Subsections (3) and (4)* provide that subsection (1) will not apply where an employer and a worker have entered into any agreements under conciliation arrangements dealt with by a conciliation officer or under a compromise agreement (the conditions for which are listed in *subsection (5)*). These subsections ensure that subsection (1) does not undermine any conciliation process by inadvertently voiding any agreement made as part of the conciliation process.

Section 59: Employment appeal tribunal

142. This section provides that an appeal lies to the Employment Appeal Tribunal on any question of law arising from any decision of, or arising in any proceedings before, an employment tribunal under or by virtue of this Act - including the right not to suffer detriment as provided for by section 55. This right of appeal will be open to both employers and eligible jobholders. There is no need for an equivalent provision in this Act to extend to the change to unfair dismissal law in section 57. This is because the Employment Tribunals Act 1996, section 21, already provides that a right of appeal exists to the Employment Appeal Tribunal on any question of law arising under the Employment Rights Act 1996, which contains the principal provisions on unfair dismissal.

Chapter 4: Supplementary provision about compliance and information sharing

Section 60: Requirement to keep records

143. **Section 60** permits the Secretary of State, by regulations, to make provision requiring any person to keep records in a prescribed form for a period prescribed by regulations, not exceeding 6 years. Regulations may require the provision of such records, on request, to the Regulator.
144. These regulations can make provision for the Regulator to apply penalties under section 10 of the PA 1995 where a person fails to comply with this requirement.

Section 61: Powers to require information and to enter premises

145. This gives the Regulator, in pursuance of its new objective, powers to require information and to enter premises. It amends section 72 of the PA 2004 so as to permit the Pensions Regulator to require any person who holds or is likely to hold information relevant to the exercise of the Regulator's functions to provide an explanation of a document requested, at a specified time and place.
146. The Regulator will not be able to require anyone to answer any question or provide any information that might incriminate themselves or their partner or spouse.
147. This section also allows an inspector, appointed by the Pensions Regulator, to enter premises liable to inspection to investigate whether an employer is complying with requirements under Chapter 1, or sections 50 or 54 of Part 1.

Section 62: Disclosure of tax information etc

148. This section substitutes a new section 88 of the PA 2004. It allows HM Revenue and Customs (HMRC) to disclose information on specified matters to the Regulator to enable the Regulator to discharge its functions. The section allows HMRC to share any information it holds in relation to:
- tax or duty (including income tax);
 - national insurance contributions;
 - the national minimum wage.
149. The section also places controls on the Regulator's ability to disclose this information. Any information the Regulator receives from HMRC under this section must be treated as restricted information, and can only be disclosed if one of the following exceptions applies:
- HMRC has authorised the disclosure (or the disclosure is back to HMRC);
 - it is needed for criminal proceedings;
 - it is needed for civil proceedings started by the Regulator;
 - it is needed for the Regulator to carry out its functions; or
 - the data has been anonymised.
150. Information received by the Regulator from HMRC under this section is specifically excluded from some of the grounds on which the Regulator can normally disclose information it holds. These are set out in sections 82, 83, 85-87, and 235 of the PA 2004. This includes, for example, disclosure with the consent of the person to whom the information relates, or where necessary to help other specified regulatory bodies exercise their functions, or to the Secretary of State for the purposes of private pensions and retirement planning policy.

Section 63: Information for private pensions policy and retirement planning

151. *Section 63* amends Schedule 10 to the PA 2004. Schedule 10 allows the Secretary of State (or the Northern Ireland Department) to make use of information collected in the course of carrying out a wide variety of functions (social security, child support, war pensions, employment or training, private pensions policy, retirement planning). This section adds private pensions policy and retirement planning to that list of functions.
152. This section also allows the Pensions Regulator to supply the Secretary of State with information in the first place, so that the latter (and the Northern Ireland Department) can use this information to help perform functions relating to private pensions policy or retirement. The section also utilises a definition of “private pensions policy” so as to incorporate the definition of pension schemes introduced in Part 1 of the Act.

Section 64: Penalty for disclosure

153. *Section 64* increases the maximum sentence on summary conviction for officials, contractors or any other people who directly or indirectly receive restricted information from the Pensions Regulator and who disclose such information without authorisation. Such unauthorised disclosure is already a criminal offence under section 82(5) of the PA 2004. This section makes anyone who is convicted of this offence in a magistrates' court liable to a prison term of up to a year (rather than a fine not exceeding the statutory maximum, which was the previous extent of a magistrates' court's powers for this offence). This may be imposed together with, or instead of, a fine up to the statutory maximum.

Section 65: Objectives of the Regulator

154. *Section 65* provides a new statutory objective for the Pensions Regulator. In addition to those listed at section 5(1) of the PA 2004, the Regulator's objectives will now include maximising compliance with the new duties being placed on employers under Chapter 1 of Part 1, and the safeguards in sections 50 (prohibited recruitment conduct) and 54 (inducements).

Section 66: Functions of the Pensions Ombudsman

155. *Section 66* gives the Pensions Ombudsman a new function, in addition to those under section 146 of the PSA 1993, to investigate complaints relating to a jobholder opting out of a pension scheme.

Chapter 5: Duty to establish a pension scheme

Section 67: Duty to establish a pension scheme

156. *Section 67* places a duty on the Secretary of State to establish a pension scheme. That scheme will be a trust, which is generally how occupational pension schemes are established. All trusts are run by trustees. The corporate trustee established by *section 75* must be a trustee of the scheme when the scheme is established (see section 68(1)). There may be other trustees. The trustees will be required as a matter of trust law to act within the terms of the trust in the best interests of its beneficiaries.
157. The trustees must ensure that the scheme is tax registered under Chapter 2 of Part 4 of the FA 2004, which will allow tax relief on pension contributions and investment returns. In general terms, members will be able to access their savings in the same way as members of any other tax registered money purchase pension scheme – including by taking a tax free lump sum. The scheme must be an automatic enrolment scheme (see section 17) in relation to any jobholder who is employed by a participating employer and who must be enrolled under section 3 (automatic enrolment), section 5 (automatic re-enrolment), section 7 (jobholder's right to opt in) or section 9 (workers without qualifying earnings).
158. The scheme must be established by order made by statutory instrument which under section 143 will be subject to the draft affirmative resolution procedure (that is, a draft must be laid before, and approved by, both Houses of Parliament before it can be made). This Order will set out the legal framework of the scheme and is the equivalent of a trust deed. In addition, the scheme may have a separate set of Rules, also equivalent to part of the trust deed, for its operation. These Rules will not be subject to a formal Parliamentary procedure but must be compatible with the Order and cannot be made about certain provisions of the scheme, listed at *subsection (12)*.

Section 68: Scheme orders: general

159. *Section 68* sets out the general provisions which must, or may, be in the Order. The Order must provide for the trustee corporation established by section 75, to be a trustee when the scheme comes into force.
160. The Order may:
- allow for any provision of the Trustee Act 2000 to apply as if the Order and Rules were a trust instrument. This is one way in which it will be possible to ensure that existing UK trust law will also apply to the scheme established under section 67.
 - give the trustees the power to make Rules. This would allow trustees to make further provisions in connection with the day-to-day operation and running of the scheme.
 - limit the trustees' power to make Rules in prescribed circumstances and or subject it to conditions. This will enable the Secretary of State to ensure that matters of

wider public policy continue to be given are given effect, or to set out procedural safeguards for the making of rules by the trustee.

- provide for protection of the trustees against liability, where appropriate, arising from the administration of the scheme.

Section 69: Consultation of members and employers

161. *Section 69* provides that the scheme order must require the trustees of the scheme to make arrangements for consulting the scheme members and participating employers about the ongoing operation, development and amendment of the scheme. These arrangements must include the establishment of members' and employers' panels to represent the interests of members of the scheme and participating employers.
162. The trustees will have decisions to make about the operation of the scheme. These will include decisions on how the scheme should be developed and whether it should be amended. The trustees will have to consult the scheme members and employers about these decisions. To help with the consultation, the trustees will have to create panels to represent the members and employers. The make-up and functions of these panels could be set out in the Order or under it (e.g., in Rules). The members' panel could be allowed to propose people for appointment as members of the trustee corporation. The panel could use those proposals to help ensure that their interests are represented. (This would be in the spirit of the provisions for member nominated trustees and directors in the PA 2004.)
163. The Order will also be able to allow for payments to be made to panel members from scheme funds. This could include payment for their time and expenses.
164. A scheme created under section 67 could potentially cover a very wide and diverse range of employers and employees, making it difficult for the trustees to keep in touch with all their opinions. The members' and employers' panels will act as representative bodies to keep the trustees informed and provide feedback about how the scheme is working. The trustees will consult both panels before any changes are made to the scheme.

Section 70: Contribution limits

165. This section requires the Secretary of State to set out in the Order the maximum amount a member of the scheme established under section 67 can contribute (including the employer contribution and tax relief) in a tax year. This allows the Order to set a contribution limit of £3,600 (by reference to the level of earnings in 2005). It would also allow the Order to provide, for example, a higher limit in the first year of the scheme and for the contribution limit to be uprated in line with earnings.
166. The power will enable the Secretary of State to include in the Order:
- what a contribution is;
 - when a contribution is to be treated as made;
 - how contributions are treated where the maximum is exceeded;
 - the value of any amount to be repaid in respect of excess contributions (whether the same or more or less than the contribution, because of investment or otherwise), and;
 - who makes the refund payments and to whom.
167. *Subsection (3)* allows the Secretary of State to set out in an Order more than one contribution limit. The Order could allow, for example, a lump sum contribution limit over the member's lifetime.

168. *Subsection (4)* enables the Secretary of State to remove the requirement to have a contribution limit in the scheme established under section 67. This allows [section 70](#) to be repealed if, for example, a review is carried out which concludes that a contribution limit is not appropriate for a scheme under section 67.

Section 71: Procedure for scheme orders

169. [Section 71](#) sets out the procedure for consulting on and seeking consent to changes to the scheme Order (see the note to section 67). When a trustee is in place (i.e., once the scheme has been established), subsequent changes to the Order may be made by the Secretary of State only if he has the consent of the trustee. Trustees must consult the members' and employers' panels before giving consent.
170. Examples of what could be included in the Order are: the structure of members' charges; access to the scheme for the self employed; the way that members will be able to access their savings; the provision of payments to members' and employers' panel members; a default fund for members who do not wish to choose where their contributions are invested.

Section 72: Procedure for rules

171. [Section 72](#) sets out the procedure for publication and consultation on proposed scheme Rules.
172. A draft of the proposed Rules must be published by the person proposing to make them and comments invited. That person – which will be the Secretary of State or trustees – must then consider any comments received and publish a summary of the comments, together with a response. If the Rules are made, they must be published in a way designed to bring them to the attention of interested parties.
173. The trustees will have to consult the members' and employers' panels before making any Rules or giving their consent to changes to the Rules proposed by the Secretary of State. The Secretary of State will not be able to make any change to the Rules without the consent of the trustees.
174. Although the Rules will not be subject to a formal Parliamentary procedure, the effect of this section is that they must be open to debate by interested parties.

Section 73: Application of enactments

175. [Section 73](#) sets out how the scheme should be treated within current legislation to ensure that the scheme is established and can run as intended. It ensures that the scheme will not be treated as a public service scheme under the PSA 1993 and FA 2004. It also sets out that the Interpretation Act 1978 will apply to rules as if they were in a deed (which would be appropriate to other occupational schemes) rather than made under an enactment (provisions of the personal accounts scheme order).

Section 74: Review

176. This section requires the Secretary of State to appoint a person to carry out a review of two aspects of the scheme established under section 67 that are designed to focus it on the target market specifically: namely the policy on contribution limits and restricting pension fund transfers to and from the scheme. It also allows the Secretary of State to bring other topics within the review's scope.
177. *Subsection (2)* requires the Secretary of State to appoint the person on or after (i) 1st of January 2017 or (ii) at the end of five years beginning with the first day on which contributions are paid to the scheme by or on behalf of members, whichever is the later.

178. The section also requires the person to prepare a report of the review and send a copy of it to the Secretary of State, and the Secretary of State is under an obligation to lay before Parliament a copy of that report (*subsections (3) and (4)*).

Section 75: Trustee corporation

179. *Section 75* establishes the trustee corporation which under section 68(1) must be appointed trustee of the scheme. The name of the corporation will be determined by the Secretary of State by statutory instrument. This will allow for completion of research on names that are most appropriate for both the scheme and the trustee corporation.
180. This section also provides for the corporation not to be regarded as the servant or agent of the Crown and not to enjoy any status, immunity or privilege of the Crown, nor can property it holds (including property held in its capacity as trustee) be considered to belong to the Crown.
181. This section introduces Schedule 1 which details the provisions relating to the members, proceedings and funding of the trustee corporation.

Schedule 1: The trustee corporation

182. *Schedule 1* sets out rules concerning the governance of the trustee corporation established by section 75.
183. *Part 1* details the rules relating to the appointment, conduct, remuneration and staffing of the corporation.
184. The chair and members of the corporation will initially be selected by the Secretary of State. Later appointments will be made by the corporation. The Secretary of State must consult the chair, if there is one, before making other appointments. The aim must be for the trustee corporation to have no fewer than nine and no more than fifteen members. The scheme Order (see section 67) may provide for the corporation to be subject to existing rules for member nominated directors, suitably modified to make them work in this context.
185. The Secretary of State and the corporation should satisfy themselves on appointment, and on an ongoing basis, that no member of the corporation has a conflict of interest – as defined in *paragraph 2(5) and (6)*.
186. *Paragraphs 3, 4 and 5* set out the reasons why a member will be disqualified or may be removed from the corporation. A person will be disqualified from being or continuing as a member if they are already prohibited or suspended from being a trustee under existing legislation – unless, in specific circumstances, the Pensions Regulator waives the existing suspension or disqualification.
187. A member cannot be appointed for a period of more than five years and, although they may be reappointed at the end of this period, cannot be reappointed more than once. Therefore, the maximum period anyone will be able to serve as a member will be ten years. This is within the maximum period for a public appointment as set out in the Office of the Commissioner for Public Appointments (OCPA) guidance. Members may resign by giving written notice to the Chair and the Chair by giving such notice to the Secretary of State.
188. The corporation may pay remuneration and allowances and gratuities to members and, where there are special circumstances as determined by the Secretary of State, compensation to a person who ceases to hold office as a member or chair.
189. *Paragraph 8* allows the corporation to employ staff and to determine terms and conditions, including remuneration, of their employment. It must also pay pensions and allowances, as well as provide such pension schemes, as it determines.

190. *Part 2* of the Schedule concerns the day-to-day proceedings of the trustee corporation, including that of any committees.
191. The corporation may establish committees to discharge its functions or to provide advice in order to do so. Committees may include people who are not members or employees of the corporation (though they must not form the entire committee) and such people may be paid remuneration and expenses. This ensures that the corporation can obtain specific skills or expertise but will always have member interest in the committee. Such committees may establish sub-committees whose members must be members of the committee which established it.
192. The corporation is normally allowed to regulate its own procedure and that of its committees and sub-committees and to allow committees and sub-committees to regulate their own procedure. Procedures must be published.
193. *Paragraph 13* sets out procedure for declaring an interest in any matter to be discussed at a meeting of the corporation or its committees. Such declarations must be recorded in the minutes. Interests can be disregarded if certain specified conditions are met.
194. The corporation can delegate any of its functions to members, employees or other members of staff and committees, unless anything in the Order or Rules does not allow that function to be delegated.
195. The validity of proceedings of the corporation will be protected where there is a vacancy among members or defect in an appointment.
196. *Paragraph 16* specifies that application of the corporation's seal must be authenticated by the signature of a member, or someone authorised by the corporation to do so. The seal is used in the case of some documents to signify that the corporation has formally agreed to them (e.g., certain documents in relation to property transactions).
197. *Paragraph 17* requires the corporation to prepare an annual report which includes a report of the corporation's proceedings during the year and anything relating to the financial position or other matter that the Secretary of State requires. Such reports must be sent to the Secretary of State as soon as possible following the end of the financial year and must be laid before Parliament.
198. *Part 3* sets out the corporation's procedures relating to the receipt of money and accounting.
199. It also allows the Secretary of State to provide financial assistance to the trustee corporation, for example, through a grant or loan with the consent of HM Treasury. The interest rate associated with any loan must be approved by the Treasury and meet the conditions that would apply under section 5 of the National Loans Act 1968 (and so, as a minimum, cover the cost of Government borrowing). It also allows the corporation to charge for its services.
200. As a non-departmental public body (NDPB) the corporation, like all other NDPBs, must keep proper accounts and prepare an annual statement for each financial year which must be audited by the Comptroller and Auditor General (the head of the National Audit Office) and the statement and Auditor's report must be laid before Parliament by the Secretary of State.
201. *Part 4* amends current legislation on disqualification, records and freedom of information and equality to ensure that the corporation conforms to these provisions. For example, a member may not be a member of the House of Commons or the Northern Ireland Assembly. It also lists the meanings of a number of terms used in this Schedule.

Section 76: Functions

202. *Section 76* provides for the trustee corporation to act as a trustee of the scheme and carry out any other functions within the legislation or scheme rules.

203. This section also provides the corporation with a broad power which will allow it to do anything necessary to enable it to carry out its functions. For example, this will allow the corporation to enter into agreements. It also allows the corporation to borrow and invest money, but it can only borrow with consent from the Secretary of State.

Section 77: Application of pension trustee legislation

204. *Section 77* allows the Secretary of State, by regulations, to apply existing law which applies to trustees of pension schemes or directors of trustee companies to the trustee corporation created by section 75, with any appropriate modifications.

Section 78: Interpretation of Chapter

205. *Section 78* sets out the meanings of members' and employers' panels, and trustees for this Chapter.

Chapter 6: Personal Accounts Delivery Authority

Section 79: Functions of the Authority

206. This section makes provision for broadening the Personal Accounts Delivery Authority's functions. It provides that section 21 of the PA 2007, which sets out the initial functions of the Authority, ceases to have effect. It then allows for the Authority not only to advise and prepare but also to take forward the implementation work to establish the scheme under Chapter 5 and to work with the Pensions Regulator to create the infrastructure to enable employers to register and comply with their new duties.
207. Specifically, this section provides for the Authority to give any assistance or advice on the establishment and operation of the scheme that the Secretary of State may require, and any advice that the Authority considers it appropriate to provide. Similarly, it also provides for the Authority to provide such assistance or advice on arrangements to enable employers to comply with their new duties (in Chapter 1) that the Secretary of State or the Pensions Regulator may require, and any advice that the Authority considers it appropriate to provide.
208. The section provides the Authority with an ancillary power which will allow it to do anything necessary to enable it to carry out its functions or in connection with those functions. For example, this will allow the Authority to enter into formal negotiations and to finalise contracts, and to borrow money to allow it to carry out its functions.

Section 80: Principles

209. This section requires the Authority to consider a number of guiding principles when carrying out its functions. The Authority must have regard to the principles and so consider how they apply in relation to the advice or assistance it provides. An effect of the principles is that the Authority will have to consider in carrying out its functions how to encourage those people with moderate to low incomes, who are not currently saving for a pension, to make provision for their retirement.
210. There is no provision for different principles to carry different weight. They all relate to the manner in which the Authority must discharge its functions. The principles are not the only matters which the Authority will have to consider, neither will the principles necessarily be determinative of the choices the Authority makes, but they are matters to which the Authority will need to have express regard.
211. The section also requires the Authority to do anything it considers appropriate to engage in discussion with relevant stakeholders about its functions and how it discharges its functions (*subsection (3)*).

Section 81: Directions and guidance

212. This section allows the Secretary of State to give directions and guidance to the Authority on anything to do with the discharge of its functions. In turn, the Authority is required to consider any guidance and comply with any direction. If the Secretary of State gives a direction it must be given in writing. The Secretary of State must publish any direction given under this section.

Section 82: Finance

213. This section replaces paragraph 18 of Schedule 6 to PA 2007, to extend the ways in which the Secretary of State may give financial assistance to the Authority. It allows the Secretary of State to provide finance to the Authority in connection with its functions, for example, through grant or loan with the consent of HM Treasury. The interest rate associated with any loan must be approved by the Treasury and meet the conditions that would apply under section 5 of the National Loans Act 1968 (and so, as a minimum, cover the cost of Government borrowing).

Section 83: Disclosure of information by the Pensions Regulator

214. *Section 83* amends section 84 of the PA 2004 to permit the Pensions Regulator to disclose restricted information to the Personal Accounts Delivery Authority to enable it to provide assistance or advice to the Regulator.

Section 84: Non-executive committee

215. *Section 84* amends Schedule 6 to the PA 2007. It adds a requirement for the Authority to set up a non-executive committee. It also sets out the functions that are to be carried out by such a committee.
216. It inserts a new paragraph 8A into Part 2 of Schedule 6 to the PA 2007 which provides that there is to be a non-executive committee consisting of the chairman and other non-executive members of the Authority. The functions of the committee will include subsequent appointments (nominations) and terms and conditions (remuneration) of the chief executive and executive members of the Authority. It also provides that the non-executive committee is responsible for monitoring the Authority's internal financial controls.
217. The non-executive committee must prepare a report on the discharge of their functions for inclusion in the annual report of the Authority.
218. The non-executive committee may establish sub-committees, which must include at least one non-executive member of the Authority and may include people who are not members of the Authority, although it must not include anyone who is an executive or an employee of the Authority. The non-executive committee and its sub-committees can regulate their own proceedings.

Section 85: Executive members

219. This section makes further amendments to Schedule 6 to the PA 2007 to remove the current requirement that all executive members of the Authority must be employees. Instead, it provides that the Authority may appoint executive members as employees. Consequently, individuals who are not employed by the Authority can become executive members. However, the Chief Executive is always to be an employee of the Authority.
220. *Subsection (4)* makes consequential changes to paragraph 7 of Schedule 6 so that appropriate terms and conditions of appointment can be set.

Section 86: Winding up of the Authority

221. This section amends section 23 of the PA 2007 which allows the Secretary of State to wind up and dissolve the Authority by order. It removes the conditions set out in subsections (2) to (4) of section 23 of the 2007 Act which only allow the Secretary of State to dissolve the Authority on abandonment or modification of proposals relating to the scheme that may be established under section 67.
222. This section also extends the provision for transfer of the Authority's property, rights and liabilities. The extension allows such a transfer to be made to any person designated by the Secretary of State.
223. This section also amends subsection (7) of section 23 of the PA 2007 to provide that in the event of the dissolution of the Authority, an order under section 23 can remove what will be redundant provisions from the Act.

Chapter 7: Stakeholder pension schemes

Section 87: Stakeholder pension schemes

224. *Section 87* amends the Welfare Reform and Pensions Act 1999 to remove the statutory duty on employers to have a designated stakeholder pension scheme, and all but one of the detailed related requirements (consultation, provision of information etc).
225. From the date these changes come into effect the payroll deduction requirement (section 3(5) of the Welfare Reform and Pensions Act 1999) will continue as a transitional provision. Under this provision, those employees ("relevant employees" as defined in new subsections (1A), (1B) and (1C) of section 3) who are making regular contributions into their stakeholder pension through their employer's payroll, will continue to be able to do so until they stop making these contributions or leave the employer's employment.
226. This recognises that in making their decision to contribute into a stakeholder pension, employees did so in the knowledge that they could make their contributions via their employer's payroll. This transitional provision only applies if the request to deduct these contributions from the employee's pay was made prior to the date when these changes take effect, and the employee is making regular contributions into their stakeholder pension.

Chapter 8: Application and interpretation

Section 88: "Employer", "worker" and related expressions

227. This section defines the terms "employer", "worker" and other related expressions for Part 1 of this Act.

Section 89: Agency workers

228. Under this section, agency workers, who would not otherwise fall within the definition of "worker", are treated as workers for the purposes of the employer duty (automatic enrolment, automatic re-enrolment and opting in). The agency or the principal for whom the worker works will be the relevant "employer" depending on which is responsible for paying the worker, or if that cannot be determined, on whichever one actually pays the worker.

Section 90: Directors

229. This section provides that a director with a contract of employment is included as a worker for the purposes of the employer duty and a director with any other contract or letter is not included.

Section 91: Crown employment

Section 92: Armed Forces

Section 93: House of Lords staff

Section 94: House of Commons staff

Section 95: Police

230. These sections make provision about how Part 1 of this Act applies in relation to some specific types of worker or employer.
231. *Sections 91, 93, 94 and 95* set out specific classes of people who fall to be treated as workers for the purposes of these provisions. As such, the employer duty will apply to these specific groups in the same way as it applies in relation to other employment and other workers. The only exception is for employment by or under the Crown where there is no criminal liability placed on the Crown. However, the Regulator is enabled to apply to the High Court for a declaration that there has been a failure by the Crown to comply with duties referred to in section 45(1) which, though not giving rise to criminal liability, is unlawful.
232. *Section 92* sets out the specific exclusion of the armed forces from these provisions.

Section 96: Persons working on vessels

233. *Section 96* provides that persons employed in any capacity on board a ship are not workers for the purposes of Part 1 unless regulations make provision to that effect. The section goes on to provide an affirmative regulation-making power to apply the provisions of Part 1 in relation to persons employed on a ship.

Section 97: Persons in offshore employment

234. *Section 97* provides an affirmative power to make Orders in Council to set out those persons engaged in offshore employment to whom the provisions of Part 1 will apply.

Section 98: Extension of definition of worker

235. This section provides that the definition of “worker” may be extended to include individuals who are not currently captured if a new definition arose within policy parameters which did not fall within the existing employer duty obligation. Such individuals would be deemed to be subject to a worker’s contract of a prescribed kind, working for a person of a prescribed description, who would be deemed to be the employer for the purposes of automatic enrolment.

Section 99: Interpretation of Part

236. This section sets out the meaning of particular words and phrases used throughout this Part.

Part 2: Simplification

Section 100: Abolition of safeguarded rights

237. Where, on divorce or dissolution of a civil partnership, rights to a pension are shared under the mechanism in Chapter 1 of Part 4 of Welfare Reform and Pensions Act 1999, and those rights include contracted-out rights, the law as it stands treats the contracted-out rights in a different way from the other shared rights. They are known as “safeguarded rights” and are subject to various restrictions. Section 100 and the related repeals in Schedule 11 abolish these restrictions. Once these provisions are brought into

force, shared rights that derive from contracted-out rights will be treated in the same way as other shared rights.

Section 101: Revaluation of accrued benefits etc

238. This section amends the method of revaluing the accrued pension benefits of deferred members in certain occupational pension schemes and also amends related arrangements applying to pension compensation payable by the Pension Protection Fund. The details of the amended provisions are set out in [Schedule 2](#).
239. The amended revaluation arrangements do not apply to revaluation periods ending before the section becomes operational.

Schedule 2: Revaluation of accrued benefits etc.

Part 1

240. [Paragraphs 2 and 3](#) of Schedule 2 amend the provisions in the PSA 1993 for revaluing deferred members' benefits in final salary occupational pension schemes.
241. The overall effect of the amendments is to provide that accrued benefit attributable to pensionable service on or after the commencement day is to be revalued by the rate of inflation over the relevant revaluation period, capped at 2.5% per annum. Accrued benefit attributable to service before the commencement day is to be unaffected by the amendments and a cap of 5% per annum is to continue to be applied to accrued benefits for service between 1985 and the commencement day. Where the time period between the end of pensionable service and the beginning of pension payments is longer than a year, the caps are applied to the rate of inflation as averaged over that time, and are calculated on a compound basis.
242. "Accrued benefit" is defined as the amount of benefit accrued at the date pensionable service was terminated, excluding any guaranteed minimum pension rights (to which separate provisions apply) – see the inserted paragraph 1(1E) of Schedule 3 to PSA 1993, which reproduces the existing text. "Pensionable service" continues to include any notional pensionable service which is credited to the member by the scheme.

Part 2

243. [Part 2](#) ensures Pension Protection Fund compensation is paid based on revised revaluation rates as set out in section 101 and Part 1 of this Schedule.
244. [Paragraph 7](#) makes a consequential amendment to the provision allowing the Board of the Pension Protection Fund to alter the maximum revaluation rate.

Part 3

245. [Paragraph 8](#) makes consequential amendments to section 51ZA of the PA 1995, which defines "the appropriate percentage" for the purposes of section 51 of the same Act (limited price indexation of pensions in payment). The amendments insert a reference to the new revaluation rate cap of 2.5% for accrued benefits attributable to post commencement day service as introduced by Part 1 of this Schedule.

Section 102: Consolidation of additional pension

246. [Sections 102 to 104](#) and [Schedules 3 and 4](#) change the method of calculating earnings related components of state pensions for people who reach state pension age after 5 April 2020. In addition to their basic State Pension, pensioners can have accrued rights under three earnings related state schemes:
- the Graduated Retirement Benefit scheme (GRB) – from 1961 to 1975;

*These notes refer to the Pensions Act 2008 (c.30)
which received Royal Assent on 26 November 2008*

- State Earnings Related Pension Scheme (SERPS) – from 1978 to 2002;
 - State Second Pension (S2P) – accrued from 2002.
247. S2P was reformed by the PA 2007. From the Flat Rate Introduction Year (for planning purposes this is assumed to be 2012), S2P will start to accrue on a flat-rate basis – the earnings-related element will be gradually phased out and will cease to accrue from around 2030.
248. **Section 102** amends SSCBA 1992, section 45. It provides the mechanism by which additional pension in respect of years before the Flat Rate Introduction Year will be calculated for people who reach state pension age after 5 April 2020.
249. *Subsection (4)* provides that their weekly rate of Additional Pension will be the consolidated value of their GRB, SERPS and S2P accruals, “the consolidated amount”, plus any flat rate accruals built up after 2012.
250. *Subsection (5)* introduces Schedule 3. This inserts new Schedule 4C into the SSCBA 1992 which sets out how the consolidated amount is to be calculated.
251. *Subsection (6)* provides for the GRB element of the consolidated pension to be omitted when carrying out the calculation to offset additional pension from incapacity age addition entitlement. This arises where a person was getting an age addition of incapacity benefit before they reach state pension age.
252. *Subsection (7)* restricts the calculation of GRB under existing rules to those who reach state pension age before 6 April 2020.

Schedule 3: Consolidation of additional pension

253. *Paragraph 1* of the inserted Schedule 4C specifies that the consolidation date will be a fixed date, the first day of the Flat Rate Introduction Year, regardless of the date when the person reaches state pension age.
254. *Paragraphs 2 and 3* stipulate that a person’s consolidated amount must be calculated before they reach state pension age.
255. *Paragraph 4* ensures that the existing appeals process under Chapter 2 of Part 1 of the Social Security Act 1998 is applied to the consolidated amount.
256. *Paragraph 5* defines the consolidated amount as the sum of the person’s GRB and Additional Pension accruals.
257. *Paragraphs 6 to 8* specify that GRB and Additional Pension will be calculated using legislation in force at the time consolidation takes place.
258. *Paragraph 9* provides that the consolidated amount, including GRB, will be revalued annually by earnings.

Section 103: Effect of entitlement to guaranteed minimum pension

259. **Section 103** amends PSA 1993 to cater for those who have been in contracted-out employment for all or part of the period up until 5 April 1997 and are entitled to one or more Guaranteed Minimum Pensions. It introduces a method for calculating the reduction to be made from Additional Pension in respect of the years before the Flat Rate Introduction Year for those who reach State Pension age after 5 April 2020.
260. *Subsection (2)* amends PSA 1993, section 46, inserting new *subsections (1A) and (1B)*, so that the method of calculating a reduction under the provisions in section 46(1), do not apply where someone reaches State Pension age after 5 April 2020.
261. *Subsection (3)* inserts a new section 46A into PSA 1993.

*These notes refer to the Pensions Act 2008 (c.30)
which received Royal Assent on 26 November 2008*

262. Subsection (1) in new section 46A provides for the method of calculating the reduction from Additional Pension where someone reaches State pension age after 5 April 2020 and is entitled to one or more Guaranteed Minimum Pensions.
263. Subsection (2) in new section 46A provides that the calculation should be made in accordance with regulations.
264. Subsection (3) specifies that the reduction calculated under the regulations should not exceed the amount of the Additional Pension attributable to periods before the principal appointed day (for the PA 1995: 6 April 1997).
265. Subsection (4) provides that the effect of the reduction made under the regulations should be actuarially equivalent to the effect of the reduction that would have been made under PSA 1993 section 46(1) had section 46(1A) not been inserted.
266. Subsection (5) requires that the Secretary of State must commission a report from the Government Actuary or the Deputy Government Actuary to advise on how actuarial equivalence should be determined.
267. Subsection (6) requires that, in preparing that report, the Actuary must consult such persons as the Actuary considers appropriate.
268. Subsection (7) requires that the report must be laid before Parliament.
269. Subsection (8) requires that the Secretary of State, having considered the report, must make regulations determining actuarial equivalence for the purpose of this section.
270. Subsection (9) requires that if any recommendation in the report is not followed, the Secretary of State must lay a report before Parliament explaining why.

Section 104: Additional pensions etc: minor and consequential amendments

271. *Section 104* introduces Schedule 4 which contains minor and consequential amendments relating to the additional pension.

Schedule 4: additional pension etc: minor and consequential amendments

272. *Paragraph 2* amends section 21(5A)(c) SSCBA 1992 to correct an omission from the PA 2007. It provides for all earnings below the upper earnings limit for National Insurance to be taken into account for basic pension purposes where a person reaches State Pension age on or after 6 April 2010, maintaining parity with the current position;
273. *Paragraphs 3 and 4* make minor technical amendments to sections 39 and 39C SSCBA 1992 to make provision for tidying up and inserting cross references consequential to the introduction of new section 45AA (by paragraph 5 of the Schedule) and the consolidated amount as set out in new Schedule 4C (which is inserted by Schedule 3)
274. *Paragraph 5* inserts new section 45AA in the SSCBA 1992 to restore the rules that allow a person's working families and disabled person's tax credit entitlement and the predecessors to these benefits to count for SERPS purposes, which had been erroneously repealed as part of the tax credit changes.
275. *Paragraph 6* amends section 46 of the SSCBA 1992 to update cross references consequential to the introduction of the consolidated amount. In addition, the amendment allows for the consolidated amount to be disapplied in specific cases to be defined in regulations, for example, where a person dies before State Pension age and the inherited additional pension calculation needs to be modified to reflect that fact.
276. *Paragraphs 7 to 11* amend respectively sections 48A, 48B, 48BB, 48C and 51 of the SSCBA 1992 to insert the necessary references to the consolidated amount and ensure that the inherited additional pension is calculated correctly where the late spouse's or civil partner's entitlement had been adjusted as part of a financial settlement on divorce.

277. *Paragraph 12* amends paragraphs 2 to 12 of Schedule 4B to the SSCBA 1992 to clarify provision in respect of the level of earnings, following the introduction of the flat rate amount, on which the residual earnings-related element of the state second pension would accrue.
278. *Paragraph 13* amends paragraph 3(3) of Schedule 7 to the SSCBA 1992 to insert the necessary reference to new section 46A to ensure the consolidated contracted-out deduction is taken into account.
279. *Paragraph 14* inserts new section 148AB in the Social Security Administration Act 1992 which introduces provisions for earnings revaluation of the consolidated amount.
280. *Paragraphs 15 to 22* amend PSA 1993 to insert the necessary references to new section 46A in sections 46, 47, 48, 49, 164, 165 and 167 to ensure the consolidated contracted-out reduction is taken into account where appropriate.

Section 105: State pension credit: extension of assessed income period for those aged 75 or over

281. An assessed income period (AIP) is a specified period during which time the state pension credit customer does not need to report changes to his or her retirement provision. Currently the maximum length of an AIP is five years (except under transitional provisions).
282. *Subsection (2)* substitutes a new subsection (1) in section 9 of the State Pension Credit Act 2002 so that from 6 April 2009 claimants aged 75 or over will generally be given an indefinite AIP. Exceptions to this general rule are set out in the following subsections of section 9 so that, for example, an indefinite AIP may be brought to an end early on the occurrence of certain circumstances, such as where the claimant ceases to be treated as a member of a couple.
283. Under *Subsection (4)* which inserts a new subsection (6) into section 9, if the claimant has an AIP of five years or more which expires when he or she is aged 80 or over then the AIP will also be extended indefinitely. Again, however, this indefinite AIP may be brought to an end early in certain circumstances. This provision is temporary as five years after its coming into force every AIP that has been set for a claimant over 80 will either be an indefinite AIP or will be under five years.

Section 106: Contracting out: Abolition of all protected rights

284. *Section 106* repeals the main sections of the PSA 1993 which deal with protected rights. This includes sections that were inserted by the PA 2007 which provide for survivor benefits. The PA 2007 repealed several sections of the PSA 1993 which dealt with protected rights; section 106 repeals most of the remainder. This section, taken with the PA 2007 changes and section 145(2), will ensure that all rules for past protected rights are removed at the same time as contracting out on a defined contribution basis is abolished.

Part 3: Pension compensation

Chapter 1: Pension compensation on divorce etc.

Section 107: Scope of mechanism

285. This section sets out the scope of the pension compensation sharing mechanism that will enable compensation paid by the Pension Protection Fund to be shared on divorce or dissolution of a civil partnership.
286. *Subsection (2)* sets out that pension compensation rights will be shareable subject to certain exceptions that will be set out in regulations.

Section 108: Interpretation

287. This section sets out the intended meaning of particular words and phrases used throughout Chapter 1 of Part 3.

Section 109: Activation of pension compensation sharing

288. This section sets out the possible orders a court could make under the MCA1973, the Matrimonial and Family Proceedings Act 1984, the Civil Partnerships Act 2004 and the Family Law (Scotland) Act 1985 which, upon taking effect, would trigger the new pension compensation sharing regime. With regard to Scotland, the section also allows for pension compensation sharing to be provided for in a ‘qualifying agreement’ – an agreement between the parties to a marriage or partners in a civil partnership as to the sharing of assets on divorce or dissolution. Although not a court order, such agreements, if made in the correct form and registered, can be enforced through the courts.

Section 110: Activation of pension compensation sharing: supplementary (Scotland)

289. This section makes additional provision in relation to Scotland, concerning the manner and time limits within which the order or qualifying agreement is to be passed to the Board of the PPF.

Section 111: Creation of pension compensation debits and credits

290. Pension compensation sharing will be initiated by an order of the court specifying a percentage of the compensation rights which are to be “shared” (i.e. transferred). The effect of this section is that the rights to compensation are valued for the purpose of the transfer on “valuation day” – a day during the “implementation period” (see [section 115](#)) chosen by the Board.
291. *Subsection (4)* provides a regulation-making power to enable any description of benefit to be disregarded for the purposes of the compensation sharing calculation. For example, benefits due to a survivor as a consequence of a previous marriage or civil partnership.

Section 112: Cash equivalents

This section allows the Secretary of State to establish, in regulations, the method for the calculation of the cash equivalent in pension compensation sharing cases. It is intended that this will broadly reflect the principles set out for calculating cash equivalents for early leavers.

Section 113: Reduction of compensation

292. This section provides for the reduction of the transferor’s pension compensation payments by the percentage specified in the pension compensation sharing order (or qualifying agreement). *Subsection (3)(b)* provides for the calculation of a percentage, where, in Scotland, the order or agreement has specified an amount.

Section 114: Time for discharge of liability

Section 115: “Implementation period”

293. *Section 114* provides that the Board must implement the order conferring rights to compensation on the beneficiary of a pension compensation sharing order (or qualifying agreement) during the implementation period – defined in [section 115](#) as 4 months beginning on the date on which the sharing order (or qualifying agreement) takes effect or, if later, the date on which the Board of the Pension Protection Fund receives the relevant documents.

294. Regulation-making powers are provided to allow the Secretary of State to define the parameters of this requirement. Regulations may provide for:-
- the circumstances where the implementation period can be extended;
 - the information required (for example addresses, ages, National Insurance numbers)
 - the procedure for notifying the transferor and transferee of the day on which the implementation period begins; and
 - the effect on the implementation period where the pension compensation sharing order (or qualifying agreement) is the subject of an application for leave to appeal out of time.

Section 116: Discharge of liability

295. *Section 116* sets out the procedure which the Board must follow in order to discharge its liability in respect of a pension compensation credit. The beneficiary of a pension compensation order (or qualifying agreement) will in the first place receive a notice stating that they are entitled to periodic compensation and setting out the initial annual amount of that compensation (*subsection (2) and (7)*). The initial annual amount will have been calculated by the Board (*subsection (4)*) and will reflect the value of the rights transferred by the court (*subsection (5)*). The timing of payments, and calculation of their amounts in the future, is set out in *Schedule 5*.
296. *Subsection (8)* provides a power to make provision for what is to happen if the person dies before the Board makes its calculation and sends out the notice. For example, regulations will provide for survivor's benefits to be paid where appropriate.

Schedule 5: Pension compensation payable on discharge of pension compensation credit

297. *Schedule 5* makes detailed provision concerning the calculation of compensation payable to the transferee (former spouse or civil partner). The way the compensation is calculated depends upon the status of the transferee at the date the transfer takes place.
298. The Schedule is accordingly divided into four Parts:-
- *Part 1* is introductory, covering interpretation and the determination of a pension compensation age;
 - *Part 2* makes provision where transferees attain pension compensation age before or on transfer day;
 - *Part 3* makes provision where transferees attain pension compensation age after transfer day; and
 - *Part 4* provisions apply irrespective of the age of the transferee on transfer day.
299. The Schedule is intended to operate in a similar way to the corresponding provisions of Schedule 7 to the PA 2004 (Pension Compensation Provisions) as they apply to the calculation of pension compensation generally.
300. *Paragraph 3* makes provision about the age at which the transferee is to start receiving periodic compensation under the Schedule (the transferee's "pension compensation age"). In the usual case this will be when they reach the age at which the transferor starts to receive pension compensation payments.

Part 2: Transferee attains pension compensation age before or on transfer day

301. Where the transferee is, at the point the pension compensation order takes effect, over the pension compensation age they will receive periodic compensation for life

(*paragraph 4*). This compensation starts from the transfer day, and comprises the initial annual rate of the compensation plus any annual increases due to inflation under *paragraph 12*. It is subject to any regulations applying the compensation cap made under *paragraph 18*.

302. *Paragraph 5* provides that 50% of the pension compensation in payment, or payable, will be paid to the transferee's surviving partner (widow, widower or surviving civil partner) after the death of the transferee. Regulations may set out when the surviving partner will not be entitled to compensation. This will allow provision to be made for cases where the scheme rules under which the transferor's compensation is calculated did not provide for pensions to a surviving partner.

Part 3: Transferee attains pension compensation after transfer day

303. Where the transferee has not reached the pension compensation age at the point of transfer they will become entitled to receive compensation payments for life starting from when they do reach the pension compensation age (*paragraph 6*). That compensation will comprise the initial annual rate, adjusted by any increases for inflation, up until the point when they reach pension compensation age under *paragraph 8*, plus any annual increases due to inflation under *paragraph 17*. The compensation will be subject to the provisions for commutation (*paragraph 9*), early payment (*paragraph 10*), deferred payment (*paragraph 11*) and the compensation cap (*paragraph 18*).
304. *Paragraph 7* provides that 50% of the pension compensation in payment or payable, plus increases for inflation under *paragraph 17*, will be paid to the transferee's surviving partner after the death of the transferee. Regulations may set out exceptions. This will allow provision to be made for cases where the scheme rules, under which the transferor's compensation is calculated, did not provide for pensions to a surviving partner.
305. *Paragraph 8* provides for the initial rate of compensation to be increased to take account of the increases in prices, subject to a cap equal to inflation running at 2.5% every year, between the transfer day and the day before the day the transferee becomes entitled to payment. This is subject to the power in *Paragraph 20* for the Board of the Pension Protection Fund to alter the maximum rate of revaluation from 2.5% (the rate established by the amendments made by section 101 and Schedule 2).
306. *Paragraph 9* provides that the transferee can commute part of their pension compensation as a lump sum in prescribed circumstances, up to a maximum of 25%. The amount paid as a lump sum will be 25% of the pension compensation payable after reductions are made to take account of the compensation cap. The lump sum payable will be the actuarial equivalent of the commuted portion of the pension compensation calculated from tables designated for this purpose by the Board of the Pension Protection Fund. Regulations may set out the manner in which the option to commute may be exercised. The intention is that regulations will prescribe that the transferee can exercise the right to commute where the transferor had such a right and has not already exercised it before the transfer day. This paragraph also allows Secretary of State to change the maximum sum commuted by order.
307. *Paragraph 10* provides that regulations may prescribe when the transferee may receive pension compensation and lump sum compensation before their normal pension age. This applies to transferees under pension compensation age. The Board of the Pension Protection Fund will determine the actuarial reduction to be applied to compensation paid early. The intention is to prescribe that the transferee may take compensation early any time after they reach the age of 50. This provides for the transferee to take compensation early in the same way as the transferor would under Schedule 7 to PA 2004.
308. *Paragraph 11* will enable transferees in prescribed circumstances to delay receipt of the pension compensation until a date after they would reach the pension compensation age.

The Board will determine the amount by which the compensation will increase to take account of the delayed payment. This provides for the transferee to defer compensation in the same way as the transferor will be entitled to do once the amendment of Schedule 7 to PA 2004 made by paragraph 13 of Schedule 8 to the Act comes into force.

309. *Paragraph 12* will enable transferees who have a progressive disease in consequence of which death can reasonably be expected in the following six months, and who are not already receiving compensation in respect of a particular pension scheme, to apply for a lump sum equal to twice the annual rate of compensation which they would have been entitled to had they reached normal pension age.
310. *Paragraph 13* sets out the manner in which an application can be made, and provides for the Board of the PPF to require certain information, for example, concerning the transferee's illness.
311. *Paragraph 14* sets out how the Board must respond to an application, and provides for applications to be held over and determined at a later date where the transferee does not satisfy the conditions relating to their terminal illness, but may satisfy the conditions in a the next six months.
312. *Paragraph 15* means that a successful applicant will receive a lump sum calculated in accordance with sub-paragraph (2) in lieu of future rights to compensation.
313. *Paragraph 16* provides for the Board of the PPF to have access to certain information held by the Secretary of State to assist in dealing with applications for terminal illness lump sums.
314. The provisions in paragraphs 12 to 16 make corresponding provision in respect of transferees as the new paragraphs 25B to 25F inserted into Schedule 7 to the PA 2004 by Schedule 8 to this Act make in respect of PPF members more generally.

Part 4: Provisions applicable irrespective of age of transferee on transfer day

315. *Paragraph 17* provides for the amount of compensation derived from the transferor's service after 1997 to be increased every year in line with the increase in prices, subject to a maximum increase of 2.5% a year. This provides for the transferee to receive increases due to take account of inflation in the same way as the transferor. This is subject to the power in paragraph 20 for the Board to alter the maximum rate of increase from 2.5% (the rate established by the amendments made by section 101 and Schedule 2).
316. *Paragraph 18* allows the Secretary of State to set out in regulations how the compensation cap under paragraph 26(7) of Schedule 7 to the PA 2004 will apply to the compensation payable to the transferee. The intention is that the cap will apply in a way that ensures that both the transferee and transferor receive the appropriate levels of compensation without creating additional liabilities for the Board of the Pension Protection Fund or opportunities for evasion of the cap.
317. *Paragraph 19* provides that regulations may provide for compensation to be payable to partners and dependants of prescribed descriptions. This allows for the extension of compensation payment to surviving civil partners.
318. *Paragraph 20* provides that the Board of the Pension Protection Fund may determine the maximum indexation rates for the purposes of paragraphs 8 and 17. For the purposes of paragraph 17 this can only apply to future increases and can apply to all cases or those cases where entitlement arose after the determination. The Board of the Pension Protection Fund must consult anyone it considers appropriate and publish details of the proposed determination as it considers appropriate. The Board must consider any representations made. This is an equivalent power to that which applies in respect of the rates of revaluation and indexation in paragraph 29 of Schedule 7 to the PA 2004.

Section 117: Charges in respect of compensation sharing costs

319. The purpose of this section is to enable provision to be made to allow the Board of the Pension Protection Fund to recover, from the transferor and transferee, administrative costs incurred as a result of implementing the pension compensation share (for example the reasonable costs of valuing the rights to be shared and of calculating and making payments to an additional person). The precise amount of the charges will depend on the activities the Board will need to carry out in a particular case, but are likely to be similar to the charges parties pay to pension schemes where a pension is shared, for example in the region of £2,000 to £3,000 in total.
320. The intention is to use the regulation-making power to require that charges must relate to the costs incurred in implementing the pension compensation sharing order; and that the parties are offered a chance to pay charges at the outset so that they need not be deducted from compensation payments.
321. Regulations may include the following provisions:-
- *paragraph (a)*: postponement of the start of the implementation period. This could allow the Board of the Pension Protection Fund to postpone the start of the implementation until the administration charges have been met (see also section 115 (Implementation Period)) above;
 - *paragraph (b)*: off setting charges that a party owes to the Board against compensation payable to the party by the Board;
 - *paragraph (c)*: reimbursement. This could allow charges to be recovered from one party where that party has defaulted on meeting the administrative charges, and the charges have been met by the other party.
322. *Subsection (3)* controls how the regulations will deal with the question of apportionment of charges between the parties. If apportionment of charges is included in the pension compensation sharing order (or qualifying agreement) then charges will be apportioned by that provision. If there is no such provision, charges are attributable to the member of the couple whose compensation is being shared (the transferor).

Section 118: Supply of information about compensation in relation to divorce etc.

Section 119: Supply of information about compensation sharing

323. These sections allow the Secretary of State to make regulations relating to the Board of the Pension Protection Fund releasing information on pension compensation sharing cases.
324. *Section 118* provides for the Secretary of State to make regulations requiring information to be supplied by the Board, or about the calculation and verification of compensation rights, in connection with proceedings for divorce or dissolution of a civil partnership in England, Wales, Scotland and Northern Ireland. It also enables regulation to be made imposing charges for the provision of such information.
325. *Section 119* allows for the Secretary of State to make regulations requiring the Board of the Pension Protection Fund to provide prescribed persons with information regarding the implementation of pension compensation sharing. For example, regulations would prescribe that the parties to the divorce or dissolution of a civil partnership are provided with information of their future entitlements to compensation.

Section 120: Pension compensation sharing and attachment on divorce etc

326. This section gives effect to *Schedules 6 and 7*. Schedule 6 amends matrimonial and civil partnership legislation for England and Wales so that the Court can make pension

compensation sharing orders and orders for the attachment of pension compensation. Schedule 7 amends legislation with respect to Scotland.

***Schedule 6: Pension compensation sharing and attachment on divorce etc:
England and Wales***

327. *Schedule 6* makes various amendments to family legislation in respect of England and Wales to enable the courts to make pension compensation sharing orders and attachment orders in respect of pension compensation paid by the Pension Protection Fund.
328. *Part 1* amends MCA 1973.
329. *New section 24E* (Pension compensation sharing orders in connection with divorce proceedings) sets out the circumstances in which a pension compensation sharing order may be made. The circumstances mirror those set out in relation to the making of a pension sharing order in section 24B of the MCA 1973. The effect of this provision is that pension sharing will not be available in relation to rights which have already been shared between parties. Nor will it be available in relation to rights which are the subject of attachment (whether in favour of one of the parties or in favour of a third party).
330. *New section 24F* (Pension compensation orders: duty to stay) provides powers to the Lord Chancellor to specify in regulations when the implementation of a sharing order is delayed. This mirrors the existing provision made in relation to pension sharing orders made by section 24C and will allow time for any appeals arising from the order to be heard.
331. *New section 24G* (Pension compensation sharing orders: apportionment of charges) mirrors the existing provision made in relation to pension sharing orders by section 24D and provides that a court order may provide for the apportionment of any charge made by the Board of the Pension Protection Fund under section 117 (charges in respect of compensation sharing costs).
332. *Paragraphs 4 to 6* of the Schedule make consequential amendments to other provisions in the MCA 1973 following from the other amendments in the Schedule, such as adding cross-references to the new sections.
333. *Paragraph 7* makes provision in the MCA 1973 allowing for the making of attachment orders by inserting new sections 25F and 25G. These ensure that the court may make attachment orders in respect of Pension Protection Fund compensation in a similar way to the making of attachment orders in respect of pensions under the current provisions of sections 25B and 25D of the MCA1973.
334. An attachment order is an alternative to a pension sharing order that will be available to the court on divorce etc. where one of the parties has rights to pension compensation. It is a less drastic alternative in that it does not involve the complications of dividing the rights. An attachment order simply requires the Board to subtract a specified amount from each payment it makes to one party and send it instead to the other party.
335. *New section 25G* (Attachment of pension compensation: supplementary) mirrors section 25D and allows the Lord Chancellor, through regulations, to specify in relation to the implementation of an attachment order under section 25F the manner in which the Pension Protection Fund discharges its liability, the manner in which payment is calculated and is made, and the information to be provided in relation to payments.
336. *Paragraph 8* makes consequential amendments to section 31 (variation, discharge etc of certain orders for financial relief) of the MCA 1973 to reflect the amendments made to that Act by this Schedule, such as inserting necessary cross-references to the new sections and references to compensation sharing orders.
337. *Paragraph 9* inserts a new section 40B (appeals relating to pension compensation sharing orders which have taken effect) into the MCA 1973. This new section allows the

court to make such further orders as required to put the parties, including the Board of the Pensions Protection Fund, in the appropriate position following a successful appeal.

338. *Part 2* of the Schedule makes amendments to the Matrimonial and Family Proceedings Act 1984 so that the provisions of that Act relating to the making of financial provision after overseas settlements on divorce, such as the making of interim orders and orders relating to financial provision and property adjustment also apply to, and enable the making of, orders in relation to Pension Protection Fund compensation under the various provisions inserted into the MCA1973 by this Schedule.
339. *Part 3* amends the civil partnership legislation. The amendments correspond with those made to the matrimonial legislation by Part 1.

Schedule 7: Pension compensation on divorce etc: Scotland

340. *Schedule 7* makes various amendments to the Family Law (Scotland) Act 1985 (the '1985 Act') to enable the courts to make pension compensation sharing orders and, in certain circumstances, orders in respect of qualifying agreements which concern pension compensation paid by the Pension Protection Fund.
341. *Paragraph 2* amends section 8 (orders for financial provision) of the 1985 Act to provide that in an action for divorce either party to a marriage, and in an action for dissolution of a civil partnership either partner, can apply to the court for a pension compensation sharing order and a pension compensation earmarking order (an order under section 12B(2)) in an action for divorce or dissolution of a civil partnership. The paragraph also sets out the circumstances in which a pension compensation sharing order may be made. The effect of this provision is that compensation sharing will not be available in relation to rights which have already been shared between parties or civil partners. This provision also applies when a court is making an order with respect to a qualifying agreement which concerns pension compensation sharing.
342. *Paragraph 3* inserts a new section 8B (Pension compensation sharing orders: apportionment of charges) which mirrors the existing provision made in relation to pension sharing orders by section 8A and states that a court order may provide for the apportionment of any charge made by the Board of the Pension Protection Fund under Section 114 (charges in respect of compensation sharing costs).
343. *Paragraph 4* amends section 10 (sharing of value of matrimonial property or partnership property) of the 1985 Act to include new subsections 8B and 8(C) which mirror the existing provision at section 10(8A) and provide for the Scottish Ministers to make regulations in relation to the calculation, verification and apportionment of benefits under Pension Protection Fund compensation.
344. *Paragraph 6* inserts a new section 12B (order for payment of capital sum: pension compensation) which ensures that the court can make earmarking orders in respect of Pension Protection Fund compensation in a similar way to the making of earmarking orders in respect of pensions under the current provisions of sections 12A of the 1985 Act. An earmarking order is an alternative to a pension sharing order that will be available to the court on divorce or dissolution of a civil partnership where one of the parties has rights to pension compensation.
345. *Paragraph 8* amends section 16 (agreements on financial provision) of the 1985 Act to ensure that qualifying agreements in respect of pension compensation sharing can be dealt with by the court in the same as way as they would deal with qualifying agreements which concern pension sharing provision.
346. *Paragraph 9* inserts relevant definitions in the 1985 Act.

Chapter 2: Other provision about pension compensation

Section 121: Charges in respect of pension compensation sharing etc.

347. This section inserts a new section 168A into the PA 2004 which would give the Secretary of State the power to make provision through regulations for the purpose of enabling the Board of the PPF to recover charges, including allowing the Board to offset charges against PPF compensation.

Section 122: Amendments of Schedule 7 to the Pensions Act 2004

348. This section gives effect to [Schedule 8](#).

Schedule 8: Amendments of Schedule 7 to the Pension Act 2004

349. This Schedule makes amendments to Schedule 7 to the PA 2004 (Pension Compensation Provisions) which relates to the calculation of pension compensation with the aim of improving the way it works.

350. The amendments in Schedule 8 are intended to –

- clarify, through the amendments made in [paragraphs 2, 3, 17 and 18](#), the interpretation of admissible rules in paragraph 35 of Schedule 7. Both rule changes and discretionary increases made, in relation to the scheme, in the period immediately before the insolvency event are ignored for the purposes of calculating pension compensation under Schedule 7.
- provide, through the amendments made in [paragraphs 4 to 9 and 14](#), for a terminal illness lump sum to be paid to members, on application, who have a progressive disease in consequence of which death can reasonably be expected in the following six months. The main provisions for the new terminal illness payment are as follows:
 - *New paragraph 25B* inserted into Schedule 7 to the PA 2004 will enable members who have a progressive disease, and who are not already receiving compensation in respect of a particular pension scheme, to apply for a terminal illness lump sum payment.
 - *New paragraph 25C* sets out the manner in which an application must be made and allows the Board of the PPF to require the application to include certain information. The Board could use this power for example, to obtain information concerning the member's illness.
 - *New paragraph 25D* sets out how the Board must respond to an application, and allows for applications to be held over and determined at a later date where the member does not satisfy the conditions relating to their terminal illness, but may satisfy the conditions in the next six months.
 - *New paragraph 25E* means that a successful applicant will receive a lump sum calculated in accordance with sub-paragraph (2) (twice the annual rate of compensation which they would have been entitled to had they reached normal pension age) in lieu of future rights to compensation.
 - *New paragraph 25F* gives for the Board of the PPF access to certain information held by the Secretary of State for Work and Pensions to assist in dealing with applications for terminal illness lump sums.
- remove an anomaly in the treatment of pension credit members of schemes which enter the Fund. Through amendments made by paragraphs [10 to 12](#), where a pension credit member (i.e. a member whose rights derive from a pension sharing order or qualifying agreement) was entitled to revaluation under the scheme in which they

were a pension credit member, they will be entitled to receive a revaluation addition under paragraph 21 of Schedule 7 like other scheme members.

351. *Paragraph 13* inserts powers to specify in regulations when a person may choose to delay receipt of pension compensation and to receive an adjusted amount from a later date. The regulations allow such a delay, for example, when a person has several small tranches of entitlement under their scheme rules payable at different dates, but would rather delay receipt of the earlier tranches and receive a higher income at a later time.
352. *Paragraph 15* make amendments which deal with schemes whose rules would provide for a higher, or lower, rate of pension payment after a period of time, (for example, upon the pensioner reaching a certain age). Currently, the compensation provisions in Schedule 7 to the PA 2004 specify that compensation is calculated based on the rate of pension a person would be entitled to on the assessment date, or on reaching their normal pension age. The provisions introduced by this paragraph will enable regulations to provide that a different amount of compensation is to be paid. For example, the compensation could reflect the level of pension which would have been payable at the time the compensation is paid.
353. *Paragraph 16* provides for more consistent wording in the provisions which set out the methods for establishing a member's normal pension age.

Section 123: Consequential amendments

354. This section makes a consequential amendment to the PA 2004 following from the creation of pension compensation sharing.

Part 4: Financial Assistance Scheme

Section 124: Financial Assistance Scheme

355. This section amends section 286(2) of the PA 2004 (financial assistance scheme for members of certain pension schemes). Currently, the definition of a “qualifying member” who may qualify for payments from the Financial Assistance Scheme (the FAS) only includes those members who have not received, or who are unlikely to receive, all their scheme benefits from their pension scheme.
356. Following the Young Review, the Government’s stated intention is to take over the available assets remaining in the qualifying schemes and make all the associated payments itself. This means that, as well as making payments to those whose pensions are not fully covered, the FAS will also make payments to many of those people whose benefits would have been met in full by their pension schemes.
357. This section amends the definition of “qualifying member” (*subsection (2)*) to include this latter group of scheme members. Once the section is brought into force and the amendment to section 286(2) is made, a qualifying member in relation to a qualifying pension scheme will no longer be restricted to someone who will not, or who will not be likely to, receive their benefits in full from the scheme. Instead a qualifying member will be someone who is or was a member of a qualifying scheme at a time which may be prescribed and who satisfied prescribed conditions at such time as may be prescribed.
358. The section also amends the definition of “qualifying pension scheme” to take account of the changes to the definition of “qualifying member”. The changes to “qualifying member” mean that references to schemes having insufficient assets no longer appear in that definition and so the definition of “qualifying pension scheme” is amended to limit the FAS provisions to schemes which are under-funded. The section also removes a definition and other wording (*subsection (6)*) which is no longer needed as a result of the amendments described above.
359. *Subsection (3)* allows for exceptions to one aspect of the definition of a FAS qualifying pension scheme. There are a small number of schemes which cannot qualify for the

*These notes refer to the Pensions Act 2008 (c.30)
which received Royal Assent on 26 November 2008*

FAS or the PPF because their employer went insolvent before the PPF start date, thus preventing eligibility for the PPF, and the pension scheme delayed winding up until after that date, thereby also preventing FAS qualification. This amendment will enable exceptions to be made to the winding-up date qualification criterion, to enable these schemes to be FAS qualifying schemes.

360. *Subsection (5)* removes the need for an employer-related condition as part of the definition of a FAS qualifying pension scheme. This will allow greater flexibility for further changes to the FAS eligibility criteria if necessary, in addition to those provided for by the Financial Assistance Scheme (Miscellaneous Amendments) Regulations 2008, which enable certain schemes which wound up under funded with solvent employers to qualify for the FAS.
361. *Subsections (7) to (10)* provide that regulations providing for such an exception are to be subject to the negative resolution procedure unless they are included with other provisions in regulations that are subject to affirmative resolution.

Section 125: Restriction on purchase of annuities

362. Regulations were made, following the PA 2007, to protect scheme assets by restricting the purchase of annuities. The restriction imposed by those regulations expired on 25th June 2008. This section extends the restriction on purchasing annuities. It also introduces a sanction (s.286A(5) to (7)) which allows the FAS scheme manager to make void any annuity contract entered into contrary to the restriction.
363. Purchases of annuities or agreements to purchase can be made if trustees had entered into a binding commitment prior to the regulations being in force, or if the FAS scheme manager approves a written application from a trustee to annuitise. Such approval can be given subject to appropriate conditions.
364. Both the restriction and the power to make annuity contracts void are effective from 26th June 2008, the day following the expiry of the restriction.

Part 5: Miscellaneous

Section 126: Amendments to the Pensions Act 2004 relating to contribution notices and financial support directions

365. *Section 126* inserts *Schedule 9*. This Schedule amends sections 38 and 39 of the PA 2004, which set out the Pensions Regulator's powers to issue a contribution notice where certain acts or deliberate failures to act have occurred. It also amends sections 43 and 44 of the same Act which set out the Regulator's power to issue a direction requiring that the recipient put in place appropriate financial support for an occupational pension scheme.

Schedule 9 – contribution notices and financial support directions under Pensions Act 2004

366. *Paragraph 1* introduces the amendments made by Schedule 9.
367. *Paragraph 2(1)* inserts reference to the material detriment test into section 38(5)(a) of the PA 2004 (main purpose or one of the main purposes of act or failure to prevent recovery of employer debt under section 75 of the PA 1995 etc.)
368. *Sub-paragraph (2)* inserts section 38A into the PA 2004.

38A Section 38 contribution notice: meaning of “material detriment test”

369. *Subsection (1)* of new section 38A enables the Pensions Regulator to issue a contribution notice where it is of the opinion that an act or failure to act has detrimentally

affected in a material way the likelihood of the accrued scheme benefits being received (the “material detriment test”).

370. *Subsection (2)* sets out for the purposes of section 38A what are accrued scheme benefits.
371. *Subsection (3)* defines “the relevant time” in the case of an act or a failure to act and specifies that in the case of acts or failures to act forming part of a series, any reference to the act or failure is a reference to the last of those acts or failures.
372. *Subsection (4)* provides that the Regulator must have regard to such matters as it considers relevant in considering whether the material detriment test is met; this includes certain specified matters where relevant.
373. *Subsection (5)* defines “scheme obligation”, which includes actual or contingent obligations towards the scheme or relevant transferee scheme.
374. *Subsection (6)(a)* defines “relevant transferee scheme”, and *subsection 6(b)* provides that references to the assets or liabilities of any relevant transferee scheme relate to those assets or liabilities only in relation to persons who were members of the scheme before the relevant time.
375. *Subsection (7)* provides that for the purposes of subsection 6(a) a transfer of accrued rights of members of a scheme to another pension scheme includes a reference to the extinguishing of those accrued rights as a result of an obligation to make a payment or asset transfer to the other scheme.
376. *Subsection (8)* defines “work-based pension scheme” and provides that any reference to rights which have accrued be read in accordance with section 67(A)(6) and (7) of the PA 1995.
377. *Subsection (9)* provides that certain provisions of the PA 2004 (relating to the Pension Protection Fund and the Financial Assistance Scheme) are to be disregarded for the purposes of deciding whether an act or failure has had a detrimental effect under this section.
378. *Subsection (10)* provides the Secretary of State with a regulation-making power to amend any provision of subsections (4) to (8).

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

379. This section sets out how a person may make out a statutory defence to a contribution notice issued under the material detriment test.
380. *Subsection (1)* sets out where this section applies, namely where the Regulator has issued a warning notice under section 38 of this Act, wholly or partly because in its opinion the material detriment test is met.
381. *Subsection (2)* provides that a contribution notice must not be issued on grounds of material detriment if the Regulator is satisfied that certain conditions under this section are met.
382. *Subsections (3) to (7)* set out the conditions for the defence: this provides that the person who wishes to raise the defence must satisfy the Regulator that he or she satisfied conditions A and C, and where relevant condition B. Those conditions provide for a three step process.
383. Condition A is that before becoming a party to the act or failure, the person gave due consideration to the extent to which the act or failure to act might detrimentally affect in a material way the likelihood of accrued scheme benefits being received.

*These notes refer to the Pensions Act 2008 (c.30)
which received Royal Assent on 26 November 2008*

384. Condition B is that where as a result of that consideration there was considered to be a potential detriment, the person took all reasonable action to eliminate or minimise the extent to which it would have a detrimental effect on the likelihood of accrued scheme benefits being received.
385. Condition C is that, having regard to all the circumstances prevailing at the time in question, it was reasonable for the person to conclude that the act or failure to act would not detrimentally affect in a material way the likelihood of accrued scheme benefits being received.
386. *Subsection (6)* gives further detail about what will be required in order for a person to be regarded as having given the consideration referred to in Condition A, and that is that the person must have made the enquiries and done the other acts that a reasonably diligent person would have made or done in the circumstances.
387. *Subsection (7)* defines “the relevant time”, and makes clear that the person’s assessment of whether or not an act or failure might detrimentally affect the likelihood of scheme benefits being received is to be judged by reference to the circumstances prevailing at that time and of which that person was aware or ought reasonably to have been aware.
388. *Subsections (8) to (11)* set out how the defence applies in relation to a series of acts or failures.
389. *Subsection (8)* provides that the person must show either that the three conditions are met in relation to each of the acts or failures in the series, or that in relation to each of those acts or failures, it formed part of a group of acts or failures (as selected by the person raising the defence) in relation to which the matters set out in subsection (9) are shown.
390. *Subsection (9)* sets out the matters to be shown to meet conditions A, B and C in relation to a group of acts. They are that before becoming party to the first act or failure in the group, the person must show that condition A is met in relation to the overall effect of the group; condition B must be met in relation to that overall effect, and condition C must be met in relation to each of the acts or failures in the group.
391. *Subsection (10)* provides that where condition C cannot be met in relation to any act in the group, the defence for the preceding act(s) would stand where the three conditions A - C had been met, and those preceding acts or failures would be regarded as a separate group. *Subsection (10)(b)* provides that the person could then select another group for the defence, which could include the particular act or failure concerned, and any subsequent one, and the person would then need to show the matters set out in subsection (9) in relation to the new group.
392. *Subsection (11)* provides that in a case where the person cannot show those matters set out in subsection (8) in relation to each of the acts or failures in the group, but can in relation to some of them, those which he can would not be taken into account for the purposes of a series of acts (under new sections 38A and 38(12) of the Act).
393. *Subsection (12)* defines terms used in this section and also applies the disapplication of provisions relating to the Pension Protection Fund and the Financial Assistance Scheme for the purposes of this section.
394. *Subsection (13)* provides the Secretary of State with a regulation-making power to amend this section.
395. *Paragraph 3* of the Schedule provides that the Pensions Regulator must issue a code of practice setting out the circumstances in which it expects to issue contribution notices under the material detriment test.
396. *Paragraph 4* stipulates that where a warning notice is issued by virtue of the material detriment test, the Pensions Regulator’s standard procedure must provide for the

warning notice to explain the general effect of section 38B, and give the person the opportunity to make out the statutory defence that section.

397. *Paragraph 5* provides that regulations under section 38A(10) or section 38B (13) are subject to affirmative resolution.

Contribution notices: acting or failing to act otherwise in good faith

398. *Paragraph 6* removes the words “otherwise in good faith” from section 38(5)(a)(ii) of the PA 2004.

Whether reasonable for the Pensions Regulator to issue contribution notice

399. *Paragraph 7* further amends section 38 of the PA 2004.
400. *Sub-paragraph (2)* amends *subsection (3)* by setting out an additional condition that must be met before the Regulator can consider it reasonable to impose a liability on the person to pay the sum in the contribution notice; that is, the Regulator must have regard to all the circumstances of the case as well as such other matters the Regulator considers relevant (including matters set out in *subsection (7)*).
401. *Sub-paragraph (3)* adds to the relevant matters set out in *subsection (7)*; that is, the Regulator must also have regard, where relevant, to the value of any benefits the person (to whom the Regulator is considering imposing a liability to pay a sum specified) receives, or is entitled to receive, directly or indirectly from the employer or under the scheme, and also to the likelihood of any relevant creditors being paid and the extent to which they are likely to be paid.
402. *Sub-paragraph (4)* defines “relevant creditors”.

Contribution notices: series of acts or failures

403. *Paragraph 8* makes a clarificatory amendment section 38 to enable the Pensions Regulator to issue a contribution notice in relation to a series of acts or failures to act. For the purposes of section 39 of the Act the relevant time in relation to such a series is determined by reference to whichever of the acts or failures in the series that the Regulator considers most appropriate.

39A Section 38 contribution notice: transfer of members of the scheme

404. *Paragraph 9* inserts a new section 39A into the PA 2004.
405. *Subsection (1)* provides that the new section applies where the Regulator is of the opinion that in relation to a scheme (known as “the initial scheme”), one of the tests for issuing a contribution notice under section 38 are met, and the other conditions in that section for issuing such a notice are also met, and further that the accrued rights of at least two persons have been transferred out of the scheme to one or more other work-based pension schemes (that is, a “transferee scheme”).
406. *Subsection (2)* of the new section provides that where the section applies, the Regulator may issue a contribution notice in relation to any transferee scheme. It further provides that references in sections 40 and 41 to the scheme are to the transferee scheme.
407. *Subsection (3)* provides that, except where *subsection (5)* applies, references to the scheme in section 39 are references to either the initial scheme or the transferee scheme whichever the Regulator considers most appropriate.
408. *Subsection (4)* provides that where section 39 has effect in relation to the transferee scheme, references in that section to the debt under section 75 of the PA 1995 is to be taken as a reference to so much of that debt as is to be attributable to those members of the transferee scheme who were members of the initial scheme.

409. *Subsection (5)* makes provision for the Secretary of State to introduce regulations to permit the Regulator to calculate the sum specified in the contribution notice in a different way from that specified under 39 where appropriate, to take account of transfers into schemes to which section 75 of the 1995 Act does not apply (section 75 of the 1995 Act establishes the debts from employers to pension schemes).
410. *Subsection (6)* enables the Pensions Regulator to issue a direction to the trustees of managers of a transferee scheme requiring them to take certain steps to ensure that the sum payable under the contribution notice is applied for the benefit of the affected members (that is, those who have transferred in from the affected initial scheme).
411. *Subsection (7)* provides that failure by the trustees or managers to take all reasonable steps to comply with a direction under subsection (6) may attract a civil penalty under section 10 of the 1995 Act.

39B Section 39A: supplemental

412. Section 39B makes provision supplemental to section 39A.
413. *Subsections (1) and (2)* define the “transferee scheme” and provide that for the purposes of section 39A(1) and 39B(1) it does not matter whether the transfer into the transferee scheme was directly from the initial scheme or whether it was as a result of one or more.
414. *Subsection (3)* provides that in sections 39A and 39B, any references to the transfer of accrued rights include references to the extinguishing of those accrued rights as a result of the obligation to make a payment, or transfer an asset, to the transferee scheme.
415. *Subsection (4)* provides definitions that are relevant to this section.
416. *Subsection (5)* provides that this section applies even if the initial scheme has been wound up as a result of the transfer or otherwise ceases to exist. *Subsection (6)* sets out the application of references to a scheme in section 39A(1) in a case to which subsection (5) applies.
417. *Subsection (7)* provides that nothing in this section prevents the Regulator from issuing a contribution notice in relation to the initial scheme, that is, the transferor scheme.
418. *Subsections (8) and (9)* permit the Secretary of State to make regulations in order to apply sections 39A and 39B to a scheme or other arrangement in any case where the accrued rights of pension scheme members are transferred or extinguished in connection with certain specified events.
419. *Subsection (10)* provides that regulations made under subsection (8) may have effect from the date of any announcement by the Secretary of States of the intention to legislate. Paragraph 16 of the Schedule provides that the first set of regulations made section 39B(8) would have effect from 20 October 2008.

43A Financial support directions: transfer of members of the scheme.

420. Section 43A and 43B provide that where some or all of the members of a pension scheme to which section 43 of the PA 2004 (financial support directions) applies have been transferred to one or more other work-based schemes the Regulator may issue a financial support direction in relation to any scheme that contains the affected members. These sections set out parallel provisions in respect of financial support directions to those at sections 39A and 39B.
421. *Paragraph 11* of the Schedule amends section 306 of the PA 2004 to provide that any direction issued by the Regulator under either section 39A(6) or 43A(3) overrides the scheme rules to the extent that there would otherwise be a conflict. *Paragraph 13* provides that the powers to issue a direction under those sections are reserved regulatory functions of the Regulator.

Financial support directions: meaning of “insufficiently resourced”

422. *Paragraph 14* amends section 44(3) of the PA 2004 to provide that, for the purposes of financial support directions, the “insufficiently resourced” test is satisfied if the additional conditions listed are met.
423. *Sub-paragraph (2)* amends subsection (3) to add a new condition which if met means that the “insufficiently resourced” test would be met. The effect of the new condition is that the Regulator may take into account the aggregate value of the resources or two or more persons who are associated with or connected to the employer, who are furthermore associated with or connected to each other, and determine whether that aggregate value is not less than the relevant deficit.

Effect of amendments made by the Schedule

424. *Paragraph 15(1)* specifies that the amendments made by the Schedule have effect in relation to acts or failures first occurring on or after 14 April 2008.
425. *Sub-paragraph (2)* provides that the amendments made by paragraph 8 (contribution notices: series of acts or failures to act) have effect for the material detriment test where at least one of the acts or failures occurs or first occurs on or after 14 April 2008, and for all other purposes, where at least one of the acts or failures to act occurs on or after the day on which the Act receives Royal Assent.
426. *Sub-paragraph (3)* provides that the amendments made by paragraphs 9 and 10 (contribution notices and financial support directions: transfer of members of the scheme) have effect in relation to any case where rights are transferred or extinguished on or after 14 April 2008.
427. *Sub-paragraph (4)* provides that the amendments made by paragraphs 14 (financial support directions: meaning of “insufficiently resourced”) have effect to enable the Pensions Regulator to make a financial support direction by reference to any time falling on or after 14 April 2008.

Transitional Provisions

428. *Paragraph 16 (1)* provides that for the first set of regulations made under this power, the regulation-making power at 39B(8) would have retrospective effect to 20 October 2008.
429. *Paragraph 16 (2)* provides that for the first set of regulations made under this power, the regulation-making power at 43B(10) would have retrospective effect to 20 October 2008.

Section 127 “Review of the initial operation of sections 38A and 38B of the Pensions Act 2004

430. *Section 127* requires the Secretary of State to undertake a review of the operation of sections 38A and 38B of the Act during the period of 4 years from the date these provisions come into force. The Secretary of State must set out the resulting conclusions in a report to be laid before Parliament no later than 5 years from that date.

Section 128: Pension sharing: power of Court of Session to extend time limits

431. For a pension sharing order (or a corresponding order) made under Scottish matrimonial law to come into effect, it must be received by the person responsible for the pension arrangement, together with certain matrimonial documents, within two months of the date of the order. If that period has already expired, one of the persons with an interest in the order may apply to the sheriff for an extension of time. Similarly, such an application may be made to the sheriff when such an order is made under Scottish matrimonial law in respect of shareable state pension rights.

432. In Scotland most divorces are heard by the sheriff but some divorces are heard in the Court of Session. However, there are currently no powers to enable the Court of Session to extend the two month period on application if it has already expired.
433. *Section 128* gives the Court of Session the same powers as the sheriff in relation to extending the two month period. This will allow one of the parties with an interest in a pension sharing order or a corresponding order made either by the Court of Session or the sheriff to apply to either jurisdiction for an extension of the two month period.

Section 129: Interest on late payment of levies

434. This section gives effect to *Schedule 10*.

Schedule 10: Interest on late payment of levies

435. *Schedule 10* provides the Secretary of State with a discretionary power to make regulations allowing for a prescribed rate of interest to be charged on late payment of: the general levy (*paragraph 1*) (charged to cover the costs of running, amongst other things, the Pensions Regulator and the Pensions Ombudsman); the Pension Protection Fund administration levy (*paragraph 3*); the pension protection levy (*paragraph 5*); the fraud compensation levy (*paragraph 7*); and the Pension Protection Fund Ombudsman levy (*paragraph 8*).
436. Interest will be due to the creditor of the debt, which is the Secretary of State except in the cases of the pension protection levy and the fraud compensation levy, where the debts payable in relation to these levies are debts to the Board of the Pension Protection Fund.
437. There is provision for the Regulator to collect interest in respect of all of the levies in the Schedule, on behalf of the Secretary of State or the Board of the Pension Protection Fund.
438. There may be circumstances in which it would be inappropriate to charge interest on late payment of levies. For example, a scheme may have been incorrectly billed and the review of its invoice might lead to a delay. This Schedule therefore includes a power to prescribe in regulations circumstances in which interest may be waived (new section 175A(5)(b) of the PSA 1993, 117A(5)(b), 181A(5)(b) and 189A(5)(b) of the PA 2004).

Section 130: Payments to employers

439. This section amends section 37 of the PA 1995, which imposes conditions which must be satisfied before trustees can authorise a payment to the sponsoring employer from the funds of a trust-based occupational pension scheme. Section 37 was amended by the PA 2004, but that amendment inadvertently did not carry forward an exemption from the strict conditions of section 37 which previously existed for certain administrative and other payments.
440. *Section 37* is primarily intended to ensure that funds cannot be removed from a defined benefit scheme unless it is sufficiently well funded, and the trustees are satisfied that a payment is in the interests of the scheme's members. The exemption introduced by this section broadly replicates the payments which were previously exempt from section 37 before it was revised by the PA 2004. The exemption covers payments which are exempt from the tax charge which normally applies to authorised surplus payments to an employer from the funds of a scheme (for example, the payment of wages to the people who administer the scheme).

Section 131: Appointment of trustees

441. Section 7 of the PA 1995 allows the Pensions Regulator to take action to appoint trustees where it is satisfied that this is necessary and only in certain specific circumstances.

Where appropriate these trustees can be independent, that is, professional trustees that are fully independent of the employer or any other interest in the scheme. Examples of the circumstances in which this can be done are if the Regulator is of the opinion that the existing trustees of a scheme do not have the necessary knowledge for proper administration or if there isn't a sufficient number of trustees.

442. The section extends this power to allow the Pensions Regulator to appoint trustees in certain circumstances where it is reasonable to do so, instead of necessary. The "necessary test" means that the Regulator may only appoint a trustee if it is satisfied that there is no other option available and it must act almost as a last resort. A "reasonable test" would enable the Regulator to appoint a trustee where there are a range of options available but the appointment is the most appropriate action for the scheme.
443. It also amends section 7(3) of the PA 1995 to extend the circumstances in which this power may be exercised, to enable the Regulator to appoint trustees in order to protect the interest of the generality of scheme members. It also makes a change consequential on the addition of a further subsection to section 7(3).

Section 132: Intervention by Regulator where scheme's technical provisions improperly determined

444. Section 222(4)(c) of the PA 2004 requires trustees to follow prescribed principles when determining the actuarial methods and assumptions to be used in the calculation of a scheme's technical provisions. These are prescribed in regulation 5(4) of the [Occupational Pension Schemes \(Scheme Funding\) Regulations 2005 \(SI 2005/3377\)](#). One of the principles is that the methods and assumptions must be chosen prudently by the trustees. The requirement for prudence implements obligations under the European occupational pensions directive (Directive [2003/41/EC](#)).
445. Section 222(4)(c) of the PA 2004 is not currently included in the circumstances, set out in section 231(1), in which the Pensions Regulator can exercise its powers (set out in section 231(2)) in respect of the scheme funding provisions. The Pensions Regulator cannot therefore make use of the powers in section 231(2) if the sole ground of concern is that the actuarial methods or assumptions used in the calculation of the technical provisions do not appear to have been chosen prudently.
446. The actuarial assumptions used in a valuation of a pension scheme are critical in establishing a scheme's correct funding position and, therefore, an appropriate level of contributions to the scheme. This section ensures that the Regulator can use the powers in section 231(2) (such as issuing directions on the scheme's actuarial calculations or imposing a schedule of contributions) where the sole ground of concern is that the actuarial methods or assumptions do not appear to be prudent.

Section 133: Delegation of powers by the Regulator

447. [Section 133](#) amends the PA 2004 to give the Pensions Regulator more flexibility in the delegation of its powers. This section firstly enables the Regulator to contract out the power to exercise prescribed functions, which will be set out in regulations, to any persons (whereas the PA 2004 also requires the persons and circumstances to be set out in regulations). Secondly, it enables the Regulator to contract out the determination whether to exercise certain functions related to the compliance regime, which are listed in the section. Finally, section 133 repeals paragraph 28 of Schedule 1 to the PA 2004, which concerns the ability of the Regulator to pay for expenses, as this provision is no longer required.

Section 134: Exclusion of transfers out in certain cases

448. This section will enable the Secretary of State to make regulations preventing individuals, in prescribed circumstances, from taking advantage of a right under

existing legislation to transfer funds from a prescribed pension scheme to another scheme.

449. The power in this section can be used in particular to prevent transfers out of the scheme established under section 67. Certain transfers out of the scheme may be allowed (because the Regulations do not have to ban all transfers out). For example, where someone wants to aggregate all of their pension pots in different schemes into one pension fund in order to purchase an annuity.

Section 135: Additional Class 3 contributions

450. *Section 135* enables individuals who reach State Pension age between 6 April 2008 and 5 April 2015 to buy up to an additional 6 years of voluntary Class 3 National Insurance contributions for tax years from 1975-76, providing they already have 20 existing qualifying years. A qualifying year for these purposes is one in which a person has paid, or been credited with, National Insurance contributions of a relevant class; it includes any years during which a person was precluded from regular employment by responsibilities at home. The amendments made by this section will come into force on 6th April 2009.

Section 136: Additional Class 3 contributions (Northern Ireland)

451. *Section 136* makes the same amendments for Northern Ireland.

Section 137: Official pensions: adjustment of increases in survivors' pensions

452. Section 59 of the Social Security Pensions Act 1975 deals with the index-linking of public service pensions. Section 59(5ZA) was inserted in 1990 to prevent an element of "double indexation" arising in relation to the "guaranteed minimum pension" or "GMP" payable to survivors of members of public service pension schemes. Double indexation of the GMP might occur if it is increased by both legislation relating to public service pension schemes and by legislation which provides for index-linking of state pensions.
453. A GMP arises where a pension scheme member was contracted out of the additional state pension for service between tax years 1978/79 and 1996/97. When a public service pension scheme member dies, a member's widow is entitled to half of a member's GMP, but the member's widower is only entitled to half of the member's GMP accrued since 1988/89.
454. Section 59(5ZA) fails to take account of the difference in GMP entitlement between widows and widowers and it does not cover civil partners.
455. This section amends section 59(5ZA) so that it reflects the different guaranteed minimum pension entitlements of widowers when compared to widows. It also extends the operation of section 59(5ZA) so that it will apply to future payments of pensions to civil partners.

Section 138: War pensions: effect of later marriage or civil partnership

456. *Section 138* amends section 168 of the PA 1995. Section 168 provides for the effect of remarriage on receipt of war pensions to widows. It refers only to remarriage and to widows, but the same rules are applied in relation to widowers, and in relation to civil partnership. The Ministry of Defence's war pensions instruments have already been amended to this effect. The section makes corresponding amendments to section 168.

Section 139: Polish Resettlement Act 1947: effect of residence in Poland

457. This section amends section 1(3) of the [Polish Resettlement Act 1947 \(c.19\)](#) to remove the provision preventing payments being made under the [Pensions \(Polish Forces\) Scheme 1964 \(S.I. 1964/2007\)](#) to or in respect of beneficiaries who are resident in Poland. This will enable pensions to continue to be paid to beneficiaries who become

resident in Poland from 1 May 2004. The section also enables the Scheme's residency restriction to be retained for beneficiaries who became resident in Poland before that date.

458. This section also provides a power to make provision in the Scheme for backdated payments to be made to or in respect of those who became resident in Poland from 1 May 2004 to the date the amended section 1(3) comes into force in relation to any part of that period.

Section 140: Pre -1948 insurance affecting German Pensions Entitlement

Section 141: Pre-1948 insurance: supplementary

459. *Section 140* enables a UK pensioner who has a German pension entitlement which is reduced or extinguished by a period of pre-1948 insurance to request that they are deemed not to have had such insurance. The section applies to people who entered the UK as unaccompanied children from Germany, Austria, Czechoslovakia or Poland (known as the 'Kindertransport') between 2 December 1938 and 31 May 1940. It is intended to be used by former members of the 'Kindertransport'. The section also gives the Secretary of State a power to ensure that the pensioner's UK pension entitlement is not adversely affected by the exercise of the powers conferred by this provision.
460. It is supplemented by *section 141* which explains what a period of pre-1948 insurance is.

Section 142: Disclosure of information relating to state pension credit recipients

461. This section enables the Secretary of State to make regulations to supply social security information about state pension credit recipients to energy suppliers, or persons providing services to the energy suppliers or Secretary of State.
462. The regulations may authorise energy suppliers to share their customer information with the Secretary of State or a service provider. This is intended to enable either the Secretary of State or a third-party to match DWP and energy supplier data to identify the relevant state pension credit recipients.
463. The regulations may also set out a number of matters including the purposes for which information may be supplied and used, and provide for a criminal offence to penalise the unauthorised disclosure of this information.
464. The regulations will be subject to the draft affirmative resolution procedure.

Part 6: General

Section 143: Orders and regulations

465. Most statutory instruments containing an order or regulations under this Act will be subject to the negative resolution procedure (i.e. they can be annulled on a resolution of either House of Parliament).
466. Those that have to be approved by both Houses (affirmative procedure) are listed in *subsection (5)*.

Section 144: Orders and regulations: supplementary, and

Section 145: Power to make further provision

467. *Section 144* permits an order or regulations under powers conferred by the Act to include consequential or transitional provision, etc. It also makes other provision about how those powers may be exercised.

468. *Section 145* allows the Secretary of State to make further provision in connection with giving the Act full effect and, in particular, allows him to amend primary or secondary legislation in connection the abolition of all protected rights for contracting out under section 106 and with the introduction of the scheme to be established under section 67.

Section 146: Pre consolidation amendments

469. This section (in association with the repeal of section 321 of the PA 2004 by Part 6 of Schedule 10 to the Act) re-enacts a pre-consolidation order making power so that legislation made subsequent to the passing of the 2004 Act can also be included within the scope of such an order.
470. *Subsection (1)* provides a power to modify enactments listed in *subsection (2)* where in the opinion of the Secretary of State such modifications facilitate, or are desirable in connection with, the consolidation of any of those enactments.
471. *Subsection (3)* specifies that no order may be made unless a Bill consolidating the relevant enactments has been presented to either House of Parliament.
472. *Subsection (4)* provides that a pre-consolidation order made under this power may be brought into effect only by a provision contained in the Act which results from the consolidating Act.
473. *Subsection (5)* excludes from the scope of an order made under this power any provision which would fall within the legislative competence of the Scottish Parliament.

Section 147: General financial provisions

This section provides that expenditure incurred by the Secretary of State in consequence of the provisions of this Act is to be paid out of money provided by Parliament. Any sums received by the Secretary of State as a consequence of the provisions of this Act will be returned to the Consolidated Fund (the repository for most Government revenues).

Section 148: Repeals

474. This section introduces Schedule 11 which lists the enactments repealed by this Act.

Section 149: Commencement

475. This section provides for commencement (see below).

Section 150: Extent

476. The Act extends to England and Wales and Scotland. The following provisions also extend to Northern Ireland:
- In Part 1, Chapters 5 and 6 and section 99.
 - Section 96 (2) to (7)
 - Section 97
 - Section 125 (2)
 - Section 140 and 141
 - Sections 143 to 146
 - Sections 149 to 151

*These notes refer to the Pensions Act 2008 (c.30)
which received Royal Assent on 26 November 2008*

Section 151: Short title

477. This section sets out the short title of the Act.