



# Pension Schemes Act 2021

## 2021 CHAPTER 1

### PART 3

#### THE PENSIONS REGULATOR

##### *Contribution notices where avoidance of employer debt etc*

#### **103 Grounds for issuing a section 38 contribution notice**

- (1) The Pensions Act 2004 is amended as follows.
- (2) In section 38 (contribution notices where avoidance of employer debt)—
  - (a) in subsection (5)(a)—
    - (i) after “test” insert “, the employer insolvency test or the employer resources test”;
    - (ii) for “section 38A)” substitute “ sections 38A, 38C and 38E) ”;
  - (b) in subsection (12)(c), after “test” insert “, the employer insolvency test or the employer resources test”.
- (3) After section 38B insert—

#### **“38C Section 38 contribution notice: meaning of “employer insolvency test”**

- (1) For the purposes of section 38 the employer insolvency test is met in relation to an act or failure to act if the Regulator is of the opinion that—
  - (a) immediately after the relevant time, the value of the assets of the scheme was less than the amount of the liabilities of the scheme, and
  - (b) if a debt under section 75(4) of the Pensions Act 1995 (deficiencies in scheme assets: employer insolvency etc) had fallen due from the employer to the scheme immediately after the relevant time, the act or failure would have materially reduced the amount of the debt likely to be recovered by the scheme.

*Status: Point in time view as at 01/09/2021. This version of this part contains provisions that are not valid for this point in time.*

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- (2) For the purposes of subsection (1)—
- (a) the value of the assets of the scheme immediately after the relevant time is the value which the Regulator estimates to be their value,
  - (b) the amount of the liabilities of the scheme immediately after the relevant time is the amount which the Regulator estimates to be the amount of those liabilities, and
  - (c) the amount of the debt is the amount which the Regulator estimates to be the amount of the debt under section 75(4) of the Pensions Act 1995 that would have fallen due immediately after the relevant time.
- (3) When estimating the value and the amounts referred to in subsection (2), the Regulator must take into account how assets and liabilities, and their value or amount, are determined and calculated for the purposes of section 75(4) of the Pensions Act 1995.
- (4) When estimating—
- (a) the value of the assets of the scheme immediately after the relevant time, and
  - (b) the amount of the debt under section 75(4) of the Pensions Act 1995 falling due immediately after the relevant time,
- the Regulator must disregard the amount of any debt due immediately after the relevant time from the employer under section 75 of the Pensions Act 1995.
- (5) In this section “the relevant time” means—
- (a) in the case of an act, the time of the act, or
  - (b) in the case of a failure to act—
    - (i) the time when the failure occurred, or
    - (ii) where the failure continued for a period of time, the time which the Regulator determines and which falls within that period;
- and, in the case of acts or failures to act forming part of a series, any reference in this subsection to an act or failure to act is a reference to the last of the acts or failures in that series.

### **38D Section 38 contribution notice issued by reference to employer insolvency test: defence**

- (1) This section applies where—
- (a) a warning notice is given to any person (“P”) 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 employer insolvency test is met in relation to an act or deliberate failure to act to which P was a party.
- (2) If the Regulator is satisfied that P has shown that—
- (a) conditions A and C are met, and
  - (b) where applicable, condition B is met,
- the Regulator must not issue the contribution notice by reference to its being of the opinion mentioned in subsection (1)(b).

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- (3) If the Regulator is satisfied that P or another person has shown that condition D is met, the Regulator must not issue the contribution notice by reference to its being of the opinion mentioned in subsection (1)(b).
- (4) Condition A is that, before becoming a party to the act or failure, P gave due consideration to the extent to which, if a debt under section 75(4) of the Pensions Act 1995 were to fall due from the employer to the scheme—
  - (a) immediately after the act or failure, or
  - (b) where the failure might continue for a period of time, at any time within that period,the act or failure might materially reduce the amount of the debt likely to be recovered by the scheme.
- (5) Condition B is that, in any case where as a result of that consideration P considered that the act or failure might have such an effect, P took all reasonable steps to eliminate or minimise the potential for the act or failure to have such an effect.
- (6) Condition C is that, having regard to all relevant circumstances prevailing at the time of the act or at the time when the failure to act first occurred, it was reasonable for P to conclude that, if a debt under section 75(4) of the Pensions Act 1995 were to fall due from the employer to the scheme—
  - (a) immediately after the act or failure, or
  - (b) where the failure might continue for a period of time, at any time within that period,the act or failure would not materially reduce the amount of the debt likely to be recovered by the scheme.
- (7) Condition D is that, immediately after the relevant time, the value of the assets of the scheme equalled or was more than the amount at that time of the liabilities of the scheme.
- (8) P is to be regarded as giving the consideration mentioned in condition A only if P has made the enquiries, and done the other acts, that a reasonably diligent person would have made or done in the circumstances.
- (9) For the purposes of condition C the reference to the circumstances mentioned in that condition is a reference to those circumstances of which P was aware, or ought reasonably to have been aware, at the time of the act or the time when the failure to act first occurred (including acts or failures to act which have occurred before that time and P's expectation at that time of other acts or failures to act occurring).
- (10) For the purposes of conditions A, C and D the amount of any debt due at the time in question from the employer under section 75 of the Pensions Act 1995 is to be disregarded.
- (11) In the case of acts or failures to act forming part of a series, P is to be regarded as having shown the matters mentioned in subsection (2) if P shows in the case of each of the acts or failures in the series that—
  - (a) conditions A and C are met, and (where applicable) condition B is met, in relation to the act or failure, or

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- (b) the act or failure was one of a number of acts or failures (a “group” of acts or failures) selected by P in relation to which the following matters are shown.

(12) The matters to be shown are that—

- (a) before becoming a party to the first of the acts or failures in the group, condition A is met in relation to the effect of the acts or failures in the group taken together,
- (b) condition B is (where applicable) met in relation to that effect, and
- (c) condition C is then met in relation to each of the acts or failures in the group (determined at the time at which each act or failure concerned occurred or first occurred).

(13) If at any time P considers that condition C will not be met in relation to any particular act or failure in the group—

- (a) the previous acts or failures in the group are to be regarded as a separate group for the purposes of subsection (11), and
- (b) P may then select another group consisting of the particular act or failure concerned, and any subsequent act or failure, in relation to which P shows the matters mentioned in subsection (12).

Nothing in paragraph (b) is to be read as preventing P from showing the matters mentioned in subsection (11)(a).

(14) If—

- (a) P is unable to show in the case of each of the acts or failures in the series that the matters set out in subsection (11)(a) or (b) are met, but
  - (b) does show in the case of some of them that those matters are met,
- the acts or failures within paragraph (b) are not to count for the purposes of section 38C as acts or failures to act in the series.

(15) In this section—

- (a) “the relevant time” has the meaning given by section 38C;
- (b) “a warning notice” means a notice given as mentioned in section 96(2)(a);
- (c) a reference to a party to an act or failure to act includes a reference to a person who knowingly assists in the act or failure.”

(4) After section 38D (inserted by subsection (3)) insert—

**“38E Section 38 contribution notice: meaning of “employer resources test”**

(1) For the purposes of section 38 the employer resources test is met in relation to an act or failure to act if the Regulator is of the opinion that—

- (a) the act or failure reduced the value of the resources of the employer, and
- (b) that reduction was a material reduction relative to the estimated section 75 debt in relation to the scheme.

(2) For the purposes of this section—

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- (a) what constitutes the resources of the employer is to be determined in accordance with regulations;
  - (b) the value of the resources of the employer is to be determined, calculated and verified in a prescribed manner.
- (3) In this section the “estimated section 75 debt” means the amount which the Regulator estimates to be the amount of the debt which would become due from the employer to the trustees or managers of the scheme under section 75 of the Pensions Act 1995 (deficiencies in the scheme assets) if—
- (a) section 75(2) applied, and
  - (b) the time designated by the trustees or managers of the scheme for the purposes of section 75(2) were the relevant time.
- (4) When calculating the estimated section 75 debt under subsection (3), the amount of any debt due at the relevant time from the employer under section 75 of the Pensions Act 1995 is to be disregarded.
- (5) In this section “the relevant time” means—
- (a) in a case where the act or failure to act forms part of a series of acts or failures to act, the time immediately before the first of the acts occurred or the first of the failures to act first occurred;
  - (b) in any other case, the time immediately before the act occurred or the failure to act first occurred.

### **38F Section 38 contribution notice issued by reference to employer resource test: defence**

- (1) This section applies where—
- (a) a warning notice is given to any person (“P”) 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 employer resource test is met in relation to an act or deliberate failure to act to which P was a party.
- (2) If the Regulator is satisfied that P has shown that—
- (a) conditions A and C are met, and
  - (b) where applicable, condition B is met,
- the Regulator must not issue the contribution notice by reference to its being of the opinion mentioned in subsection (1)(b).
- (3) Condition A is that, before becoming a party to the act or failure, P gave due consideration to the extent to which the act or failure might reduce the value of the resources of the employer relative to the estimated section 75 debt in relation to the scheme.
- (4) Condition B is that, in any case where as a result of that consideration P considered that the act or failure might have such an effect, P took all reasonable steps to eliminate or minimise the potential for the act or failure to have such an effect.
- (5) Condition C is that, having regard to all relevant circumstances prevailing at the time of the act or at the time when the failure to act first occurred, it was

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reasonable for P to conclude that the act or failure would not bring about a reduction in the value of the resources of the employer that would be a material reduction relative to the estimated section 75 debt in relation to the scheme.

- (6) P is to be regarded as giving the consideration mentioned in condition A only if P has made the enquiries, and done the other acts, that a reasonably diligent person would have made or done in the circumstances.
- (7) For the purposes of condition C the reference to the circumstances mentioned in that condition is a reference to those circumstances of which P was aware, or ought reasonably to have been aware, at the time of the act or the time when the failure to act first occurred (including acts or failures to act which have occurred before that time and P's expectation at that time of other acts or failures to act occurring).
- (8) For the purposes of conditions A and C—
  - (a) the “estimated section 75 debt” means the amount which is a reasonable estimate of the amount of the debt which would become due from the employer to the trustees or managers of the scheme under section 75 of the Pensions Act 1995 (deficiencies in the scheme assets) if—
    - (i) section 75(2) applied, and
    - (ii) the time designated by the trustees or managers of the scheme for the purposes of section 75(2) were the time immediately before the act occurred or the failure to act first occurred;
  - (b) the amount of any debt due at the time in question from the employer under section 75 of the Pensions Act 1995 is to be disregarded.
- (9) In the case of acts or failures to act forming part of a series, P is to be regarded as having shown the matters mentioned in subsection (2) if P shows in the case of each of the acts or failures in the series that—
  - (a) conditions A and C are met, and (where applicable) condition B is met, in relation to the act or failure, or
  - (b) the act or failure was one of a number of acts or failures (a “group” of acts or failures) selected by P in relation to which the following matters are shown.
- (10) The matters to be shown are that—
  - (a) before becoming a party to the first of the acts or failures in the group, condition A is met in relation to the effect of the acts or failures in the group taken together,
  - (b) condition B is (where applicable) met in relation to that effect, and
  - (c) condition C is then met in relation to each of the acts or failures in the group (determined at the time at which each act or failure concerned occurred or first occurred).
- (11) If at any time P considers that condition C will not be met in relation to any particular act or failure in the group—
  - (a) the previous acts or failures in the group are to be regarded as a separate group for the purposes of subsection (9), and
  - (b) P may then select another group consisting of the particular act or failure concerned, and any subsequent act or failure, in relation to which P shows the matters mentioned in subsection (10).

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Nothing in paragraph (b) is to be read as preventing P from showing the matters mentioned in subsection (9)(a).

(12) If—

- (a) P is unable to show in the case of each of the acts or failures in the series that the matters set out in subsection (9)(a) or (b) are met, but
  - (b) does show in the case of some of them that those matters are met,
- the acts or failures within paragraph (b) are not to count for the purposes of section 38E as acts or failures to act in the series.

(13) In this section—

- (a) section 38E(2) (the resources of the employer and their value) has effect for the purpose of this section as it has effect for the purposes of section 38E;
- (b) “a warning notice” means a notice given as mentioned in section 96(2)(a);
- (c) a reference to a party to an act or failure to act includes a reference to a person who knowingly assists in the act or failure.”

#### Commencement Information

**II** S. 103(4) in force at 31.5.2021 for specified purposes by S.I. 2021/620, reg. 2(1)(a)

VALID FROM 01/10/2021

#### 104 Reasonableness of issuing a contribution notice

- (1) Section 38 of the Pensions Act 2004 (contribution notices where avoidance of employer debt) is amended as follows.
- (2) In subsection (7) (matters that may be relevant to imposing liability), after paragraph (d) insert—
  - “(da) if the act or failure to act was a notifiable event for the purposes of section 69A (duty to give notices and statements to the Regulator in respect of certain events), any failure by the person to comply with any obligation imposed on the person by section 69A,”.
- (3) In subsection (7), after paragraph (eb) insert—
  - “(ec) the effect of the act or failure to act on the value of the assets or liabilities of the scheme or any relevant transferee scheme,”.
- (4) After subsection (7A) insert—
  - “(7B) In subsection (7)(ec) “relevant transferee scheme” and the reference to the assets or liabilities of any relevant transferee scheme have the same meaning as in section 38A.”

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VALID FROM 01/10/2021

### **105 Determination of sum specified in a contribution notice**

- (1) Section 39 of the Pensions Act 2004 (the sum specified in a section 38 contribution notice) is amended as follows.
- (2) For subsection (4) substitute—
  - “(4) For the purposes of this section “the relevant time” means the end of the scheme year which ended most recently before the day on which the Regulator gives a determination notice under section 96(2)(d) in respect of an intended contribution notice under section 38.”
- (3) Omit subsection (4A).

VALID FROM 01/10/2021

### **106 Sanctions for failure to comply with a contribution notice**

- (1) The Pensions Act 2004 is amended as follows.
- (2) In section 40 (content and effect of a section 38 contribution notice)—
  - (a) after subsection (2) insert—
    - “(2A) Without prejudice to subsections (3) and (7), the contribution notice must also specify a date for the purposes of sections 42A(2) and 42B(2) (sanctions for failure to comply with a contribution notice).”;
  - (b) in subsection (9), after paragraph (b) (and before the “and”) insert—
    - “(ba) specifies the same date for the purposes of sections 42A(2) and 42B(2) as is specified in P's contribution notice.”.
- (3) In section 41 (section 38 contribution notice: relationship with employer debt)—
  - (a) after subsection (8) insert—
    - “(8A) An application under subsection (7) may not be made after—
      - (a) the date specified under section 40(2A) for the purposes of sections 42A(2) and 42B(2) (sanctions for failure to comply with a contribution notice), or
      - (b) if a different date has effect instead of that date (see subsections (10A) and (11B)), that different date.”;
  - (b) after subsection (10) insert—
    - “(10A) Where an application under subsection (7) is made to the Regulator, the Regulator may, if it is of the opinion that it is appropriate to do so—
      - (a) change the date that has effect for the purposes of sections 42A(2) and 42B(2) (whether specified in the contribution notice or an earlier revised contribution notice), and
      - (b) specify the revised date in the revised contribution notice issued under subsection (9)(b) or, if the Regulator does not



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issue a revised contribution notice under subsection (9)(b),  
issue a revised contribution notice specifying the revised  
date.”;

(c) after subsection (11) insert—

“(11A) Subsection (11B) applies where—

- (a) P's contribution notice specifies that P is jointly and severally liable for the debt with other persons, and
- (b) the Regulator issues a revised contribution notice to P under subsection (9)(b) or (10A)(b) specifying a revised date for the purposes of sections 42A(2) and 42B(2).

(11B) Where this subsection applies, the Regulator must—

- (a) change the date that has effect for the purposes of sections 42A(2) and 42B(2) in the case of the contribution notices or revised contribution notices issued in respect of the debt to those other persons, and
- (b) specify the revised date in the revised contribution notices issued to those other persons under subsection (11) or, if the Regulator does not issue revised contribution notices under subsection (11), issue revised contribution notices to those other persons specifying the revised date.”

(4) After section 42 insert—

**“42A Offence of failing to comply with a section 38 contribution notice**

- (1) This section applies where a contribution notice is issued to a person under section 38.
- (2) If the person, without reasonable excuse, fails to pay the debt due by virtue of the contribution notice to—
  - (a) the trustees or managers of the scheme, or
  - (b) the Board of the Pension Protection Fund (as the case may be),before the date specified in the contribution notice for the purposes of this subsection (see section 40(2A)), the person is guilty of an offence.
- (3) A person guilty of an offence under subsection (2) is liable—
  - (a) on summary conviction in England and Wales, to a fine;
  - (b) on summary conviction in Scotland, to a fine not exceeding level 5 on the standard scale.
- (4) Proceedings for an offence under subsection (2) may not be instituted if an application under section 41(7) has been made—
  - (a) in relation to the contribution notice, or
  - (b) in relation to a contribution notice which is a corresponding contribution notice for the purposes of section 40(8),and the application has not been determined, withdrawn or abandoned.
- (5) Proceedings for an offence under subsection (2) may be instituted in England and Wales only—
  - (a) by the Regulator or the Secretary of State, or

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(b) by or with the consent of the Director of Public Prosecutions.”

(5) After section 42A (inserted by subsection (4)) insert—

**“42B Financial penalty for failure to comply with a section 38 contribution notice**

- (1) This section applies where a contribution notice is issued to a person under section 38.
- (2) Section 88A (financial penalties) applies to the person if the person, without reasonable excuse, fails to pay the debt due by virtue of the contribution notice to—
  - (a) the trustees or managers of the scheme, or
  - (b) the Board of the Pension Protection Fund (as the case may be),
 before the date specified in the contribution notice for the purposes of this subsection (see section 40(2A)).
- (3) The Regulator may not issue a warning notice to the person in respect of the imposition of a penalty under section 88A as it applies by virtue of subsection (2) if an application under section 41(7) has been made—
  - (a) in relation to the contribution notice, or
  - (b) in relation to a contribution notice which is a corresponding contribution notice for the purposes of section 40(8),
 and the application has not been determined, withdrawn or abandoned.
- (4) In this section “warning notice” means a notice given as mentioned in section 96(2)(a).”

VALID FROM 01/10/2021

*Sanctions for avoidance of employer debt etc*

**107 Sanctions for avoidance of employer debt etc**

- (1) The Pensions Act 2004 is amended as follows.
- (2) After section 58 insert—

*“Sanctions for avoidance of employer debt etc*

**58A Offence of avoidance of employer debt**

- (1) This section applies in relation to an occupational pension scheme other than—
  - (a) a money purchase scheme, or
  - (b) a prescribed scheme or a scheme of a prescribed description.
- (2) A person commits an offence only if—
  - (a) the person does an act or engages in a course of conduct that—

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- (i) prevents the recovery of the whole or any part of a debt which is due from the employer in relation to the scheme under section 75 of the Pensions Act 1995 (deficiencies in the scheme assets),
    - (ii) prevents such a debt becoming due,
    - (iii) compromises or otherwise settles such a debt, or
    - (iv) reduces the amount of such a debt which would otherwise become due,
  - (b) the person intended the act or course of conduct to have such an effect, and
  - (c) the person did not have a reasonable excuse for doing the act or engaging in the course of conduct.
- (3) A reference in this section to an act or course of conduct includes a failure to act.
- (4) This section does not apply to a person if the act done, or course of conduct engaged in, by the person is in accordance with the person's functions as an insolvency practitioner in relation to another person.
- (5) For the purposes of this section a reference to a debt due under section 75 of the Pensions Act 1995 includes a contingent debt under that section.
- (6) Accordingly, in the case of such a contingent debt, the reference in subsection (2)(a) to preventing a debt becoming due is to be read as including a reference to preventing the occurrence of any of the events specified in section 75(4C)(a) or (b) of the Pensions Act 1995 upon which the debt is contingent.
- (7) A person guilty of an offence under subsection (2) is liable—
- (a) on summary conviction in England and Wales, to a fine;
  - (b) on summary conviction in Scotland, to a fine not exceeding the statutory maximum;
  - (c) on conviction on indictment, to imprisonment for a term not exceeding seven years or a fine, or both.
- (8) Proceedings for an offence under subsection (2) may be instituted in England and Wales only—
- (a) by the Regulator or the Secretary of State, or
  - (b) by or with the consent of the Director of Public Prosecutions.
- (9) For the purposes of this section and sections 58B to 58D “insolvency practitioner”, in relation to a person, means—
- (a) a person acting as an insolvency practitioner, in relation to that person, in accordance with section 388 of the Insolvency Act 1986, or
  - (b) an insolvency practitioner within the meaning of section 121(9)(b) (persons of a prescribed description).

### **58B Offence of conduct risking accrued scheme benefits**

- (1) This section applies in relation to an occupational pension scheme other than—

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- (a) a money purchase scheme, or
  - (b) a prescribed scheme or a scheme of a prescribed description.
- (2) A person commits an offence only if—
- (a) the person does an act or engages in a course of conduct that detrimentally affects in a material way the likelihood of accrued scheme benefits being received (whether the benefits are to be received as benefits under the scheme or otherwise),
  - (b) the person knew or ought to have known that the act or course of conduct would have that effect, and
  - (c) the person did not have a reasonable excuse for doing the act or engaging in the course of conduct.
- (3) A reference in this section to an act or a course of conduct includes a failure to act.
- (4) A reference in this section to accrued scheme benefits being received is a reference to benefits the rights to which have accrued by the relevant time being received by, or in respect of, the persons who were members of the scheme before that time.
- (5) In this section “the relevant time” means—
- (a) in the case of an act, the time of the act,
  - (b) in the case of a failure to act—
    - (i) the time when the failure occurred, or
    - (ii) where the failure continued for a period of time, the end of that period, or
  - (c) in the case of a course of conduct, the time when the course of conduct ended.
- (6) A reference in this section to rights which have accrued is to be read in accordance with section 67A(6) and (7) of the Pensions Act 1995 (reading any reference in those subsections to a subsisting right as a reference to a right which has accrued).
- (7) For the purposes of this section the benefits that may be received under the following provisions of this Act are to be disregarded—
- (a) Chapter 3 of Part 2 (the Board of the Pension Protection Fund: pension protection), and
  - (b) section 286 (the financial assistance scheme for members of certain pension schemes).
- (8) This section does not apply to a person if the act done, or course of conduct engaged in, by the person is in accordance with the person's functions as an insolvency practitioner in relation to another person (see section 58A(9)).
- (9) A person guilty of an offence under subsection (2) is liable—
- (a) on summary conviction in England and Wales, to a fine;
  - (b) on summary conviction in Scotland, to a fine not exceeding the statutory maximum;
  - (c) on conviction on indictment, to imprisonment for a term not exceeding seven years or a fine, or both.

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(10) Proceedings for an offence under subsection (2) may be instituted in England and Wales only—

- (a) by the Regulator or the Secretary of State, or
- (b) by or with the consent of the Director of Public Prosecutions.”

(3) After section 58B (inserted by subsection (2)) insert—

**“58C Financial penalty for avoidance of employer debt**

(1) This section applies in relation to an occupational pension scheme other than—

- (a) a money purchase scheme, or
- (b) a prescribed scheme or a scheme of a prescribed description.

(2) Section 88A (financial penalties) applies to a person who was party to an act or deliberate failure to act the main purpose or one of the main purposes of which was—

- (a) to prevent the recovery of the whole or any part of a debt which is due from the employer in relation to the scheme under section 75 of the Pensions Act 1995 (deficiencies in the scheme assets),
- (b) to prevent such a debt becoming due,
- (c) to compromise or otherwise settle such a debt, or
- (d) to reduce the amount of such a debt which would otherwise become due,

if it was not reasonable for the person to act or fail to act in the way that the person did.

(3) This section does not apply where the Regulator is of the opinion that the person, in being a party to the act or failure, was acting in accordance with the person's functions as an insolvency practitioner in relation to another person (see section 58A(9)).

(4) For the purposes of this section a reference to a debt due under section 75 of the Pensions Act 1995 includes a contingent debt under that section.

(5) Accordingly, in the case of such a contingent debt, the reference in subsection (2) to preventing a debt becoming due is to be read as including a reference to preventing the occurrence of any of the events specified in section 75(4C)(a) or (b) of the Pensions Act 1995 upon which the debt is contingent.

(6) For the purposes of this section the parties to an act or deliberate failure to act include those persons who knowingly assist in the act or failure.

(7) If the Regulator is of the opinion that—

- (a) a person was party to a series of acts or deliberate failures to act, and
  - (b) the requirements of subsection (2) are met in relation to the series,
- the series of acts or failures to act is to be regarded as an act or failure to act in relation to which the requirements of subsection (2) are met.

*Status: Point in time view as at 01/09/2021. This version of this part contains provisions that are not valid for this point in time.*

*Changes to legislation: There are currently no known outstanding effects for the Pension Schemes Act 2021, PART 3. (See end of Document for details)*

### **58D Financial penalty for conduct risking accrued scheme benefits**

- (1) This section applies in relation to an occupational pension scheme other than—
  - (a) a money purchase scheme, or
  - (b) a prescribed scheme or a scheme of a prescribed description.
- (2) Section 88A (financial penalties) applies to a person who was party to an act or deliberate failure to act that detrimentally affected in a material way the likelihood of accrued scheme benefits being received (whether the benefits are to be received as benefits under the scheme or otherwise), if—
  - (a) the person knew or ought to have known that the act or failure to act would have that effect, and
  - (b) it was not reasonable for the person to act or fail to act in the way that the person did.
- (3) This section does not apply where the Regulator is of the opinion that the person, in being a party to the act or failure, was acting in accordance with the person's functions as an insolvency practitioner in relation to another person (see section 58A(9)).
- (4) In this section a reference to accrued scheme benefits being received is a reference to benefits the rights to which have accrued by the relevant time being received by, or in respect of, the persons who were members of the scheme before that time.
- (5) In this section “the relevant time” means—
  - (a) in the case of an act, the time of the act;
  - (b) in the case of a failure to act—
    - (i) the time when the failure to act occurred, or
    - (ii) where the failure continued for a period of time, the end of that period;and, in the case of acts or failures to act forming part of a series, any reference in this subsection to an act or failure to act is a reference to the last of the acts or failures in that series.
- (6) A reference in this section to rights which have accrued is to be read in accordance with section 67A(6) and (7) of the Pensions Act 1995 (reading any reference in those subsections to a subsisting right as a reference to a right which has accrued).
- (7) In determining for the purposes of this section whether an act or failure to act has detrimentally affected in a material way the likelihood of accrued scheme benefits being received, the following provisions of this Act are to be disregarded—
  - (a) Chapter 3 of Part 2 (the Board of the Pension Protection Fund: pension protection), and
  - (b) section 286 (the financial assistance scheme for members of certain pension schemes).
- (8) For the purposes of this section the parties to an act or deliberate failure to act include those persons who knowingly assist in the act or failure.

**Status:** Point in time view as at 01/09/2021. This version of this part contains provisions that are not valid for this point in time.

**Changes to legislation:** There are currently no known outstanding effects for the Pension Schemes Act 2021, PART 3. (See end of Document for details)

- (9) If the Regulator is of the opinion that—
- (a) a person was party to a series of acts or deliberate failures to act, and
  - (b) the requirements of subsection (2) are met in relation to the series, the series of acts or failures to act is to be regarded as an act or failure to act in relation to which the requirements of subsection (2) are met.”

### *Collecting information*

VALID FROM 01/10/2021

#### **108 Duty to notify the Regulator of certain events**

- (1) The Pensions Act 2004 is amended as follows.
- (2) In section 69 (duty to notify the Regulator of certain events)—
  - (a) in subsection (7), for “section 10 of the Pensions Act 1995 (c. 26) (civil penalties)” substitute “ section 88A (financial penalties) ”;
  - (b) in subsection (8), for “That section” substitute “ Section 88A ”.
- (3) In section 80 (offences of providing false or misleading information to the Regulator), in subsection (1)(a), after sub-paragraph (ii) insert—

“(ia) section 69 (duty to notify the Regulator of certain events),”.

#### **109 Duty to give notices and statements to the Regulator in respect of certain events**

- (1) The Pensions Act 2004 is amended as follows.
- (2) After section 69 insert—

##### **“69A Duty to give notices and statements to the Regulator in respect of certain events**

- (1) Except where the Regulator otherwise directs, the appropriate person must—
  - (a) give notice to the Regulator of any notifiable event;
  - (b) give notice to the Regulator of any material change in, or in the expected effects of, a notifiable event;
  - (c) give notice to the Regulator if a notifiable event is not going to, or does not, take place.
- (2) In subsection (1) “notifiable event” means a prescribed event in respect of the employer in relation to an eligible scheme.
- (3) For the purposes of subsection (1) each of the following is “the appropriate person”—
  - (a) the employer in relation to the scheme,
  - (b) a person connected with the employer,
  - (c) an associate of the employer, and
  - (d) a person of a prescribed description.

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*Status: Point in time view as at 01/09/2021. This version of this part contains provisions that are not valid for this point in time.*

**Changes to legislation:** There are currently no known outstanding effects for the Pension Schemes Act 2021, PART 3. (See end of Document for details)

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- (4) Regulations may make provision about the meaning of a “material change” for the purposes of this section.
- (5) A notice under subsection (1) must be given to the Regulator—
- (a) in the case of a notice under subsection (1)(a), as soon as reasonably practicable after the person giving it becomes aware of the notifiable event, subject to subsection (6),
  - (b) in the case of a notice under subsection (1)(b), as soon as reasonably practicable after the person giving it becomes aware of the material change, subject to subsection (6), or
  - (c) in the case of a notice under subsection (1)(c), as soon as reasonably practicable after the person giving it becomes aware that the notifiable event is not going to take place or (as the case may be) did not take place.
- (6) Regulations may require a notice under subsection (1)(a) or (b) to be given before the beginning of the prescribed period ending with—
- (a) the notifiable event in question, or
  - (b) the material change in question.
- (7) A notice under subsection (1)(a) or (b) must be accompanied by a statement (an “accompanying statement”).
- (8) An accompanying statement must contain prescribed information.
- (9) The information that may be prescribed under subsection (8) includes, in particular—
- (a) a description of the event,
  - (b) a description of any adverse effects of the event on the eligible scheme,
  - (c) a description of any steps taken to mitigate those adverse effects, and
  - (d) a description of any communication with the trustees or managers of the eligible scheme about the event.
- (10) Where a person gives the Regulator a notice under subsection (1), the person must give a copy of the notice and any accompanying statement to the trustees or managers of the eligible scheme at the same time.
- (11) A notice or accompanying statement under this section must be in writing.
- (12) No duty to which a person is subject is to be regarded as contravened merely because of any information or opinion contained in a notice or accompanying statement under this section.
- This is subject to section 311 (protected items).
- (13) Section 88A (financial penalties) applies to a person who, without reasonable excuse, fails to comply with an obligation imposed on the person by this section.
- (14) For the purposes of this section—
- (a) section 249 of the Insolvency Act 1986 (connected persons) applies as it applies for the purposes of any provision of the first Group of Parts of that Act,



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**Changes to legislation:** There are currently no known outstanding effects for the Pension Schemes Act 2021, PART 3. (See end of Document for details)

- (b) section 435 of the Insolvency Act 1986 (associated persons) applies as it applies for the purposes of that Act, and
- (c) section 229 of the Bankruptcy (Scotland) Act 2016 (associated persons) applies as it applies for the purposes of that Act.

(15) In this section—

“eligible scheme” has the meaning given by section 126;  
“event” includes a failure to act.”

(3) In section 80 (offences of providing false or misleading information to the Regulator), after subsection (1)(a)(ia) (inserted by section 108) insert—

“(iib) section 69A (duty to give notices and statements to the Regulator in respect of certain events),”.

#### Commencement Information

**I2** S. 109(2) in force at 31.5.2021 for specified purposes by S.I. 2021/620, reg. 2(1)(b)

### *Gathering information*

## **110 Interviews**

(1) The Pensions Act 2004 is amended as follows.

(2) After section 72 insert—

#### **“72A Interviews**

(1) The Regulator may, by notice in writing, require any person to whom section 72(2) applies to attend before the Regulator, at a time and place specified in the notice, to answer questions and provide explanations on one or more matters specified in the notice that are relevant to the exercise of any of the Regulator's functions.

(2) A notice under subsection (1) must contain such other information as may be prescribed.”

(3) In section 72 (provision of information), omit subsections (1A) and (1B).

(4) In section 77 (penalties relating to sections 72 to 75)—

(a) after subsection (1) insert—

“(1A) A person who, without reasonable excuse, neglects or refuses—

(a) to attend before the Regulator as required under section 72A(1), or

(b) to answer a question or provide an explanation on a matter specified in the notice under section 72A(1), when so attending before the Regulator,

is guilty of an offence.”;

(b) in subsection (3), after “subsection (1)” insert “, (1A) ”;

(c) in subsection (4), after “subsection (1)” insert “, (1A) ”.

**Status:** Point in time view as at 01/09/2021. This version of this part contains provisions that are not valid for this point in time.

**Changes to legislation:** There are currently no known outstanding effects for the Pension Schemes Act 2021, PART 3. (See end of Document for details)

### Commencement Information

**I3** S. 110(2) in force at 31.5.2021 for specified purposes by S.I. 2021/620, reg. 2(1)(c)

VALID FROM 01/10/2021

## 111 Inspection of premises

(1) Section 73 of the Pensions Act 2004 (inspection of premises) is amended as follows.

(2) In subsection (2)—

(a) after paragraph (da) insert—

“(db) the Pension Schemes Act 2017;

(dc) Part 1 of the Pension Schemes Act 2021;”;

(b) in paragraph (e), for “(da)” substitute “(dc)”.

(3) After subsection (2) insert—

“(2A) An inspector may, for the purposes of investigating whether the Regulator has grounds in the case of an occupational pension scheme for issuing—

(a) a contribution notice under section 38 (contribution notices where avoidance of employer debt),

(b) a financial support direction under section 43 (financial support directions),

(c) a contribution notice under section 47 (contribution notices where non-compliance with financial support direction),

(d) a restoration order under section 52 (restoration orders where transactions at an undervalue),

(e) a contribution notice under section 55 (contribution notice where failure to comply with restoration order), or

(f) a notice, direction or order under any corresponding provision in force in Northern Ireland,

at any reasonable time enter premises liable to inspection.”

(4) After subsection (5) insert—

“(5A) An inspector may, for the purposes of investigating whether the relevant provisions are being, or have been, complied with in the case of a scheme, at any reasonable time enter premises liable to inspection.

(5B) In subsection (5A), “the relevant provisions” means provisions contained in or made by virtue of—

(a) such provisions of the pensions legislation as may be prescribed;

(b) any provisions in force in Northern Ireland corresponding to the provisions so prescribed.”

(5) In subsection (6) (premises liable to inspection)—

(a) in paragraph (b), omit the “or” at the end;

(b) after paragraph (c) insert—

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*Changes to legislation: There are currently no known outstanding effects for the Pension Schemes Act 2021, PART 3. (See end of Document for details)*

- “(d) documents relevant to the administration of the business of the employer in relation to the scheme are being kept there,
- (e) the administration of the business of the employer in relation to the scheme, or work connected with that administration, is being carried out there, or
- (f) in the case of an occupational pension scheme other than a money purchase scheme, a prescribed scheme or a scheme of a prescribed description, documents relevant to a change in the ownership of the employer or of a significant asset of the employer are being kept there.”

(6) After subsection (6) insert—

“(6A) In the application of this section in relation to a provision mentioned in subsection (1), (2A), (3), (4) or (5A), references in this section to “employer” are to be read as having the meaning that it has for the purposes of the provision in question.

(6B) In this section a reference to an employer in relation to an occupational pension scheme includes a reference to a person who has been the employer in relation to the scheme.”

(7) In subsection (7), for “this section,” substitute “this section—

“the pensions legislation” means any enactment contained in or made by virtue of—

- (a) the Pension Schemes Act 1993,
- (b) Part 1 or section 33 or 45 of the Welfare Reform and Pensions Act 1999,
- (c) this Act,
- (d) Schedule 18 to the Pensions Act 2014, or
- (e) section 48 or 49 of the Pension Schemes Act 2015;”.

## 112 Fixed penalty notices and escalating penalty notices

After section 77 of the Pensions Act 2004 (penalties relating to sections 72 to 75) insert—

### “77A Fixed penalty notices

- (1) The Regulator may issue a fixed penalty notice to a person if it considers that the person—
  - (a) has failed to comply with a notice under section 72 or 72A,
  - (b) has failed to comply with a requirement under section 75, or
  - (c) has prevented or hindered an inspector exercising any power under section 73, 74 or 75.
- (2) A fixed penalty notice is a notice requiring the person to whom it is issued to pay a penalty within the period specified in the notice.
- (3) The penalty—
  - (a) is to be determined in accordance with regulations, and

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- (b) must not exceed £50,000.
- (4) A fixed penalty notice must—
  - (a) state the amount of the penalty;
  - (b) state the date by which the penalty must be paid, which must be at least 28 days after the date on which the notice is issued;
  - (c) state the period to which the penalty relates;
  - (d) specify the failure or conduct to which the penalty relates;
  - (e) state that the Regulator may issue an escalating penalty notice under section 77B if the person fails to comply with a notice under section 72 or 72A;
  - (f) notify the person to whom the notice is issued of the review process under section 43 of the Pensions Act 2008 and the right of referral to a tribunal under section 44 of that Act (as applied by subsection (5)).
- (5) The following sections of the Pensions Act 2008 apply to a penalty notice under this section as they apply to a penalty notice under section 40 of that Act—
  - (a) section 42 (penalty notices: recovery);
  - (b) section 43 (review of penalty notices);
  - (c) section 44 (references to First-tier Tribunal or Upper Tribunal).
- (6) This section does not apply in a case where section 40 of the Pensions Act 2008 or section 17 of the Pension Schemes Act 2017 applies.

### **77B Escalating penalty notices**

- (1) The Regulator may issue an escalating penalty notice to a person if it considers that the person has failed to comply with a notice under section 72 or 72A.
- (2) But the Regulator may not issue an escalating penalty notice to a person if—
  - (a) the person has exercised the right of referral to a tribunal under section 44 of the Pensions Act 2008 (as applied by section 77A(5)) in respect of a fixed penalty notice issued under section 77A in relation to that notice under section 72 or 72A, and
  - (b) the reference has not been determined.
- (3) An escalating penalty notice is a notice requiring a person to pay an escalating penalty if the person fails to comply with a notice under section 72 or 72A before a specified date.
- (4) An escalating penalty is a penalty which is calculated by reference to a daily rate.
- (5) The daily rate—
  - (a) is to be determined in accordance with regulations, and
  - (b) must not exceed £10,000.
- (6) An escalating penalty notice must—
  - (a) specify the failure to which the penalty relates;
  - (b) state that, if the person fails to comply with the notice under section 72 or 72A before a specified date, the person will be liable to pay an escalating penalty;

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*Changes to legislation: There are currently no known outstanding effects for the Pension Schemes Act 2021, PART 3. (See end of Document for details)*

- (c) state the daily rate of the escalating penalty and the way in which the penalty is calculated;
  - (d) state the date from which the escalating penalty will be payable, which must not be earlier than the date specified in the fixed penalty notice under section 77A(4)(b);
  - (e) state that the escalating penalty will continue to be payable at the daily rate until the date on which the person complies with the notice under section 72 or 72A or such earlier date as the Regulator may determine;
  - (f) notify the person to whom the notice is issued of the review process under section 43 of the Pensions Act 2008 and the right of referral to a tribunal under section 44 of that Act (as applied by subsection (7)).
- (7) The following sections of the Pensions Act 2008 apply to an escalating penalty notice under this section as they apply to an escalating penalty notice under section 41 of that Act—
- (a) section 42 (penalty notices: recovery);
  - (b) section 43 (review of penalty notices);
  - (c) section 44 (references to First-tier Tribunal or Upper Tribunal).
- (8) This section does not apply in a case where section 41 of the Pensions Act 2008 or section 18 of the Pension Schemes Act 2017 applies.”

#### Commencement Information

**I4** S. 112 in force at 31.5.2021 for specified purposes by S.I. 2021/620, reg. 2(1)(d)

VALID FROM 01/10/2021

### *Provision of false or misleading information*

#### **113 Provision of false or misleading information to Regulator**

After section 80 of the Pensions Act 2004 (offences of providing false or misleading information) insert—

#### **“80A Financial penalty for providing false or misleading information to Regulator**

- (1) Section 88A (financial penalties) applies to a person who has knowingly or recklessly provided the Regulator with information which is false or misleading in a material particular, if the information was provided to the Regulator in the circumstances mentioned in subsection (2)(a), (b) or (c).
- (2) The circumstances referred to in subsection (1) are—
  - (a) that the information was provided in purported compliance with a requirement under—
    - (i) section 62 (the register: duties of trustees or managers),
    - (ii) section 64 (duty of trustees or managers to provide scheme return),

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- (iii) section 69 (duty to notify the Regulator of certain events),
- (iv) section 69A (duty to give notices and statements to the Regulator in respect of certain events),
- (v) section 72 (provision of information),
- (vi) section 72A (interviews),
- (vii) section 75 (inspection of premises: powers of inspectors), or
- (viii) regulations under section 11 of the Pensions Act 2008 (information about employers' duties to be given to the Regulator);
- (b) that the information was provided in applying for registration of a pension scheme under section 2 of the Welfare Reform and Pensions Act 1999 (registration of stakeholder pension schemes);
- (c) that the information was provided otherwise than as mentioned in paragraph (a) or (b) but in circumstances in which the person providing the information intends, or could reasonably be expected to know, that it would be used by the Regulator for the purpose of exercising its functions under—
  - (i) the Pensions Act 1995,
  - (ii) this Act,
  - (iii) the Pensions Act 2008,
  - (iv) Schedule 18 to the Pensions Act 2014,
  - (v) the Pension Schemes Act 2017, or
  - (vi) Part 1 of the Pension Schemes Act 2021.”

#### **114 Provision of false or misleading information to trustees or managers**

After section 80A of the Pensions Act 2004 (inserted by section 113) insert—

##### **“80B Financial penalty for providing false or misleading information to trustees or managers**

- (1) This section applies in relation to an occupational pension scheme other than—
  - (a) a money purchase scheme, or
  - (b) a prescribed scheme or a scheme of a prescribed description.
- (2) Section 88A (financial penalties) applies to a person who has knowingly or recklessly provided a trustee or manager of the scheme with information which is false or misleading in a material particular, if the information was provided to the trustee or manager of the scheme in the circumstances mentioned in subsection (3)(a) or (b).
- (3) The circumstances referred to in subsection (2) are—
  - (a) that the information was provided in purported compliance with a requirement under—
    - (i) regulations under section 7 of the Superannuation Act 1972 (superannuation of persons employed in local government service and other persons selected by the Secretary of State),

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- (ii) regulations under section 113A of the Pension Schemes Act 1993 (power to require disclosure of information about transfers from one scheme to another),
  - (iii) section 22(2B)(c) of the Pensions Act 1995 (insolvency practitioner or official receiver to give notice of certain events to trustees of scheme),
  - (iv) section 26 of that Act (insolvency practitioner or official receiver to give information to trustees),
  - (v) regulations under section 47(9) of that Act (power to impose duties on employers, auditors and actuaries to disclose information), or
  - (vi) a direction under section 72B of that Act (directions by Regulator for facilitating winding up of scheme);
- (b) that the information was provided otherwise than as mentioned in paragraph (a) but in circumstances in which the person providing the information intends, or could reasonably be expected to know, that it would be used by the trustee or manager who receives it in that person's capacity as a trustee or manager of the scheme.”

VALID FROM 01/10/2021

### *Financial penalties*

#### **115 Financial penalties**

After section 88 of the Pensions Act 2004 insert—

#### *“Financial penalties*

##### **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—

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- (a) a penalty under this section may, apart from this subsection, be imposed on a body corporate, and
  - (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



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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
  - (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.”

### *Supplementary*

## **116 Minor and consequential amendments**

Schedule 7 contains minor and consequential amendments.

#### **Commencement Information**

- I5** S. 116 in force at 31.5.2021 for specified purposes by [S.I. 2021/620](#), [reg. 2\(2\)\(a\)](#)
- I6** S. 116 in force at 25.6.2021 for specified purposes by [S.I. 2021/752](#), [reg. 2\(a\)](#)

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**Status:** Point in time view as at 01/09/2021. This version of this part contains provisions that are not valid for this point in time.

**Changes to legislation:** There are currently no known outstanding effects for the Pension Schemes Act 2021, PART 3. (See end of Document for details)

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## *Northern Ireland*

### **117 The Pensions Regulator: Northern Ireland**

In Schedule 8—

- (a) Part 1 makes provision for Northern Ireland which corresponds to that made by sections 103 to 115;
- (b) Part 2 contains minor and consequential amendments.

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#### **Commencement Information**

- I7** S. 117(a) in force at 1.9.2021 for specified purposes by [S.R. 2021/240](#), [art. 2\(1\)\(a\)](#)
- I8** S. 117(b) in force at 1.9.2021 for specified purposes by [S.R. 2021/240](#), [art. 2\(2\)\(a\)](#)

**Status:**

Point in time view as at 01/09/2021. This version of this part contains provisions that are not valid for this point in time.

**Changes to legislation:**

There are currently no known outstanding effects for the Pension Schemes Act 2021, PART 3.