



Pensions Act 2004

2004 CHAPTER 35

PART 1

THE PENSIONS REGULATOR

[^{F1}Financial penalties

Textual Amendments

- F1** Ss. 88A-88C and cross-heading inserted (1.10.2021) by [Pension Schemes Act 2021 \(c. 1\)](#), ss. 115, 131(1); S.I. 2021/950, reg. 2(3)(i) (with reg. 3(1)(5))

88A Financial penalties

- (1) Where the Regulator is satisfied that by reason of an act this section applies to a person, the Regulator may issue a notice to the person requiring the person to pay a penalty in respect of that act of an amount specified in the notice within a period specified in the notice.
- (2) The amount of the penalty is to be an amount, not exceeding £1 million, determined by the Regulator.
- (3) Regulations may amend subsection (2) by substituting a higher amount for the amount for the time being specified in subsection (2).
- (4) The date on which the period specified in the notice ends must be at least 28 days after the date on which the notice is issued.
- (5) The notice must specify the provision by virtue of which the penalty is imposed.
- (6) Where—
 - (a) a penalty under this section may, apart from this subsection, be imposed on a body corporate, and

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- (b) the act in question was done with the consent or connivance of a director, manager, secretary or other similar officer of the body or a person purporting to act in any such capacity,
 this section applies to that person.
- (7) Where the affairs of a body corporate are managed by its members, subsection (6) applies in relation to the acts of a member in connection with the member's functions of management as to a director of a body corporate.
- (8) Where—
 - (a) a penalty under this section may, apart from this subsection, be imposed on a Scottish partnership, and
 - (b) the act in question was done with the consent or connivance of a partner,
 this section applies to that person.
- (9) If the Regulator requires a person to pay a penalty under this section by virtue of subsection (6) or (8), it may not also require the body corporate or the Scottish partnership to pay a penalty under this section in respect of the same act.
- (10) The Regulator may not issue a notice under this section to a person in relation to an act if—
 - (a) the person has been convicted of an offence in respect of the same act, or
 - (b) criminal proceedings for the offence have been instituted against the person in respect of the act and the proceedings have not been concluded.
- (11) The Regulator may not issue a notice under this section to a person in respect of an act if the Regulator has required the person to pay a penalty under section 10 of the Pensions Act 1995 (civil penalties) in respect of the same act.
- (12) In this section “act” includes omission.

88B Financial penalties: time for recovery

- (1) Subsection (3) applies where—
 - (a) the Regulator is satisfied that section 88A applies to a person by virtue of section 58C or 58D (financial penalty for avoidance of employer debt etc),
 - (b) the Regulator issues a notice under section 88A requiring the person to pay a penalty in respect of the act or failure to act in question, and
 - (c) when the notice under section 88A is issued, the person is subject to one or more contribution notices issued under section 38 (contribution notices where avoidance of employer debt).
- (2) Subsection (3) does not apply if, when the notice under section 88A is issued, a qualifying insolvency event has occurred in relation to the employer in relation to the scheme by reference to which the penalty under section 88A is imposed.
- (3) The Regulator may not take any step to recover the penalty specified in the notice under section 88A (including accepting an amount offered in payment or part payment of the penalty) until after—
 - (a) the relevant date relating to the contribution notice or (as the case may be) the latest of the relevant dates relating to the contribution notices, or

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- (b) if sooner, the date on which a qualifying insolvency event occurs in relation to the employer in relation to the scheme by reference to which the penalty under section 88A is imposed.
- (4) In this section—
- “qualifying insolvency event” has the meaning given by section 127(3);
 - “the relevant date” means, in relation to a contribution notice issued under section 38—
 - (a) the date specified under section 40(2A) for the purposes of sections 42A(2) and 42B(2), disregarding any date that has effect instead of that date by virtue of section 41(10A) or (11B), or
 - (b) if sooner, the date on which the sum specified in the contribution notice is paid.

88C Financial penalties: recovery

- (1) A penalty under section 88A is recoverable by the Regulator.
- (2) In England and Wales, such a penalty is, if the county court so orders, recoverable under section 85 of the County Courts Act 1984 or otherwise as if it were payable under an order of that court.
- (3) In Scotland, a notice to pay such a penalty is enforceable as if it were an extract registered decree arbitral bearing a warrant for execution issued by the sheriff court of any sheriffdom in Scotland.
- (4) The Regulator must pay into the Consolidated Fund a penalty recovered under this section.]

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

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

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