



Pensions Act 2004

2004 CHAPTER 35

PART 1

THE PENSIONS REGULATOR

Exercise of regulatory functions

96 Standard procedure

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

[^{F1}(1A) In any case where—

- (a) a warning notice is given to any person in respect of a contribution notice under section 38, and
- (b) the contribution notice under consideration would be issued wholly or partly by reference to the Regulator's opinion that the material detriment test [^{F2}, the employer insolvency test or the employer resources test] is met in relation to an act or failure,

the standard procedure must provide for the following matters.

(1B) The matters are—

- (a) a requirement for the warning notice to explain the general effect of section 38B, [^{F3}38D or 38F (as the case may be)] and
- (b) a requirement for the person to be given an opportunity before the contribution notice is issued to show the matters mentioned in [^{F4}section 38B(2), 38D(2) and (3) or 38F(2) (as the case may be)].]

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

- (a) the giving of notice to such persons as it appears to the Regulator would be directly affected by the regulatory action under consideration (a “warning notice”),
- (b) those persons to have an opportunity to make representations,

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- (c) the consideration of any such representations and the determination whether to take the regulatory action under consideration,
 - (d) the giving of notice of the determination to such persons as appear to the Regulator to be directly affected by it (a “determination notice”),
 - (e) the determination notice to contain details of the right of referral to the Tribunal under subsection (3),
 - (f) the form and further content of warning notices and determination notices and the manner in which they are to be given, and
 - (g) the time limits to be applied at any stage of the procedure.
- (3) Where the standard procedure applies, the determination which is the subject-matter of the determination notice may be referred to the Tribunal ^{F5}... by—
- (a) any person to whom the determination notice is given as required under subsection (2)(d), and
 - (b) any other person who appears to the Tribunal to be directly affected by the determination.
- (4) Subsection (3) does not apply where the determination which is the subject-matter of the determination notice is a determination to issue a clearance statement under section 42 or 46.
- (5) Where the determination which is the subject-matter of the determination notice is a determination to exercise a regulatory function and subsection (3) applies, the Regulator must not exercise the function—
- (a) during the period within which the determination may be referred to the Tribunal ^{F6}..., and
 - (b) if the determination is so referred, until the reference, and any appeal against the Tribunal’s determination, has been finally disposed of.
- (6) Subsection (5) does not apply where the determination is a determination to exercise any of the following functions—
- (a) the power to make a direction under section 76(8) extending the retention period for documents taken into possession under section 75;
 - (b) the power to make a direction under section 78(10) extending the retention period for documents taken into possession under that section;
 - (c) the power to make an order under section 154(8);
 - (d) the power to make an order under section 219(4);
 - (e) the power to grant or revoke authorisation under section 288;
 - (f) the power to grant or revoke approval under section 289;
 - (g) the power to issue a notice under section 293(5);
 - (h) the power to make an order under section 3(1) of the Pensions Act 1995 (c. 26) prohibiting a person from being a trustee;
 - (i) the power to make an order under section 3(3) of that Act revoking such an order;
 - [^{F7}(ia) the power under section 3A(3) of that Act to give a notice waiving a prohibition;]
 - (j) the power to make an order under section 4(1) of that Act suspending a trustee;
 - (k) the power to make an order under section 4(2) of that Act extending the period for which an order under section 4(1) of that Act has effect;

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- (l) the power to make an order under section 4(5) of that Act revoking an order under section 4(1) of that Act suspending a trustee;
- (m) the power to make an order under section 7 of that Act appointing a trustee;
- (n) the power under section 9 of that Act to exercise by order the same jurisdiction and powers as the High Court or the Court of Session for vesting property in, or transferring property to, trustees in consequence of the appointment or removal of a trustee;
- (o) the power to make an order under section 23 of that Act appointing an independent trustee;
- (p) the power under section 29(5) of that Act to give a notice waiving a disqualification under section 29 of that Act;
- (q) the power under section 30(2) of that Act to exercise by order the same jurisdiction and powers as the High Court or the Court of Session for vesting property in, or transferring property to, the trustees where a trustee becomes disqualified under section 29 of that Act;
- (r) the power to give directions under section 72B of that Act facilitating a winding up;
- (s) the power by direction under section 99(4) of the Pension Schemes Act 1993 (c. 48) to grant an extension of the period within which the trustees or managers of a scheme are to carry out certain duties;
- (t) the power by direction under section 101J(2) of that Act to extend the period for compliance with a transfer notice;
- (u) such other regulatory functions as may be prescribed;
- (v) the power under section 101(1)(b) to vary or revoke in relation to the exercise of any of the regulatory functions mentioned in paragraphs (a) to (u) other than those mentioned in paragraph (i) or (l).

[^{F8}(6A) Subsection (6B) applies in relation to a warning notice given to a person—

- (a) in respect of a contribution notice under section 38, or
- (b) in respect of a financial support direction under section 43.

(6B) Regulations may provide that no determination notice in respect of the contribution notice or the financial support direction may be given after the end of the prescribed period beginning with the day on which the warning notice is given.]

[^{F9}(7) In this section “the Tribunal”, in relation to any reference under subsection (3), means—

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

Textual Amendments

- F1** S. 96(1A)(1B) inserted (29.6.2009) by Pensions Act 2008 (c. 30), s. 149(1), Sch. 9 para. 4; S.I. 2009/1566, art. 2(1)(b)(i)
- F2** Words in s. 96(1A)(b) inserted (1.10.2021) by Pension Schemes Act 2021 (c. 1), s. 131(1), Sch. 7 para. 9(2); S.I. 2021/950, reg. 2(4)(f)
- F3** Words in s. 96(1B)(a) inserted (1.10.2021) by Pension Schemes Act 2021 (c. 1), s. 131(1), Sch. 7 para. 9(3)(a); S.I. 2021/950, reg. 2(4)(f)
- F4** Words in s. 96(1B)(b) substituted (1.10.2021) by Pension Schemes Act 2021 (c. 1), s. 131(1), Sch. 7 para. 9(3)(b); S.I. 2021/950, reg. 2(4)(f)

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- F5** Words in s. 96(3) omitted (6.4.2010) by virtue of [The Transfer of Tribunal Functions Order 2010 \(S.I. 2010/22\)](#), art. 1(2)(e), **Sch. 2 para. 75(a)** (with Sch. 5)
- F6** Words in s. 96(5)(a) omitted (6.4.2010) by virtue of [The Transfer of Tribunal Functions Order 2010 \(S.I. 2010/22\)](#), art. 1(2)(e), **Sch. 2 para. 75(b)** (with Sch. 5)
- F7** S. 96(6)(ia) inserted (11.9.2014) by [Pensions Act 2014 \(c. 19\)](#), s. 56(1), **Sch. 19 para. 8**; S.I. 2014/2377, art. 2(1)(a)(i)(2)(1)
- F8** S. 96(6A)(6B) inserted (3.1.2012) by [Pensions Act 2011 \(c. 19\)](#), **ss. 26(7)**, 38(4); S.I. 2011/3034, art. 3(f)
- F9** S. 96(7) inserted (6.4.2010) by [The Transfer of Tribunal Functions Order 2010 \(S.I. 2010/22\)](#), art. 1(2)(e), **Sch. 2 para. 75(c)** (with Sch. 5)

Commencement Information

- I1** S. 96(1)-(5)(6)(a)-(t)(v) in force at 6.4.2005 by [S.I. 2005/275](#), art. 2(7), **Sch. Pt. 7**

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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))