



# Pensions Act 1995

## 1995 CHAPTER 26

### PART I

#### OCCUPATIONAL PENSIONS

##### **Modifications etc. (not altering text)**

- C1** Pt. I modified (6.4.1997) by [The Personal and Occupational Pension Schemes \(Miscellaneous Amendments\) Regulations 1997 \(S.I. 1997/786\)](#), regs. 1, 2
- C2** Pt. I applied (with modifications) (6.4.1997) by [The Personal and Occupational Pension Schemes \(Miscellaneous Amendments\) Regulations 1997 \(S.I. 1997/786\)](#), **reg. 2**
- C3** Pt. I: [Pensions Act 2004 \(c.35\)](#), **Pt. 3** construed as one with Pt. I of this Act (4.12.2005 for specified purposes, 30.12.2005 in so far as not already in force) by [Pensions Act 2004 \(c. 35\)](#), **ss. 233**, 322(1) (with s. 313); S.I. 2005/3331, art. 2(1)(a)(b), **Sch. Pt. 1**

#### *Occupational Pensions Regulatory Authority*

##### **<sup>F1</sup> The new authority.**

.....

##### **Textual Amendments**

- F1** [S. 1](#) repealed (6.4.2005) by [Pensions Act 2004 \(c. 35\)](#), s. 322(1), **Sch. 13**; S.I. 2005/695, art. 2(7), **Sch. 1**

##### **<sup>F2</sup> Reports to Secretary of State.**

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*Status: Point in time view as at 31/05/2021.*

*Changes to legislation: Pensions Act 1995, Part I is up to date with all changes known to be in force on or before 23 June 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

### Textual Amendments

- F2** S. 2 repealed (6.4.2005) by Pensions Act 2004 (c. 35), s. 322(1), **Sch. 13**; S.I. 2005/695, art. 2(7), Sch. 1 (with arts., 4-6, Sch. 2, Sch. 3)

### *Supervision by the Authority*

#### [<sup>F3</sup>3 **Prohibition orders.**

- (1) The Authority may by order prohibit a person from being a trustee of—
  - (a) a particular trust scheme,
  - (b) a particular description of trust schemes, or
  - (c) trust schemes in general,
 if they are satisfied that he is not a fit and proper person to be a trustee of the scheme or schemes to which the order relates.
- (2) Where a prohibition order is made under subsection (1) against a person in respect of one or more schemes of which he is a trustee, the order has the effect of removing him.
- (3) The Authority may, on the application of any person prohibited under this section, by order revoke the order either generally or in relation to a particular scheme or description of schemes.
- (4) An application under subsection (3) may not be made—
  - (a) during the period within which the determination to exercise the power to make the prohibition order may be referred to [<sup>F4</sup>a tribunal] under section 96(3) or 99(7) of the Pensions Act 2004, and
  - (b) if the determination is so referred, until the reference, and any appeal against [<sup>F5</sup>the determination of the tribunal concerned], has been finally disposed of.
- (5) A revocation made at any time under this section cannot affect anything done before that time.
- (6) The Authority must prepare and publish a statement of the policies they intend to adopt in relation to the exercise of their powers under this section.
- (7) The Authority may revise any statement published under subsection (6) and must publish any revised statement.

<sup>F6</sup>(8) ..... ]

### Textual Amendments

- F3** S. 3 substituted (6.4.2005) by Pensions Act 2004 (c. 35), **ss. 33**, 322(1) (with s. 313); S.I. 2005/275, art. 2(7), Sch. Pt. 7 (with S.I. 2005/695, arts. 5(3), 6, Schs. 2, 3)
- F4** Words in s. 3(4)(a) substituted (6.4.2010) by The Transfer of Tribunal Functions Order 2010 (S.I. 2010/22), art. 1(2)(e), **Sch. 2 para. 22(a)(i)** (with Sch. 5)
- F5** Words in s. 3(4)(b) substituted (6.4.2010) by The Transfer of Tribunal Functions Order 2010 (S.I. 2010/22), art. 1(2)(e), **Sch. 2 para. 22(a)(ii)** (with Sch. 5)
- F6** S. 3(8) 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. 22(b)** (with Sch. 5)

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**Modifications etc. (not altering text)**

- C4** Ss. 3-11 modified in part (11.11.1999 for specified purposes; 1.10.2000 in so far as not already in force) by the [Welfare Reform and Pensions Act 1999 \(c. 30\)](#), s. 89(5)(a), [Sch. 1 para. 1\(1\)\(2\)\(b\)](#) (i); S.I. 2000/1047, art. 2(2)(c), [Sch. Pt. III](#) (as amended (6.4.2005) by [Pensions Act 2004 \(c. 35\)](#), s. 322(1), [Sch. 12 para. 76\(2\)\(a\)](#))
- C5** S. 3 applied (5.7.2010) by [Pensions Act 2008 \(c. 30\)](#), s. 149(1), [Sch. 1 para. 3\(2\)](#); S.I. 2010/10, art. 2(a)

**[<sup>F7</sup>3A Prohibition orders: directors of corporate trustees etc**

- (1) A company or Scottish partnership is prohibited from being a trustee of a trust scheme at any time when an individual who is a director of the company or a partner in the partnership is prohibited from being a trustee of the scheme by an order under section 3.
- (2) Where a company or partnership which is a trustee of a trust scheme becomes prohibited under subsection (1) in relation to the scheme, that subsection has the effect of removing the company or partnership as a trustee.
- (3) The Authority may, on the application of a company or Scottish partnership, give notice in writing to the applicant waiving the prohibition under subsection (1)—
  - (a) in relation to an individual against whom an order under section 3 has been made, and
  - (b) either generally or in relation to a particular scheme or particular description of schemes.
- (4) A notice may be given under subsection (3) only if the Authority is satisfied that the applicant would be a fit and proper person to be a trustee of the scheme or schemes to which the notice relates despite the individual being, or even if the individual were to become, a director of or partner in the applicant.
- (5) A notice given at any time under subsection (3) cannot affect anything done before that time.
- (6) An application under subsection (3) may not be made—
  - (a) during the period within which the determination to exercise the power to make the order against the individual may be referred to the Tribunal under section 96(3) or 99(7) of the Pensions Act 2004 (whether by a company or partnership which became prohibited under subsection (1) on the making of the order or by another person), and
  - (b) if the determination is so referred, until the reference, and any appeal against the Tribunal's determination, has been finally disposed of.
- (7) The Authority must prepare and publish a statement of the policies they intend to adopt in relation to the exercise of their powers under this section.
- (8) The Authority may revise any statement published under subsection (7) and must publish any revised statement.
- (9) References in this section to an order under section 3 are to an order under that section made on or after the date on which section 46(2) of the Pensions Act 2014 comes fully into force.]

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### Textual Amendments

**F7** S. 3A inserted (11.9.2014) by Pensions Act 2014 (c. 19), ss. 46(2), 56(1); S.I. 2014/2377, art. 2(1)(a)(i)(2)(h)

## 4 Suspension orders.

- (1) The Authority may by order suspend a trustee of a trust scheme—
- (a) pending consideration being given to the making of an order against him under section 3(1),
  - <sup>F8</sup>(aa) pending consideration being given to the institution of proceedings against him for an offence involving dishonesty or deception,]
  - (b) where proceedings have been instituted against him for an offence involving dishonesty or deception and have not been concluded,
  - <sup>F9</sup>(ba) where an application has been made under section 263H of the Insolvency Act 1986 for an order making him bankrupt and the application has not been determined,]
  - (c) where a petition has been presented to the court for an order adjudging him bankrupt, or for the sequestration of his estate, and proceedings on the petition have not been concluded [<sup>F10</sup>or an application has been made by him for a debt relief order (under Part 7A of the Insolvency Act 1986) and the application has not been determined],
  - (d) where the trustee is a company, if a petition for the winding up of the company has been presented to the court and proceedings on the petition have not been concluded,
  - (e) where an application has been made to the court for a disqualification order against him under the <sup>M1</sup>Company Directors Disqualification Act 1986 [<sup>F11</sup>or under [<sup>F12</sup>the Company Directors Disqualification (Northern Ireland) Order 2002]] and proceedings on the application have not been concluded, or
  - (f) where the trustee is a company or Scottish partnership and, if any director or, as the case may be, partner were a trustee, the Authority would have power to suspend him under paragraph [<sup>F13</sup>(aa),] (b), (c) or (e).
- (2) An order under subsection (1)—
- (a) if made by virtue of paragraph (a) [<sup>F14</sup>or (aa)]<sup>F15</sup>or, in a case where the Authority would have power to suspend a director or partner under paragraph (aa), by virtue of paragraph (f)], has effect for an initial period not exceeding twelve months, and
  - (b) in any other case, has effect until the proceedings in question are concluded [<sup>F16</sup>or, in the case of an application for a debt relief order, the application is determined];
- but the Authority may by order extend the initial period referred to in paragraph (a) for a further period of twelve months, and any order suspending a person under subsection (1) ceases to have effect [<sup>F17</sup>in relation to a trust scheme] if an order is made against that person under section 3(1) [<sup>F18</sup>in relation to that scheme].
- (3) An order under subsection (1) has the effect of prohibiting the person suspended, during the period of his suspension, from exercising any functions as trustee of any trust scheme to which the order applies; and the order may apply to a particular trust scheme, a particular [<sup>F19</sup>description] of trust schemes or trust schemes in general.

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- (4) An order under subsection (1) may be made on one of the grounds in paragraphs (b) to (e) whether or not the proceedings were instituted, petition presented or application made (as the case may be) before or after the coming into force of that subsection.
- (5) The Authority may, on the application of any person suspended under subsection (1), by order revoke the order, either generally or in relation to a particular scheme or a particular [<sup>F20</sup>description] of schemes; but a revocation made at any time cannot affect anything done before that time.
- [<sup>F21</sup>(5A) An application under subsection (5) may not be made—
- (a) during the period within which the determination to exercise the power to make an order under subsection (1) may be referred to [<sup>F22</sup>a tribunal] under section 96(3) or 99(7) of the Pensions Act 2004, and
- (b) if the determination is so referred, until the reference, and any appeal against [<sup>F23</sup>the determination of the tribunal concerned], has been finally disposed of.]
- (6) An order under this section may make provision as respects the period of the trustee's suspension for matters arising out of it, and in particular for enabling any person to execute any instrument in his name or otherwise act for him and for adjusting any rules governing the proceedings of the trustees to take account of the reduction in the number capable of acting.

[<sup>F24</sup>(7) . . . . .]

#### Textual Amendments

- F8** S. 4(1)(aa) inserted (6.4.2005) by Pensions Act 2004 (c. 35), **ss. 34(a)**, 322(1) (with s. 313); S.I. 2005/275, art. 2(7), Sch. Pt. 7 (with S.I. 2005/695, arts. 5(8), 6, Schs. 2, 3)
- F9** S. 4(1)(ba) inserted (6.4.2016) by The Enterprise and Regulatory Reform Act 2013 (Consequential Amendments) (Bankruptcy) and the Small Business, Enterprise and Employment Act 2015 (Consequential Amendments) Regulations 2016 (S.I. 2016/481), reg. 1, **Sch. 1 para. 11(2)**
- F10** Words in s. 4(1)(c) inserted (1.10.2012) by The Tribunals, Courts and Enforcement Act 2007 (Consequential Amendments) Order 2012 (S.I. 2012/2404), art. 1, **Sch. 2 para. 34(2)(a)** (with art. 5)
- F11** Words in s. 4(1)(e) inserted (2.4.2001) by Insolvency Act 2000 (c. 39), s. 16(1), **Sch. 4 para. 19(2)**; S.I. 2001/766, art. 2(1)(a) (with art. 3)
- F12** Words in s. 4(1)(e) substituted (1.10.2009) by The Companies Act 2006 (Consequential Amendments, Transitional Provisions and Savings) Order 2009 (S.I. 2009/1941), art. 1(2), **Sch. 1 para. 155(2)** (with art. 10)
- F13** Word in s. 4(1)(f) inserted (11.9.2014) by Pensions Act 2014 (c. 19), **ss. 46(4)**, 56(1); S.I. 2014/2377, art. 2(1)(a)(i)(2)(h)
- F14** Words in s. 4(2)(a) inserted (6.4.2005) by Pensions Act 2004 (c. 35), **ss. 34(b)(i)**, 322(1) (with s. 313); S.I. 2005/275, art. 2(7), Sch. Pt. 7 (with S.I. 2005/695, arts. 5(8), 6, Schs. 2, 3)
- F15** Words in s. 4(2)(a) inserted (11.9.2014) by Pensions Act 2014 (c. 19), **ss. 46(5)**, 56(1); S.I. 2014/2377, art. 2(1)(a)(i)(2)(h)
- F16** Words in s. 4(2)(b) inserted (1.10.2012) by The Tribunals, Courts and Enforcement Act 2007 (Consequential Amendments) Order 2012 (S.I. 2012/2404), art. 1, **Sch. 2 para. 34(2)(b)** (with art. 5)
- F17** Words in s. 4(2) inserted (6.4.2005) by Pensions Act 2004 (c. 35), **ss. 34(b)(ii)**, 322(1) (with s. 313); S.I. 2005/275, art. 2(7), Sch. Pt. 7 (with S.I. 2005/695, arts. 5(8), 6, Schs. 2, 3)
- F18** Words in s. 4(2) inserted (6.4.2005) by Pensions Act 2004 (c. 35), **ss. 34(b)(iii)**, 322(1) (with s. 313); S.I. 2005/275, art. 2(7), Sch. Pt. 7 (with S.I. 2005/695, arts. 5(8), 6, Schs. 2, 3)
- F19** Word in s. 4(3) substituted (6.4.2005) by Pensions Act 2004 (c. 35), s. 322(1), **Sch. 12 para. 35**; S.I. 2005/695, art. 2(7), Sch. 1 (with arts. 4-6, Schs. 2, 3)

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- F20** Word in s. 4(5) substituted (6.4.2005) by Pensions Act 2004 (c. 35), s. 322(1), **Sch. 12 para. 35**; S.I. 2005/695, art. 2(7), Sch. 1 (with arts. 4-6, Schs. 2, 3)
- F21** S. 4(5A) inserted (6.4.2005) by Pensions Act 2004 (c. 35), **ss. 34(c)**, 322(1) (with s. 313); S.I. 2005/275, art. 2(7), Sch. Pt. 7 (with S.I. 2005/695, arts. 5(8), 6, Schs. 2, 3)
- F22** Words in s. 4(5A)(a) substituted (6.4.2010) by The Transfer of Tribunal Functions Order 2010 (S.I. 2010/22), art. 1(2)(e), **Sch. 2 para. 23(a)(i)** (with Sch. 5)
- F23** Words in s. 4(5A)(b) substituted (6.4.2010) by The Transfer of Tribunal Functions Order 2010 (S.I. 2010/22), art. 1(2)(e), **Sch. 2 para. 23(a)(ii)** (with Sch. 5)
- F24** S. 4(7) 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. 23(b)** (with Sch. 5)

#### Modifications etc. (not altering text)

- C4** Ss. 3-11 modified in part (11.11.1999 for specified purposes; 1.10.2000 in so far as not already in force) by the Welfare Reform and Pensions Act 1999 (c. 30), s. 89(5)(a), **Sch. 1 para. 1(1)(2)(b)(i)**; S.I. 2000/1047, art. 2(2)(c), Sch. Pt. III (as amended (6.4.2005) by Pensions Act 2004 (c. 35), s. 322(1), Sch. 12 para. 76(2)(a))

#### Commencement Information

- II** S. 4 in force at 6.4.1997 by S.I. 1997/664, art. 2(3), **Sch. Pt. 3**

#### Marginal Citations

- M1** 1986 c. 46.

## **F25** Removal of trustees: notices.

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#### Textual Amendments

- F25** S. 5 repealed (6.4.2005) by Pensions Act 2004 (c. 35), s. 322(1), **Sch. 13**; S.I. 2005/695, art. 2(7), Sch. 1

## **6** Removal or suspension of trustees: consequences.

- (1) A person who purports to act as trustee of a trust scheme while prohibited from being a trustee of the scheme under section 3 [<sup>F26</sup>or 3A] or suspended in relation to the scheme under section 4 is guilty of an offence and liable—
  - (a) on summary conviction, to a fine not exceeding the statutory maximum, and
  - (b) on conviction on indictment, to a fine or imprisonment or both.
- (2) An offence under subsection (1) may be charged by reference to any day or longer period of time; and a person may be convicted of a second or subsequent offence under that subsection by reference to any period of time following the preceding conviction of the offence.
- (3) Things done by a person purporting to act as trustee of a trust scheme while prohibited from being a trustee of the scheme under section 3 [<sup>F27</sup>or 3A] or suspended in relation to the scheme under section 4 are not invalid merely because of that prohibition or suspension.

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- (4) Nothing in section 3 [F28, 3A] or 4 or this section affects the liability of any person for things done, or omitted to be done, by him while purporting to act as trustee of a trust scheme.

#### Textual Amendments

- F26** Words in s. 6(1) inserted (11.9.2014) by Pensions Act 2014 (c. 19), s. 56(1), **Sch. 19 para. 2(a)**; S.I. 2014/2377, art. 2(1)(a)(i)(2)(l)
- F27** Words in s. 6(3) inserted (11.9.2014) by Pensions Act 2014 (c. 19), s. 56(1), **Sch. 19 para. 2(a)**; S.I. 2014/2377, art. 2(1)(a)(i)(2)(l)
- F28** Word in s. 6(4) inserted (11.9.2014) by Pensions Act 2014 (c. 19), s. 56(1), **Sch. 19 para. 2(b)**; S.I. 2014/2377, art. 2(1)(a)(i)(2)(l)

#### Modifications etc. (not altering text)

- C4** Ss. 3-11 modified in part (11.11.1999 for specified purposes; 1.10.2000 in so far as not already in force) by the Welfare Reform and Pensions Act 1999 (c. 30), s. 89(5)(a), **Sch. 1 para. 1(1)(2)(b)(i)**; S.I. 2000/1047, art. 2(2)(c), Sch. Pt. III (as amended (6.4.2005) by Pensions Act 2004 (c. 35), s. 322(1), Sch. 12 para. 76(2)(a))

#### Commencement Information

- I2** S. 6 in force at 6.4.1997 by S.I. 1997/664, art. 2(3), **Sch. Pt. 3**

## 7 Appointment of trustees.

- (1) Where a trustee of a trust scheme is removed by an order under section 3, [F29 by section 3A] or F30... by reason of his disqualification, the Authority may by order appoint another trustee in his place.
- (2) Where a trustee appointed under subsection (1) is appointed to replace a trustee appointed under [F31 section 23(1)], sections 22 to 26 shall apply to the replacement trustee as they apply to a trustee appointed under [F31 section 23(1)].
- (3) The Authority may also by order appoint a trustee of a trust scheme where they are satisfied that it is [F32 reasonable] to do so in order—
- (a) to secure that the trustees as a whole have, or exercise, the necessary knowledge and skill for the proper administration of the scheme,
  - (b) to secure that the number of trustees is sufficient for the proper administration of the scheme, F33 ...
  - (c) to secure the proper use or application of the assets of the scheme [F34, or
  - (d) otherwise to protect the interests of the generality of the members of the scheme.]

F35(4) .....

- (5) The power to appoint a trustee by an order under this section includes power by such an order—
- (a) to determine the appropriate number of trustees for the proper administration of the scheme,
  - (b) to require a trustee appointed by the order to be paid fees and expenses out of the scheme's resources,
  - (c) to provide for the removal or replacement of such a trustee.

*Status: Point in time view as at 31/05/2021.*

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- [<sup>F36</sup>(5A) An application may be made to the Authority in relation to a trust scheme by—
- (a) the trustees of the scheme,
  - (b) the employer, or
  - (c) any member of the scheme,
- for the appointment of a trustee of the scheme under subsection (3)(a) or (c).]
- (6) Regulations may make provision about the descriptions of persons who may or may not be appointed trustees under this section.

#### Textual Amendments

- F29** Words in s. 7(1) inserted (11.9.2014) by Pensions Act 2014 (c. 19), s. 56(1), **Sch. 19 para. 3**; S.I. 2014/2377, art. 2(1)(a)(i)(2)(l)
- F30** Words in s. 7(1) repealed (6.4.2005) by Pensions Act 2004 (c. 35), s. 322(1), Sch. 12 para. 36(a), **Sch. 13**; S.I. 2005/695, art. 2(7), Sch. 1
- F31** Words in s. 7(2) substituted (6.4.2005) by Pensions Act 2004 (c. 35), s. 322(1), **Sch. 12 para. 36(b)**; S.I. 2005/695, art. 2(7), Sch. 1
- F32** Word in s. 7(3) substituted (26.1.2009) by Pensions Act 2008 (c. 30), **ss. 131(1)(a)**, 149(5)
- F33** Word in s. 7(3)(b) repealed (26.1.2009) by Pensions Act 2008 (c. 30), **ss. 131(1)(b)**, 149(5), **Sch. 11 Pt. 6**
- F34** S. 7(3)(d) and preceding word inserted (26.1.2009) by Pensions Act 2008 (c. 30), **ss. 131(1)(c)**, 149(5)
- F35** S. 7(4) repealed (6.4.2005) by Pensions Act 2004 (c. 35), **ss. 35(1)(a)**, 322(1), **Sch. 13** (with s. 313); S.I. 2005/275, art. 2(7), Sch. Pt. 7
- F36** S. 7(5A) inserted (6.4.2005) by Pensions Act 2004 (c. 35), **ss. 35(1)(b)**, 322(1) (with s. 313); S.I. 2005/275, art. 2(7), Sch. Pt. 7

#### Modifications etc. (not altering text)

- C4** **Ss. 3-11** modified in part (11.11.1999 for specified purposes; 1.10.2000 in so far as not already in force) by the Welfare Reform and Pensions Act 1999 (c. 30), s. 89(5)(a), **Sch. 1 para. 1(1)(2)(b)(i)**; S.I. 2000/1047, art. 2(2)(c), Sch. Pt. III (as amended (6.4.2005) by Pensions Act 2004 (c. 35), s. 322(1), Sch. 12 para. 76(2)(a))

#### Commencement Information

- I3** S. 7 in force at 6.4.1997 by S.I. 1997/664, art. 2(3), **Sch. Pt. 3**

## 8 Appointment of trustees: consequences.

- [<sup>F37</sup>(1) An order under section 7 appointing a trustee may provide for any fees and expenses of trustees appointed under the order to be paid—
- (a) by the employer,
  - (b) out of the resources of the scheme, or
  - (c) partly by the employer and partly out of those resources.
- (2) Such an order may also provide that an amount equal to the amount (if any) paid out of the resources of the scheme by virtue of subsection (1)(b) or (c) is to be treated for all purposes as a debt due from the employer to the trustees of the scheme.]
- (3) Subject to subsection (4), a trustee appointed under that section shall, unless he is the independent trustee and section 22 applies in relation to the scheme, have the same powers and duties as the other trustees.



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- (4) Such an order may make provision—
- (a) for restricting the powers or duties of a trustee so appointed, <sup>F38</sup>...
  - (b) for powers or duties to be exercisable by a trustee so appointed to the exclusion of other trustees.

#### Textual Amendments

- F37** S. 8(1)(2) substituted (6.4.2005) by Pensions Act 2004 (c. 35), **ss. 35(2)**, 322(1) (with s. 313); S.I. 2005/275, art. 2(7), Sch. Pt. 7 (with S.I. 2005/695, arts. 5(8), 6, Schs. 2, 3)
- F38** Word in s. 8(4)(a) repealed (11.11.1999 for specified purposes, 25.4.2000 in so far as not already in force) by Welfare Reform and Pensions Act 1999 (c. 30), s. 89(5)(a), Sch. 2 para. 10, **Sch. 13 Pt. I**; S.I. 2000/1047, art. 2(2)(b), Sch. Pt. II

#### Modifications etc. (not altering text)

- C4** Ss. 3-11 modified in part (11.11.1999 for specified purposes; 1.10.2000 in so far as not already in force) by the Welfare Reform and Pensions Act 1999 (c. 30), s. 89(5)(a), **Sch. 1 para. 1(1)(2)(b)(i)**; S.I. 2000/1047, art. 2(2)(c), Sch. Pt. III (as amended (6.4.2005) by Pensions Act 2004 (c. 35), s. 322(1), Sch. 12 para. 76(2)(a))

#### Commencement Information

- I4** S. 8 in force at 6.4.1997 by S.I. 1997/664, art. 2(3), **Sch. Pt. 3**

## 9 Removal and appointment of trustees: property.

Where the Authority have power under this Part to appoint or remove a trustee [<sup>F39</sup>or a trustee is removed under section 3A], they may exercise [<sup>F40</sup>by order] the same jurisdiction and powers as are exercisable by the High Court or, in relation to a trust scheme subject to the law of Scotland, the Court of Session for vesting any property in, or transferring any property to, trustees in consequence of the appointment or of the removal.

#### Textual Amendments

- F39** Words in s. 9 inserted (11.9.2014) by Pensions Act 2014 (c. 19), s. 56(1), **Sch. 19 para. 4**; S.I. 2014/2377, art. 2(1)(a)(i)(2)(1)
- F40** Words in s. 9 inserted (6.4.2005) by Pensions Act 2004 (c. 35), s. 322(1), **Sch. 12 para. 37**; S.I. 2005/695, art. 2(7), Sch. 1

#### Modifications etc. (not altering text)

- C4** Ss. 3-11 modified in part (11.11.1999 for specified purposes; 1.10.2000 in so far as not already in force) by the Welfare Reform and Pensions Act 1999 (c. 30), s. 89(5)(a), **Sch. 1 para. 1(1)(2)(b)(i)**; S.I. 2000/1047, art. 2(2)(c), Sch. Pt. III (as amended (6.4.2005) by Pensions Act 2004 (c. 35), s. 322(1), Sch. 12 para. 76(2)(a))

#### Commencement Information

- I5** S. 9 in force at 6.4.1997 by S.I. 1997/664, art. 2(3), **Sch. Pt. 3**

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## 10 Civil penalties.

- (1) Where the Authority are satisfied that by reason of any act or omission this section applies to any person, they may by notice in writing require him to pay, within a prescribed period, a penalty in respect of that act or omission not exceeding the maximum amount.
  - (2) In this section “the maximum amount” means—
    - (a) £5,000 in the case of an individual and £50,000 in any other case, or
    - (b) such lower amount as may be prescribed in the case of an individual or in any other case,
 and the Secretary of State may by order amend paragraph (a) by substituting higher amounts for the amounts for the time being specified in that paragraph.
  - (3) Regulations made by virtue of this Part may provide for any person who has contravened any provision of such regulations to pay, within a prescribed period, a penalty under this section not exceeding an amount specified in the regulations; and the regulations must specify different amounts in the case of individuals from those specified in other cases and any amount so specified may not exceed the amount for the time being specified in the case of individuals or, as the case may be, others in subsection (2)(a).
  - (4) An order made under subsection (2) or regulations made by virtue of subsection (3) do not affect the amount of any penalty recoverable under this section by reason of an act or omission occurring before the order or, as the case may be, regulations are made.
  - (5) Where—
    - (a) apart from this subsection, a penalty under this section is recoverable from a body corporate or Scottish partnership by reason of any act or omission of the body or partnership<sup>F41</sup> ... , and
    - (b) the act or omission was done with the consent or connivance of, or is attributable to any neglect on the part of, any persons mentioned in subsection (6),
 this section applies to each of those persons who consented to or connived in the act or omission or to whose neglect the act or omission was attributable.
  - (6) The persons referred to in subsection (5)(b)—
    - (a) in relation to a body corporate, are—
      - (i) any director, manager, secretary, or other similar officer of the body, or a person purporting to act in any such capacity, and
      - (ii) where the affairs of a body corporate are managed by its members, any member in connection with his functions of management, and
    - (b) in relation to a Scottish partnership, are the partners.
  - (7) Where the Authority requires any person to pay a penalty by virtue of subsection (5), they may not also require the body corporate, or Scottish partnership, in question to pay a penalty in respect of the same act or omission.
  - (8) A penalty under this section is recoverable by the Authority.
- [<sup>F42</sup>(8A) Any penalty recoverable under this section—
- (a) shall, if [<sup>F43</sup>the county court] so orders, be recoverable [<sup>F44</sup>under section 85 of the County Courts Act 1984] or otherwise as if it were payable under an order of that court; and

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- (b) may be enforced as if it were an extract registered decree arbitral bearing a warrant for execution issued by the sheriff court of any sheriffdom in Scotland.]
- (9) The Authority must pay to the Secretary of State any penalty recovered under this section.

#### Textual Amendments

- F41** Words in s. 10(5)(a) repealed (6.4.2005) by Pensions Act 2004 (c. 35), s. 322(1), Sch. 12 para. 38, **Sch. 13**; S.I. 2005/695, art. 2(7), Sch. 1
- F42** S. 10(8A) inserted (11.11.1999 for specified purposes, 25.4.2000 in so far as not already in force) by Welfare Reform and Pensions Act 1999 (c. 30), s. 89(5)(a), **Sch. 2 para. 11**; S.I. 2000/1047, art. 2(2)(b), Sch. Pt. II
- F43** Words in s. 10(8A)(a) substituted (22.4.2014) by Crime and Courts Act 2013 (c. 22), s. 61(3), **Sch. 9 para. 52**; S.I. 2014/954, art. 2(c) (with art. 3) (with transitional provisions and savings in S.I. 2014/956, arts. 3-11)
- F44** Words in s. 10(8A)(a) substituted (6.4.2014) by Tribunals, Courts and Enforcement Act 2007 (c. 15), s. 148, **Sch. 13 para. 121** (with s. 89); S.I. 2014/768, art. 2(1)(b)

#### Modifications etc. (not altering text)

- C4** Ss. 3-11 modified in part (11.11.1999 for specified purposes; 1.10.2000 in so far as not already in force) by the Welfare Reform and Pensions Act 1999 (c. 30), s. 89(5)(a), **Sch. 1 para. 1(1)(2)(b)(i)**; S.I. 2000/1047, art. 2(2)(c), Sch. Pt. III (as amended (6.4.2005) by Pensions Act 2004 (c. 35), s. 322(1), Sch. 12 para. 76(2)(a))
- C6** S. 10 applied by Pension Schemes Act 1993 (c. 48), **s. 99(7)(b)** (as added (6.4.1996 for specified purposes; 6.4.1997 in so far as not already in force) by the Pensions Act 1995 (c. 26), s. 180(1), Sch. 6 para. 6(e); S.I. 1996/778, art. 2(5)(a), Sch. Pt. V; S.I. 1997/664, art. 2(3), Sch. Pt. II)
- C7** S. 10 applied (11.11.1999 for specified purposes, 1.10.2000 in so far as not already in force) by Welfare Reform and Pensions Act 1999 (c. 30), **ss. 2(4), 89(5)(a)** (with s. 8(6)); S.I. 2000/1047, art. 2(2)(c), Sch. Pt. III (as amended (6.4.2005) by Pensions Act 2004 (c. 35), s. 322(1), Sch. 12 para. 73(c); S.I. 2005/695, art. 2(7), Sch. 1)
- C8** S. 10 applied (11.11.1999 for specified purposes, 6.4.2001 for specified purposes, 8.10.2001 in so far as not already in force) by Welfare Reform and Pensions Act 1999 (c. 30), **ss. 3(7), 89(5)(a)** (with s. 8(6)); S.I. 2001/933, arts. 5(a), 6
- C9** S. 10 applied (11.11.1999 for specified purposes; 1.12.2000 in so far as not already in force) by the Welfare Reform and Pensions Act 1999 (c. 30), **ss. 33(2)(3), 89(5)(a)**; S.I. 2000/1047, art. 2(2)(d), Sch. Pt. 4
- C10** S. 10 applied (with modifications) by Pension Schemes Act 1993 (c. 48), **s. 111A(8)(9)(11)** (as amended (11.11.1999 for specified purposes; 6.4.2001 in so far as not already in force) by the Welfare Reform and Pensions Act 1999 (c. 30), ss. 9, 89(5)(a); S.I. 2000/2958, art. 2(1); Pensions Act 2004 (c. 35), ss. 268(4), 322(1) (with s. 313); S.I. 2006/560, art. 2(3), Sch. Pt. 3)
- C11** S. 10 applied by Pension Schemes Act 1993 (c. 48), **s. 101H(4)** (as inserted (11.11.1999 for specified purposes; 1.12.2000 in so far as not already in force) by the Welfare Reform and Pensions Act 1999 (c. 30), ss. 37, 89(5)(a); S.I. 2000/1047, art. 2(2)(d), Sch. Pt. IV)
- C12** S. 10 applied (S.) by The Local Government Pension Scheme (Scotland) Regulations 1998 (S.I. 1998/366), **reg. 149(1)(2)** (as inserted (with effect in accordance with reg. 1(2) of the amending S.I.) by S.S.I. 2001/23, regs. 1(2), 4)
- C13** S. 10 applied (S.) by The Firemen's Pension Scheme Order 1992 (S.I. 1992/129), **Sch. 2 rule N10** (as inserted (with effect in accordance with reg. 1(2) of the amending S.I.) by S.S.I. 2001/310, arts. 1(2), 3)

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- C14** S. 10 applied (11.11.1999 for specified purposes, 1.12.2000 in so far as not already in force) by Welfare Reform and Pensions Act 1999 (c. 30), s. **33(1)-(3)**, 89(5)(a); S.I. 2000/1047, art. 2(2)(d), Sch. Pt. IV
- C15** S. 10 applied by The National Health Service Superannuation Scheme (Scotland) Regulations 1995 (S.I. 1995/365), reg. **W10** (as inserted (28.1.2002 with effect in accordance with art. 1(2) of the amending S.S.I.) by S.S.I. 2001/465, reg. 1(2), sch. 1 para. 3)
- C16** S. 10 applied (6.4.2005) by Pensions Act 2004 (c. 35), ss. **13(8)**, 322(1) (with s. 313); S.I. 2005/275, art. 2(7), Sch. Pt. 7
- C17** S. 10 applied (6.4.2005) by Pensions Act 2004 (c. 35), ss. **14(6)**, 322(1) (with s. 313); S.I. 2005/275, art. 2(7), Sch. Pt. 7
- C18** S. 10 applied (6.4.2005) by Pensions Act 2004 (c. 35), ss. **20(11)**, 322(1) (with s. 313); S.I. 2005/275, art. 2(7), Sch. Pt. 7
- C19** S. 10 applied (6.4.2005) by Pensions Act 2004 (c. 35), ss. **21(5)**, 322(1) (with s. 313); S.I. 2005/275, art. 2(7), Sch. Pt. 7
- C20** S. 10 applied (6.4.2005) by Pensions Act 2004 (c. 35), ss. **30(5)(7)(a)(8)**, 322(1) (with s. 313); S.I. 2005/275, art. 2(7), Sch. Pt. 7
- C21** S. 10 applied (6.4.2005) by Pensions Act 2004 (c. 35), ss. **30(8)**, 322(1) (with s. 313); S.I. 2005/275, art. 2(7), Sch. Pt. 7
- C22** S. 10 applied (6.4.2005) by Pensions Act 2004 (c. 35), ss. **31(5)**, 322(1) (with s. 313); S.I. 2005/275, art. 2(7), Sch. Pt. 7
- C23** S. 10 applied (6.4.2005) by Pensions Act 2004 (c. 35), ss. **41(5)**, 322(1) (with s. 313); S.I. 2005/275, art. 2(7), Sch. Pt. 7
- C24** S. 10 applied (6.4.2005) by Pensions Act 2004 (c. 35), ss. **50(5)**, 322(1) (with s. 313); S.I. 2005/275, art. 2(7), Sch. Pt. 7
- C25** S. 10 applied (6.4.2005) by Pensions Act 2004 (c. 35), ss. **62(6)**, 322(1) (with s. 313); S.I. 2005/275, art. 2(7), Sch. Pt. 7
- C26** S. 10 applied (6.4.2005) by Pensions Act 2004 (c. 35), ss. **64(2)**, 322(1) (with s. 313); S.I. 2005/275, art. 2(7), Sch. Pt. 7
- C27** S. 10 applied (6.4.2005) by Pensions Act 2004 (c. 35), ss. **69(7)**, 322(1) (with s. 313); S.I. 2005/275, art. 2(7), Sch. Pt. 7
- C28** S. 10 applied (6.4.2005) by Pensions Act 2004 (c. 35), ss. **70(4)**, 322(1) (with s. 313); S.I. 2005/275, art. 2(7), Sch. Pt. 7
- C29** S. 10 applied (6.4.2005) by Pensions Act 2004 (c. 35), ss. **71(7)**, 322(1) (with s. 313); S.I. 2005/275, art. 2(7), Sch. Pt. 7
- C30** S. 10 applied (6.4.2005) by Pensions Act 2004 (c. 35), ss. **133(11)**, 322(1) (with s. 313); S.I. 2005/275, art. 2(7), Sch. Pt. 7
- C31** S. 10 applied (6.4.2005) by Pensions Act 2004 (c. 35), s. **134(5)(6)**, 322(1) (with s. 313); S.I. 2005/275, art. 2(7), Sch. Pt. 7
- C32** S. 10 applied (6.4.2005) by Pensions Act 2004 (c. 35), ss. **135(10)**, 322(1) (with s. 313); S.I. 2005/275, art. 2(7), Sch. Pt. 7
- C33** S. 10 applied (6.4.2005) by Pensions Act 2004 (c. 35), ss. **138(9)**, 322(1) (with s. 313); S.I. 2005/275, art. 2(7), Sch. Pt. 7
- C34** S. 10 applied (6.4.2005) by Pensions Act 2004 (c. 35), ss. **140(4)**, 322(1) (with s. 313); S.I. 2005/275, art. 2(7), Sch. Pt. 7
- C35** S. 10 applied (6.4.2005) by Pensions Act 2004 (c. 35), ss. **154(9)**, 322(1) (with s. 313); S.I. 2005/275, art. 2(7), Sch. Pt. 7
- C36** S. 10 applied (6.4.2005) by Pensions Act 2004 (c. 35), ss. **219(5)**, 322(1) (with s. 313); S.I. 2005/275, art. 2(7), Sch. Pt. 7
- C37** S. 10 applied (30.6.2005) by Pensions Act 2004 (c. 35), ss. **256(3)**, 322(1) (with s. 313); S.I. 2005/1720, art. 2(8)
- C38** S. 10 applied (1.7.2005 for specified purposes, 22.9.2005 in so far as not already in force) by Pensions Act 2004 (c. 35), ss. **252(5)**, 322(1) (with s. 313); S.I. 2005/1720, art. 2(14)(a)(b), Sch. Pt. 1

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- C39** S. 10 applied (1.7.2005 for specified purposes, 22.9.2005 in so far as not already in force) by Pensions Act 2004 (c. 35), **ss. 255(3)**, 322(1) (with s. 313); S.I. 2005/1720, art. 2(14)(a)(b), Sch. Pt. 1
- C40** S. 10 applied (with effect in accordance with reg. A1(1)(b) of the amending S.S.I.) by The Teachers Superannuation (Scotland) Regulations 2005 (S.S.I. 2005/393), **reg. F9(1)(b)(2)**
- C41** S. 10 applied (1.11.2005 for specified purposes, 6.4.2006 in so far as not already in force) by Pensions Act 2004 (c. 35), **ss. 241(9)**, 322(1) (with s. 313); S.I. 2005/2447, art. 2(1)(a)(5)(b), Sch. Pts. 1, 2
- C42** S. 10 applied (1.11.2005 for specified purposes, 6.4.2006 in so far as not already in force) by Pensions Act 2004 (c. 35), **ss. 242(11)**, 322(1) (with s. 313); S.I. 2005/2447, art. 2(1)(a)(5)(b), Sch. Pts. 1, 2
- C43** S. 10 applied (4.12.2005 for specified purposes, 30.12.2005 in so far as not already in force) by Pensions Act 2004 (c. 35), **ss. 223(4)**, 322(1) (with s. 313); S.I. 2005/3331, art. 2(1)(a)(b), Sch. Pt. 1
- C44** S. 10 applied (4.12.2005 for specified purposes, 30.12.2005 in so far as not already in force) by Pensions Act 2004 (c. 35), **ss. 224(8)**, 322(1) (with s. 313); S.I. 2005/3331, art. 2(1)(a)(b), Sch. Pt. 1
- C45** S. 10 applied (4.12.2005 for specified purposes, 30.12.2005 in so far as not already in force) by Pensions Act 2004 (c. 35), **ss. 225(3)**, 322(1) (with s. 313); S.I. 2005/3331, art. 2(1)(a)(b), Sch. Pt. 1
- C46** S. 10 applied (4.12.2005 for specified purposes, 30.12.2005 in so far as not already in force) by Pensions Act 2004 (c. 35), **ss. 226(7)**, 322(1) (with s. 313); S.I. 2005/3331, art. 2(1)(a)(b), Sch. Pt. 1
- C47** S. 10 applied (4.12.2005 for specified purposes, 30.12.2005 in so far as not already in force) by Pensions Act 2004 (c. 35), **ss. 227(8)(9)**, 322(1) (with s. 313); S.I. 2005/3331, art. 2(1)(a)(b), Sch. Pt. 1
- C48** S. 10 applied (4.12.2005 for specified purposes, 30.12.2005 in so far as not already in force) by Pensions Act 2004 (c. 35), **ss. 228(4)**, 322(1) (with s. 313); S.I. 2005/3331, art. 2(1)(a)(b), Sch. Pt. 1
- C49** S. 10 applied (4.12.2005 for specified purposes, 30.12.2005 in so far as not already in force) by Pensions Act 2004 (c. 35), **ss. 229(6)**, 322(1) (with s. 313); S.I. 2005/3331, art. 2(1)(a)(b), Sch. Pt. 1
- C50** S. 10 applied (4.12.2005 for specified purposes, 30.12.2005 in so far as not already in force) by Pensions Act 2004 (c. 35), **ss. 230(4)**, 322(1) (with s. 313); S.I. 2005/3331, art. 2(1)(a)(b), Sch. Pt. 1
- C51** S. 10 applied (4.12.2005 for specified purposes, 30.12.2005 for specified purposes) by Pensions Act 2004 (c. 35), **ss. 287(5)**, 322(1) (with s. 313); S.I. 2005/3331, art. 2(1)(a)(b), Sch. Pt. 1 (with art. 3)
- C52** S. 10 applied (4.12.2005 for specified purposes, 30.12.2005 for specified purposes) by Pensions Act 2004 (c. 35), **ss. 291(3)**, 322(1) (with s. 313); S.I. 2005/3331, art. 2(1)(a)(b), Sch. Pt. 1
- C53** S. 10 applied (4.12.2005 for specified purposes, 30.12.2005 for specified purposes) by Pensions Act 2004 (c. 35), **ss. 292(3)**, 322(1) (with s. 313); S.I. 2005/3331, art. 2(1)(a)(b), Sch. Pt. 1
- C54** S. 10 applied (4.12.2005 for specified purposes, 30.12.2005 for specified purposes) by Pensions Act 2004 (c. 35), **ss. 293(7)**, 322(1) (with s. 313); S.I. 2005/3331, art. 2(1)(a)(b), Sch. Pt. 1
- C55** S. 10 applied (1.1.2006 for specified purposes, 6.4.2006 in so far as not already in force) by Pensions Act 2004 (c. 35), **ss. 253(6)**, 322(1) (with s. 313); S.I. 2005/3331, art. 2(5)(a)(b), Sch. Pt. 5
- C56** S. 10 applied by Pensions Act 2004 (c. 35), **s. 231A(7)** (as inserted (24.7.2006) by S.I. 2006/1733, art. 2(7), reg. 1)
- C57** S. 10 applied (6.4.2007) by Pensions Act 2004 (c. 35), **ss. 153(8)**, 322(1) (with s. 313); S.I. 2006/2272, art. 2(7), Sch. Pt. 2
- C58** S. 10 applied (6.4.2007) by Pensions Act 2004 (c. 35), **ss. 157(8)**, 322(1) (with s. 313); S.I. 2006/2272, art. 2(7), Sch. Pt. 2
- C59** S. 10: power to apply conferred (26.11.2008) by Pensions Act 2008 (c. 30), **ss. 60(2)**, 149(2)
- C60** S. 10 applied by Pension Schemes Act 1993 (c. 48), **s. 24H(5)** (as inserted (1.3.2009 for specified purposes, 6.4.2009 in so far as not already in force) by Pensions Act 2007 (c. 22), ss. 14(3), 30(2)(a); S.I. 2009/406, art. 2(a)(b))
- C61** S. 10 applied (1.4.2011) by The National Health Service Superannuation Scheme (Scotland) Regulations 2011 (S.S.I. 2011/117), regs. A1(2), **V10(1)(b)(2)**
- C62** S. 10 applied (24.7.2014) by The Pensions Act 2011 (Transitional, Consequential and Supplementary Provisions) Regulations 2014 (S.I. 2014/1711), regs. 1(1), **23(12)**
- C63** S. 10 applied (24.7.2014) by The Pensions Act 2011 (Transitional, Consequential and Supplementary Provisions) Regulations 2014 (S.I. 2014/1711), regs. 1(1), **46(6)**
- C64** S. 10 applied (3.3.2015 for specified purposes) by Pension Schemes Act 1993 (c. 48), **s. 93A(6)** (as substituted by Pension Schemes Act 2015 (c. 8), s. 89(1)(b)(3)(b), **Sch. 4 para. 8** (with s. 87))

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- C65** S. 10: power to apply conferred (3.3.2015 for specified purposes, 6.4.2015 in so far as not already in force) by Pension Schemes Act 2015 (c. 8), **ss. 49(2)(c)**, 89(1)(b)(3)(b) (with s. 87)
- C66** S. 10 applied by Pensions Act 2004 (c. 35), **s. 70A** (as inserted (1.4.2015) by Public Service Pensions Act 2013 (c. 25), s. 41(2), Sch. 4 para. 7 (with **Sch. 11 para. 8**); S.I. 2015/4, **art. 4(1)(b)**)
- C67** S. 10 applied (6.4.2015) by The Occupational Pension Schemes (Power to Amend Schemes to Reflect Abolition of Contracting-out) Regulations 2015 (S.I. 2015/118), regs. 1(2), **12(3)**
- C68** S. 10 applied (6.4.2015) by Pension Schemes Act 2015 (c. 8), **ss. 48(6)**, 89(3)(b) (with s. 87)
- C69** S. 10 applied (6.4.2015) by The Pension Schemes Act 2015 (Transitional Provisions and Appropriate Independent Advice) Regulations 2015 (S.I. 2015/742), regs. 1(2), **12(7)**
- C70** S. 10 applied (27.4.2017 for specified purposes, 5.9.2018 for specified purposes, 1.10.2018 in so far as not already in force) by Pension Schemes Act 2017 (c. 17), **ss. 22(10)**, 44(1)(a) (with Sch. 2); S.I. 2018/965, reg. 2(a)(b)
- C71** S. 10 applied (27.4.2017 for specified purposes, 5.9.2018 for specified purposes, 1.10.2018 in so far as not already in force) by Pension Schemes Act 2017 (c. 17), **ss. 25(7)**, 44(1)(a) (with Sch. 2); S.I. 2018/965, reg. 2(a)(b)
- C72** S. 10 applied (27.4.2017 for specified purposes, 5.9.2018 for specified purposes, 1.10.2018 in so far as not already in force) by Pension Schemes Act 2017 (c. 17), **ss. 33(7)**, 44(1)(a) (with Sch. 2); S.I. 2018/965, reg. 2(a)(b)
- C73** S. 10 applied (5.9.2018 for specified purposes, 1.10.2018 in so far as not already in force) by Pension Schemes Act 2017 (c. 17), **ss. 3(2)**, 44(2); S.I. 2018/965, reg. 2(a)(b)
- C74** S. 10 applied (5.9.2018 for specified purposes, 1.10.2018 in so far as not already in force) by Pension Schemes Act 2017 (c. 17), **ss. 14(5)**, 44(2); S.I. 2018/965, reg. 2(a)(b)
- C75** S. 10 applied (5.9.2018 for specified purposes, 1.10.2018 in so far as not already in force) by Pension Schemes Act 2017 (c. 17), **ss. 15(5)**, 44(2); S.I. 2018/965, reg. 2(a)(b)
- C76** S. 10 applied (5.9.2018 for specified purposes, 1.10.2018 in so far as not already in force) by Pension Schemes Act 2017 (c. 17), **ss. 16(6)**, 44(2); S.I. 2018/965, reg. 2(a)(b)
- C77** S. 10 applied (5.9.2018 for specified purposes, 1.10.2018 in so far as not already in force) by Pension Schemes Act 2017 (c. 17), **ss. 23(8)**, 44(2); S.I. 2018/965, reg. 2(a)(b)
- C78** S. 10 applied (5.9.2018 for specified purposes, 1.10.2018 in so far as not already in force) by Pension Schemes Act 2017 (c. 17), **ss. 24(8)**, 44(2); S.I. 2018/965, reg. 2(a)(b)
- C79** S. 10 applied (5.9.2018 for specified purposes, 1.10.2018 in so far as not already in force) by Pension Schemes Act 2017 (c. 17), **ss. 26(8)**, 44(2); S.I. 2018/965, reg. 2(a)(b)
- C80** S. 10 applied (5.9.2018 for specified purposes, 1.10.2018 in so far as not already in force) by Pension Schemes Act 2017 (c. 17), **ss. 28(5)**, 44(2); S.I. 2018/965, reg. 2(a)(b)
- C81** S. 10 applied (5.9.2018 for specified purposes, 1.10.2018 in so far as not already in force) by Pension Schemes Act 2017 (c. 17), **ss. 29(4)**, 44(2); S.I. 2018/965, reg. 2(a)(b)
- C82** S. 10 applied (5.9.2018 for specified purposes, 1.10.2018 in so far as not already in force) by Pension Schemes Act 2017 (c. 17), **ss. 30(5)**, 44(2); S.I. 2018/965, reg. 2(a)(b)
- C83** S. 10 applied (5.9.2018 for specified purposes, 1.10.2018 in so far as not already in force) by Pension Schemes Act 2017 (c. 17), **ss. 32(3)**, 44(2); S.I. 2018/965, reg. 2(a)(b)
- C84** S. 10 applied (5.9.2018 for specified purposes, 1.10.2018 in so far as not already in force) by Pension Schemes Act 2017 (c. 17), s. 44(2), **Sch. 1 para. 1(8)-(10)**; S.I. 2018/965, reg. 2(a)(b)
- C85** S. 10 applied (5.9.2018 for specified purposes, 1.10.2018 in so far as not already in force) by Pension Schemes Act 2017 (c. 17), s. 44(2), **Sch. 1 para. 4(5)**; S.I. 2018/965, reg. 2(a)(b)
- C86** S. 10 applied (1.10.2018) by The Occupational Pension Schemes (Master Trusts) Regulations 2018 (S.I. 2018/1030), reg. 1(2), **Sch. 5 para. 18**
- C87** S. 10 applied (11.2.2021 for specified purposes) by Pension Schemes Act 2021 (c. 1), **ss. 7(2)**, 131(1)(3)(a)
- C88** S. 10 applied (11.2.2021 for specified purposes) by Pension Schemes Act 2021 (c. 1), **ss. 19(4)**, 131(1)(3)(a)
- C89** S. 10 applied (11.2.2021 for specified purposes) by Pension Schemes Act 2021 (c. 1), **ss. 20(8)**, 131(1)(3)(a) (with s. 20(9))

*Status: Point in time view as at 31/05/2021.*

*Changes to legislation: Pensions Act 1995, Part I is up to date with all changes known to be in force on or before 23 June 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

- C90** S. 10 applied (11.2.2021 for specified purposes) by Pension Schemes Act 2021 (c. 1), **ss. 22(4), 131(1)(3)(a)**
- C91** S. 10 applied (11.2.2021 for specified purposes) by Pension Schemes Act 2021 (c. 1), **ss. 23(5), 131(1)(3)(a)**
- C92** S. 10 applied (11.2.2021 for specified purposes) by Pension Schemes Act 2021 (c. 1), **ss. 27(5), 131(1)(3)(a)**
- C93** S. 10 applied (11.2.2021 for specified purposes) by Pension Schemes Act 2021 (c. 1), **ss. 28(8), 131(1)(3)(a)**
- C94** S. 10 applied (11.2.2021 for specified purposes) by Pension Schemes Act 2021 (c. 1), **ss. 29(11), 131(1)(3)(a)**
- C95** S. 10 applied (11.2.2021 for specified purposes) by Pension Schemes Act 2021 (c. 1), **ss. 33(14), 131(1)(3)(a)**
- C96** S. 10 applied (11.2.2021 for specified purposes) by Pension Schemes Act 2021 (c. 1), **ss. 34(6), 131(1)(3)(a)**
- C97** S. 10: power to apply conferred (11.2.2021 for specified purposes) by Pension Schemes Act 2021 (c. 1), **ss. 36(10), 131(1)(3)(a)**
- C98** S. 10 applied (11.2.2021 for specified purposes) by Pension Schemes Act 2021 (c. 1), **ss. 37(6), 131(1)(3)(a)**
- C99** S. 10 applied (11.2.2021 for specified purposes) by Pension Schemes Act 2021 (c. 1), **ss. 38(8), 131(1)(3)(a)**
- C100** S. 10 applied (11.2.2021 for specified purposes) by Pension Schemes Act 2021 (c. 1), **ss. 39(5), 131(1)(3)(a)**
- C101** S. 10 applied (11.2.2021 for specified purposes) by Pension Schemes Act 2021 (c. 1), **ss. 41(5), 131(1)(3)(a)**
- C102** S. 10 applied (11.2.2021 for specified purposes) by Pension Schemes Act 2021 (c. 1), **ss. 42(3), 131(1)(3)(a)**
- C103** S. 10 applied (11.2.2021 for specified purposes) by Pension Schemes Act 2021 (c. 1), **ss. 43(5), 131(1)(3)(a)**
- C104** S. 10 applied (11.2.2021 for specified purposes) by Pension Schemes Act 2021 (c. 1), **ss. 45(7), 131(1)(3)(a)**
- C105** S. 10 applied (11.2.2021 for specified purposes) by Pension Schemes Act 2021 (c. 1), **ss. 46(4), 131(1)(3)(a)**
- C106** S. 10 applied (11.2.2021 for specified purposes) by Pension Schemes Act 2021 (c. 1), s. 131(1)(3)(a), **Sch. 2 para. 4(5)**
- C107** S. 10 applied (11.2.2021 for specified purposes) by Pensions Act 2004 (c. 35), **s. 221A(6)** (as inserted by Pension Schemes Act 2021 (c. 1), s. 131(1)(3)(b), Sch. 10 para. 2)
- C108** S. 10 applied (11.2.2021 for specified purposes) by Pensions Act 2004 (c. 35), **s. 221B(9)** (as inserted by Pension Schemes Act 2021 (c. 1), s. 131(1)(3)(b), Sch. 10 para. 2)
- C109** S. 10 applied (11.2.2021 for specified purposes) by Pension Schemes Act 2021 (c. 1), s. 131(1)(3)(a), **Sch. 2 para. 1(8)-(10)** (with Sch. 2 para. 1(1))
- C110** S. 10(3)-(9) applied (1.9.2005) by Pensions Act 2004 (c. 35), **ss. 314(a), 322(1)** (with s. 313); S.I. 2005/2447, art. 2(4), Sch. Pt. 1
- C111** S. 10(3)-(9) applied (30.12.2005) by The Occupational Pension Schemes (Regulatory Own Funds) Regulations 2005 (S.I. 2005/3380), regs. 1, **3(4), 4(3), 6(4), 7(4), 8(2), 10(7), 12(4)**

#### Commencement Information

- I6** S. 10 in force at 6.4.1997 in so far as not already in force by S.I. 1997/664, art. 2(3), **Sch. Pt. 3**
- I7** S. 10(1) in force at 1.6.1996 for specified purposes by S.I. 1996/1412, art. 2(2), **Sch. Pt. II**
- I8** S. 10(2)(3) in force at 6.4.1996 for specified purposes by S.I. 1996/778, art. 2(5)(a), **Sch. Pt. V**

*Status: Point in time view as at 31/05/2021.*

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## 11 Powers to wind up schemes.

- (1) Subject to the following provisions of this section, the Authority may by order direct or authorise an occupational pension scheme to be wound up if they are satisfied that—
- (a) the scheme, or any part of it, ought to be replaced by a different scheme,
  - (b) the scheme is no longer required, or
  - (c) it is necessary in order to protect the interests of the generality of the members of the scheme that it be wound up.

- (2) The Authority may not make an order under this section on either of the grounds referred to in subsection (1)(a) or (b) unless they are satisfied that the winding up of the scheme—

- (a) cannot be achieved otherwise than by means of such an order, or
- (b) can only be achieved in accordance with a procedure which—
  - (i) is liable to be unduly complex or protracted, or
  - (ii) involves the obtaining of consents which cannot be obtained, or can only be obtained with undue delay or difficulty,

and that it is reasonable in all the circumstances to make the order.

<sup>F45</sup>(3) .....

- [<sup>F46</sup>(3A) The Authority may, during an assessment period (within the meaning of section 132 of the Pensions Act 2004 (meaning of “assessment period” for the purposes of Part 2 of that Act)) in relation to an occupational pension scheme, by order direct the scheme to be wound up if they are satisfied that it is necessary to do so in order—

- (a) to ensure that the scheme’s protected liabilities do not exceed its assets, or
- (b) if those liabilities do exceed its assets, to keep the excess to a minimum.

(3B) In subsection (3A)—

- (a) “protected liabilities” has the meaning given by section 131 of the Pensions Act 2004, and
- (b) references to the assets of the scheme are references to those assets excluding any assets representing the value of any rights in respect of money purchase benefits (within the meaning of that Act) under the scheme.]

- (4) An order under this section authorising a scheme to be wound up must include such directions with respect to the manner and timing of the winding up as the Authority think appropriate having regard to the purposes of the order.

[<sup>F47</sup>This subsection is subject to sections 28, 135 and 219 of the Pensions Act 2004 (winding up order made when freezing order has effect in relation to scheme, during assessment period under Part 2 of that Act etc).]

- (5) The winding up of a scheme in pursuance of an order of the Authority under this section is as effective in law as if it had been made under powers conferred by or under the scheme.

- (6) An order under this section may be made and complied with in relation to a scheme—
- (a) in spite of any enactment or rule of law, or any rule of the scheme, which would otherwise operate to prevent the winding up, or
  - (b) except for the purpose of the Authority determining whether or not they are satisfied as mentioned in subsection (2), without regard to any such enactment, rule of law or rule of the scheme as would otherwise require, or might



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otherwise be taken to require, the implementation of any procedure or the obtaining of any consent, with a view to the winding up.

[<sup>F48</sup>(6A) Subsection (6) does not have effect to authorise the Authority to make an order as mentioned in paragraph (a) or (b) of that subsection, if their doing so would be unlawful as a result of section 6(1) of the Human Rights Act 1998 (unlawful for public authority to act in contravention of a Convention right).]

(7) In the case of a public service pension scheme—

- (a) an order under subsection (1) directing or authorising the scheme to be wound up may only be made on the grounds referred to in paragraph (c), and
- (b) such an order may, as the Authority think appropriate, adapt, amend or repeal any enactment [<sup>F49</sup>(including the Scottish Parliamentary Pensions Act 2009 (asp 1))] in which the scheme is contained or under which it is made.

#### Textual Amendments

- F45** S. 11(3) repealed (6.4.2005) by Pensions Act 2004 (c. 35), ss. 22(a), 322(1), **Sch. 13** (with s. 313); S.I. 2005/275, art. 2(7), Sch. Pt. 7 (with S.I. 2005/695, arts. 5(8), 6, Schs. 2, 3)
- F46** S. 11(3A)(3B) inserted (6.4.2005) by Pensions Act 2004 (c. 35), ss. 22(b), 322(1) (with s. 313); S.I. 2005/275, art. 2(7), Sch. Pt. 7 (with S.I. 2005/695, arts. 5(8), 6, Schs. 2, 3)
- F47** Words in s. 11(4) inserted (6.4.2005) by Pensions Act 2004 (c. 35), ss. 22(c), 322(1) (with s. 313); S.I. 2005/275, art. 2(7), Sch. Pt. 7 (with S.I. 2005/695, arts. 5(8), 6, Schs. 2, 3)
- F48** S. 11(6A) inserted (6.4.2005) by Pensions Act 2004 (c. 35), ss. 22(d), 322(1) (with s. 313); S.I. 2005/275, art. 2(7), Sch. Pt. 7 (with S.I. 2005/695, arts. 5(8), 6, Schs. 2, 3)
- F49** Words in s. 11(7)(b) inserted (1.9.2009) by The Scottish Parliamentary Pensions Act 2009 (Consequential Modifications) Order 2009 (S.I. 2009/1682), art. 1(1), **Sch. para. 1**

#### Modifications etc. (not altering text)

- C4** Ss. 3-11 modified in part (11.11.1999 for specified purposes; 1.10.2000 in so far as not already in force) by the Welfare Reform and Pensions Act 1999 (c. 30), s. 89(5)(a), **Sch. 1 para. 1(1)(2)(b)** (i); S.I. 2000/1047, art. 2(2)(c), Sch. Pt. III (as amended (6.4.2005) by Pensions Act 2004 (c. 35), s. 322(1), Sch. 12 para. 76(2)(a))

#### Commencement Information

- I9** S. 11 in force at 6.4.1997 by S.I. 1997/664, art. 2(3), **Sch. Pt. 3**

## 12 Powers to wind up public service schemes.

- (1) The appropriate authority may by order direct a public service pension scheme to be wound up if they are satisfied that—
  - (a) the scheme, or any part of it, ought to be replaced by a different scheme, or
  - (b) the scheme is no longer required.
- (2) Subsection (2) of section 11 applies for the purposes of this section as it applies for the purposes of that, but as if references to the Authority were to the appropriate authority.
- (3) In this section “the appropriate authority”, in relation to a scheme, means such Minister of the Crown or government department as may be designated by the Treasury as having responsibility for the particular scheme.
- (4) An order under this section must include such directions with respect to the manner and timing of the winding up as that authority think appropriate.

*Status: Point in time view as at 31/05/2021.*

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- (5) Such an order may, as that authority think appropriate, adapt, amend or repeal any enactment in which the scheme is contained or under which it is made.

**Commencement Information**

**I10** S. 12 in force at 6.4.1997 by S.I. 1997/664, art. 2(3), **Sch. Pt. 3**

<sup>F50</sup>**13 Injunctions and interdicts.**

**Textual Amendments**

**F50** S. 13 repealed (6.4.2005) by Pensions Act 2004 (c. 35), s. 322(1), **Sch. 13**; S.I. 2005/695, art. 2(7), **Sch. 1**

**14 Restitution.**

- (1) If, on the application of the Authority, the court is satisfied—
- (a) that a power to make a payment, or distribute any assets, to the employer, has been exercised in contravention of section 37, 76 or 77, or
  - (b) that any act or omission of the trustees or managers of an occupational pension scheme was in contravention of section 40,
- the court may order the employer and any other person who appears to the court to have been knowingly concerned in the contravention to take such steps as the court may direct for restoring the parties to the position in which they were before the payment or distribution was made, or the act or omission occurred.
- (2) The jurisdiction conferred by this section is exercisable by the High Court or the Court of Session.

**Commencement Information**

**I11** S. 14 in force at 6.4.1997 by S.I. 1997/664, art. 2(3), **Sch. Pt. 3**

**15 Directions.**

- (1) The Authority may, where in the case of any trust scheme the employer fails to comply with any requirement included in regulations by virtue of section 49(5), direct the trustees to make arrangements for the payment to the members of the benefit to which the requirement relates.
- (2) The Authority may—
  - (a) where in the case of any trust scheme an annual report is published, direct the trustees to include a statement prepared by the Authority in the report, and
  - (b) in the case of any trust scheme, direct the trustees to send to the members a copy of a statement prepared by the Authority.
- (3) A direction under this section must be given in writing.

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(4) Where a direction under this section is not complied with, [<sup>F51</sup>section 10 applies] to any trustee who has failed to take all such steps as are reasonable to secure compliance.

**Textual Amendments**

**F51** Words in s. 15(4) substituted (6.4.2005) by [Pensions Act 2004 \(c. 35\)](#), s. 322(1), **Sch. 12 para. 39**; S.I. 2005/695, art. 2(7), Sch. 1

**Modifications etc. (not altering text)**

**C112** S. 15 modified in part (11.11.1999 for specified purposes, 1.10.2000 in so far as not already in force) by [Welfare Reform and Pensions Act 1999 \(c. 30\)](#), s. 89(5)(a), **Sch. 1 para. 1(1)(2)(b)(i)**; S.I. 2000/1047, art. 2(2)(c), Sch. Pt. 3 (as amended (6.4.2005) by [Pensions Act 2004 \(c. 35\)](#), s. 322(1), Sch. 12 para. 76(2)(a))

**Commencement Information**

**I12** S. 15 in force at 6.4.1997 by S.I. 1997/664, art. 2(3), **Sch. Pt. 3**

*Member-nominated trustees and directors*

<sup>F52</sup>**16 Requirement for member-nominated trustees.**

.....

**Textual Amendments**

**F52** Ss. 16-21 repealed (6.4.2006) by [Pensions Act 2004 \(c. 35\)](#), s. 322(1), **Sch. 13**; S.I. 2005/3331, art. 2(6), Sch. Pt. 6

<sup>F52</sup>**17 Exceptions.**

.....

**Textual Amendments**

**F52** Ss. 16-21 repealed (6.4.2006) by [Pensions Act 2004 \(c. 35\)](#), s. 322(1), **Sch. 13**; S.I. 2005/3331, art. 2(6), Sch. Pt. 6

<sup>F52</sup>**18 Corporate trustees: member-nominated directors.**

.....

**Textual Amendments**

**F52** Ss. 16-21 repealed (6.4.2006) by [Pensions Act 2004 \(c. 35\)](#), s. 322(1), **Sch. 13**; S.I. 2005/3331, art. 2(6), Sch. Pt. 6

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## **F52 19 Corporate trustees: exceptions.**

.....

### **Textual Amendments**

**F52** Ss. 16-21 repealed (6.4.2006) by Pensions Act 2004 (c. 35), s. 322(1), **Sch. 13**; S.I. 2005/3331, art. 2(6), Sch. Pt. 6

## **F52 20 Selection, and eligibility, of member-nominated trustees and directors.**

.....

### **Textual Amendments**

**F52** Ss. 16-21 repealed (6.4.2006) by Pensions Act 2004 (c. 35), s. 322(1), **Sch. 13**; S.I. 2005/3331, art. 2(6), Sch. Pt. 6

## **F52 21 Member-nominated trustees and directors: supplementary.**

.....

### **Textual Amendments**

**F52** Ss. 16-21 repealed (6.4.2006) by Pensions Act 2004 (c. 35), s. 322(1), **Sch. 13**; S.I. 2005/3331, art. 2(6), Sch. Pt. 6

### *Independent trustees*

## **22 Circumstances in which following provisions apply.**

- (1) This section applies in relation to a trust scheme—
- (a) if a person (referred to in this section and sections 23 [F53 to 26] as “the practitioner”) begins to act as an insolvency practitioner in relation to a company which, or an individual who, is the employer in relation to the scheme, or
  - (b) if the official receiver becomes—
    - (i) the liquidator or provisional liquidator of a company which is the employer in relation to the scheme, <sup>F54</sup>...
    - [F55 (ia) the interim receiver of the property of a person who is the employer in relation to the scheme, or]
    - (ii) the receiver and the manager, or the trustee, of the estate of a bankrupt who is the employer in relation to the scheme.
- (2) Where this section applies in relation to a scheme [F56 by virtue of subsection (1)], it ceases to do so—
- (a) if some person other than the employer mentioned in subsection (1) becomes the employer, or

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- (b) if at any time neither the practitioner nor the official receiver is acting in relation to the employer;
- but this subsection does not affect the application of this section in relation to the scheme on any subsequent occasion when the conditions specified in subsection (1) (a) or (b) are satisfied in relation to it.
- [<sup>F57</sup>(2A) To the extent that it does not already apply by virtue of subsection (1), this section also applies in relation to a trust scheme—
- (a) at any time during an assessment period (within the meaning of section 132 of the Pensions Act 2004) in relation to the scheme, and
  - (b) at any time, not within paragraph (a), when the scheme is authorised under section 153 of that Act (closed schemes) to continue as a closed scheme.]
- [<sup>F58</sup>(2B) The responsible person must, as soon as reasonably practicable, give notice of an event within subsection (2C) to—
- (a) the Authority,
  - (b) the Board of the Pension Protection Fund, and
  - (c) the trustees of the scheme.
- (2C) The events are—
- (a) the practitioner beginning to act as mentioned in subsection (1)(a), if immediately before he does so this section does not apply in relation to the scheme;
  - (b) the practitioner ceasing to so act, if immediately after he does so this section does not apply in relation to the scheme;
  - (c) the official receiver beginning to act in a capacity mentioned in subsection (1) (b)(i), (ia) or (ii), if immediately before he does so this section does not apply in relation to the scheme;
  - (d) the official receiver ceasing to act in such a capacity, if immediately after he does so this section does not apply in relation to the scheme.
- (2D) For the purposes of subsection (2B) “the responsible person” means—
- (a) in the case of an event within subsection (2C)(a) or (b) the practitioner, and
  - (b) in the case of an event within subsection (2C)(c) or (d), the official receiver.
- (2E) Regulations may require prescribed persons in prescribed circumstances where this section begins or ceases to apply in relation to a trust scheme by virtue of subsection (2A) to give a notice to that effect to—
- (a) the Authority,
  - (b) the Board of the Pension Protection Fund, and
  - (c) the trustees of the scheme.
- (2F) A notice under subsection (2B), or regulations under subsection (2E), must be in writing and contain such information as may be prescribed.]
- (3) In this section and sections 23 [<sup>F59</sup>to 26]—
- “acting as an insolvency practitioner” and “official receiver” shall be construed in accordance with sections 388 and 399 of the <sup>M2</sup>Insolvency Act 1986,
  - “bankrupt” has the meaning given by section 381 of the Insolvency Act 1986,
  - “company” means a company [<sup>F60</sup>as defined in section 1(1) of the Companies Act 2006] or a company which may be wound up under Part V of the Insolvency Act 1986 (unregistered companies), <sup>F61</sup>...

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F62 .....

### Textual Amendments

- F53** Words in s. 22(1) substituted (6.4.2005) by [Pensions Act 2004 \(c. 35\)](#), s. 322(1), **Sch. 12 para. 40**; S.I. 2005/695, art. 2(7), Sch. 1
- F54** Word in s. 22(1)(b)(i) repealed (10.2.2005 for specified purposes, 6.4.2005 in so far as not already in force) by [Pensions Act 2004 \(c. 35\)](#), ss. 36(2)(a), 322(1), **Sch. 13** (with s. 313); S.I. 2005/275, art. 2(3)(a)(b), Sch. Pt. 3
- F55** S. 22(1)(b)(ia) inserted (10.2.2005 for specified purposes, 6.4.2005 in so far as not already in force) by [Pensions Act 2004 \(c. 35\)](#), ss. 36(2)(a), 322(1) (with s. 313); S.I. 2005/275, art. 2(3)(a)(b), Sch. Pt. 3
- F56** Words in s. 22(2) inserted (10.2.2005 for specified purposes, 6.4.2005 in so far as not already in force) by [Pensions Act 2004 \(c. 35\)](#), ss. 36(2)(b), 322(1) (with s. 313); S.I. 2005/275, art. 2(3)(a)(b), Sch. Pt. 3
- F57** S. 22(2A) inserted (10.2.2005 for specified purposes, 6.4.2005 in so far as not already in force) by [Pensions Act 2004 \(c. 35\)](#), ss. 36(2)(c), 322(1) (with s. 313); S.I. 2005/275, art. 2(3)(a)(b), Sch. Pt. 3
- F58** S. 22(2B)-(2F) inserted (10.2.2005 for specified purposes, 6.4.2005 in so far as not already in force) by [Pensions Act 2004 \(c. 35\)](#), ss. 36(2)(d), 322(1) (with s. 313); S.I. 2005/275, art. 2(3)(a)(b), Sch. Pt. 3
- F59** Words in s. 22(3) substituted (6.4.2005) by [Pensions Act 2004 \(c. 35\)](#), s. 322(1), **Sch. 12 para. 40**; S.I. 2005/695, art. 2(7), Sch. 1
- F60** Words in s. 22(3) substituted (1.10.2009) by [The Companies Act 2006 \(Consequential Amendments, Transitional Provisions and Savings\) Order 2009 \(S.I. 2009/1941\)](#), art. 1(2), **Sch. 1 para. 155(3)** (with art. 10)
- F61** Word in s. 22(3) omitted (30.11.2016) by virtue of [The Bankruptcy \(Scotland\) Act 2016 \(Consequential Provisions and Modifications\) Order 2016 \(S.I. 2016/1034\)](#), art. 1, **Sch. 1 para. 13(2)(b)**
- F62** Words in s. 22(3) omitted (30.11.2016) by virtue of [The Bankruptcy \(Scotland\) Act 2016 \(Consequential Provisions and Modifications\) Order 2016 \(S.I. 2016/1034\)](#), art. 1, **Sch. 1 para. 13(2)(a)**

### Modifications etc. (not altering text)

- C113** Ss. 22-26 excluded (31.12.2000) by [The Occupational Pension Schemes \(Republic of Ireland Schemes Exemption\) Regulations 2000 \(S.I. 2000/3198\)](#), regs. 1(1), 2, **Sch.**
- C114** Ss. 22-26 modified (11.4.2005) by [The Occupational Pension Schemes \(Independent Trustee\) Regulations 2005 \(S.I. 2005/703\)](#), regs. 1(1), **10-12**

### Commencement Information

- I13** S. 22 in force at 6.4.1997 by S.I. 1997/664, art. 2(3), **Sch. Pt. 3**

### Marginal Citations

- M2** 1986 c. 45.

## [<sup>F63</sup>23] Power to appoint independent trustees

- (1) While section 22 applies in relation to a trust scheme, the Authority may by order appoint as a trustee of the scheme a person who—
- (a) is an independent person in relation to the scheme, and
  - (b) is registered in the register maintained by the Authority in accordance with regulations under subsection (4).

*Status: Point in time view as at 31/05/2021.*

*Changes to legislation: Pensions Act 1995, Part I is up to date with all changes known to be in force on or before 23 June 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

- (2) In relation to a particular trust scheme, no more than one trustee may at any time be an independent trustee appointed under subsection (1).
- (3) For the purposes of this section a person is independent in relation to a trust scheme only if—
  - (a) he has no interest in the assets of the employer or of the scheme otherwise than as trustee of the scheme,
  - (b) he is neither connected with, nor an associate of—
    - (i) the employer,
    - (ii) any person for the time being acting as an insolvency practitioner in relation to the employer, or
    - (iii) the official receiver acting in any of the capacities mentioned in section 22(1)(b) in relation to the employer, and
  - (c) he satisfies any prescribed requirements;and any reference in this Part to an independent trustee is to be construed accordingly.
- (4) Regulations must provide for the Authority to compile and maintain a register of persons who satisfy the prescribed conditions for registration.
- (5) Regulations under subsection (4) may provide—
  - (a) for copies of the register or of extracts from it to be provided to prescribed persons in prescribed circumstances;
  - (b) for the inspection of the register by prescribed persons in prescribed circumstances.
- (6) The circumstances which may be prescribed under subsection (5)(a) or (b) include the payment by the person to whom the copy is to be provided, or by whom the register is to be inspected, of such reasonable fee as may be determined by the Authority.
- (7) This section is without prejudice to the powers conferred by section 7.]

#### Textual Amendments

**F63** S. 23 substituted for ss. 23, 24 (10.2.2005 for specified purposes, 6.4.2005 in so far as not already in force) by [Pensions Act 2004 \(c. 35\)](#), **ss. 36(3), 322(1)** (with [s. 313](#)); [S.I. 2005/275](#), [art. 2\(3\)\(a\)\(b\)](#), [Sch. Pt. 3](#)

#### Modifications etc. (not altering text)

**C113** Ss. 22-26 excluded (31.12.2000) by [The Occupational Pension Schemes \(Republic of Ireland Schemes Exemption\) Regulations 2000 \(S.I. 2000/3198\)](#), [regs. 1\(1\), 2](#), [Sch.](#)

**C114** Ss. 22-26 modified (11.4.2005) by [The Occupational Pension Schemes \(Independent Trustee\) Regulations 2005 \(S.I. 2005/703\)](#), [regs. 1\(1\)](#), [10-12](#)

#### <sup>F63</sup>24 Members' powers to apply to court to enforce duty.

.....

*Status: Point in time view as at 31/05/2021.*

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### Textual Amendments

**F63** S. 23 substituted for ss. 23, 24 (10.2.2005 for specified purposes, 6.4.2005 in so far as not already in force) by [Pensions Act 2004 \(c. 35\)](#), **ss. 36(3), 322(1)** (with [s. 313](#)); [S.I. 2005/275](#), [art. 2\(3\)\(a\)\(b\)](#), [Sch. Pt. 3](#)

## 25 Appointment and powers of independent trustees: further provisions.

- (1) If, immediately before the appointment of an independent trustee under <sup>F64</sup>section 23(1)], there is no trustee of the scheme other than the employer, the employer shall cease to be a trustee upon the appointment of the independent trustee.
- (2) While section 22 applies in relation to a scheme <sup>F65</sup>and there is an independent trustee of the scheme appointed under section 23(1)]—
  - (a) any power vested in the trustees of the scheme and exercisable at their discretion may be exercised only by the independent trustee, and
  - (b) any power—
    - (i) which the scheme confers on the employer (otherwise than as trustee of the scheme), and
    - (ii) which is exercisable by him at his discretion but only as trustee of the power,
 may be exercised only by the independent trustee.
 

<sup>F66</sup> ...
- (3) While section 22 applies in relation to a scheme <sup>F67</sup>and there is an independent trustee of the scheme appointed under section 23(1), the independent trustee may not] be removed from being a trustee by virtue only of any provision of the scheme.
- (4) If a trustee appointed under <sup>F68</sup>section 23(1)] ceases to be an independent person <sup>F69</sup>(within the meaning of section 23(3)), then—
  - <sup>F70</sup>(a) he must as soon as reasonably practicable give written notice of that fact to the Authority, and]
  - (b) subject to subsection (5), he shall cease to be a trustee of the scheme.
- (5) If, in a case where subsection (4) applies, there is no other trustee of the scheme than the former independent trustee, he shall not cease by virtue of that subsection to be a trustee until such time as another trustee is appointed.
- <sup>F71</sup>(5A) Section 10 applies to any person who, without reasonable excuse, fails to comply with subsection (4)(a).]
- <sup>F72</sup>(6) An order under section 23(1) may provide for any fees and expenses of the trustee appointed under the order to be paid—
  - (a) by the employer,
  - (b) out of the resources of the scheme, or
  - (c) partly by the employer and partly out of those resources.
- (7) Such an order may also provide that an amount equal to the amount (if any) paid out of the resources of the scheme by virtue of subsection (6)(b) or (c) is to be treated for all purposes as a debt due from the employer to the trustees of the scheme.



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- (8) Where, by virtue of subsection (6)(b) or (c), an order makes provision for any fees or expenses of the trustee appointed under the order to be paid out of the resources of the scheme, the trustee is entitled to be so paid in priority to all other claims falling to be met out of the scheme's resources.]

#### Textual Amendments

- F64** Words in s. 25(1) substituted (6.4.2005) by Pensions Act 2004 (c. 35), s. 322(1), **Sch. 12 para. 41(a)**; S.I. 2005/695, art. 2(7), Sch. 1
- F65** Words in s. 25(2) inserted (6.4.2005) by Pensions Act 2004 (c. 35), s. 322(1), **Sch. 12 para. 41(b)(i)**; S.I. 2005/695, art. 2(7), Sch. 1
- F66** Words in s. 25(2) repealed (6.4.2005) by Pensions Act 2004 (c. 35), s. 322(1), Sch. 12 para. 41(b)(ii), **Sch. 13**; S.I. 2005/695, art. 2(7), Sch. 1
- F67** Words in s. 25(3) substituted (6.4.2005) by Pensions Act 2004 (c. 35), s. 322(1), **Sch. 12 para. 41(c)**; S.I. 2005/695, art. 2(7), Sch. 1
- F68** Words in s. 25(4) substituted (6.4.2005) by Pensions Act 2004 (c. 35), s. 322(1), **Sch. 12 para. 41(d)(i)**; S.I. 2005/695, art. 2(7), Sch. 1
- F69** Words in s. 25(4) inserted (6.4.2005) by Pensions Act 2004 (c. 35), s. 322(1), **Sch. 12 para. 41(d)(ii)**; S.I. 2005/695, art. 2(7), Sch. 1
- F70** S. 25(4)(a) substituted (6.4.2005) by Pensions Act 2004 (c. 35), **ss. 36(4)(a)**, 322(1) (with s. 313); S.I. 2005/275, art. 2(7), Sch. Pt. 7
- F71** S. 25(5A) inserted (6.4.2005) by Pensions Act 2004 (c. 35), **ss. 36(4)(b)**, 322(1) (with s. 313); S.I. 2005/275, art. 2(7), Sch. Pt. 7
- F72** S. 25(6)-(8) substituted for s. 25(6) (6.4.2005) by Pensions Act 2004 (c. 35), **ss. 36(4)(c)**, 322(1) (with s. 313); S.I. 2005/275, art. 2(7), Sch. Pt. 7

#### Modifications etc. (not altering text)

- C113** Ss. 22-26 excluded (31.12.2000) by The Occupational Pension Schemes (Republic of Ireland Schemes Exemption) Regulations 2000 (S.I. 2000/3198), regs. 1(1), 2, **Sch.**
- C114** Ss. 22-26 modified (11.4.2005) by The Occupational Pension Schemes (Independent Trustee) Regulations 2005 (S.I. 2005/703), regs. 1(1), **10-12**

#### Commencement Information

- I14** S. 25 in force at 6.4.1997 by S.I. 1997/664, art. 2(3), **Sch. Pt. 3**

## 26 Insolvency practitioner or official receiver to give information to trustees.

- (1) Notwithstanding anything in section 155 of the <sup>M3</sup>Insolvency Act 1986 (court orders for inspection etc.), while section 22 applies in relation to a scheme [<sup>F73</sup>by virtue of subsection (1) of that section], the practitioner or official receiver must provide the trustees of the scheme, as soon as practicable after the receipt of a request, with any information which the trustees may reasonably require for the purposes of the scheme.
- (2) Any expenses incurred by the practitioner or official receiver in complying with a request under subsection (1) are recoverable by him as part of the expenses incurred by him in discharge of his duties.
- (3) The practitioner or official receiver is not required under subsection (1) to take any action which involves expenses that cannot be so recovered, unless the trustees of the scheme undertake to meet them.

*Status: Point in time view as at 31/05/2021.*

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#### Textual Amendments

**F73** Words in s. 26(1) inserted (6.4.2005) by Pensions Act 2004 (c. 35), s. 322(1), **Sch. 12 para. 42**; S.I. 2005/695, art. 2(7), Sch. 1

#### Modifications etc. (not altering text)

**C113** Ss. 22-26 excluded (31.12.2000) by The Occupational Pension Schemes (Republic of Ireland Schemes Exemption) Regulations 2000 (S.I. 2000/3198), regs. 1(1), 2, **Sch.**

**C114** Ss. 22-26 modified (11.4.2005) by The Occupational Pension Schemes (Independent Trustee) Regulations 2005 (S.I. 2005/703), regs. 1(1), **10-12**

#### Commencement Information

**I15** S. 26 in force at 6.4.1997 by S.I. 1997/664, art. 2(3), **Sch. Pt. 3**

#### Marginal Citations

**M3** 1986 c. 45.

### <sup>F74</sup>**26A Information to be given to the Authority in a s. 22 case**

.....

#### Textual Amendments

**F74** Ss. 26A-26C repealed (6.4.2005) by Pensions Act 2004 (c. 35), s. 322(1), Sch. 12 para. 43, **Sch. 13**; S.I. 2005/695, art. 2(7), Sch. 1

### <sup>F74</sup>**26B Information to be given in cases where s. 22 disapplied**

.....

#### Textual Amendments

**F74** Ss. 26A-26C repealed (6.4.2005) by Pensions Act 2004 (c. 35), s. 322(1), Sch. 12 para. 43, **Sch. 13**; S.I. 2005/695, art. 2(7), Sch. 1

### <sup>F74</sup>**26C Construction of ss. 26A and 26B**

.....

#### Textual Amendments

**F74** Ss. 26A-26C repealed (6.4.2005) by Pensions Act 2004 (c. 35), s. 322(1), Sch. 12 para. 43, **Sch. 13**; S.I. 2005/695, art. 2(7), Sch. 1

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*Trustees: general*

**27 Trustee not to be auditor or actuary of the scheme.**

- (1) A trustee of a trust scheme, and any person who is connected with, or an associate of, such a trustee, is ineligible to act as an auditor or actuary of the scheme.
- (2) Subsection (1) does not make a person who is a director, partner or employee of a firm of actuaries ineligible to act as an actuary of a trust scheme merely because another director, partner or employee of the firm is a trustee of the scheme.
- (3) Subsection (1) does not make a person who falls within a prescribed class or description ineligible to act as an auditor or actuary of a trust scheme.
- (4) A person must not act as an auditor or actuary of a trust scheme if he is ineligible under this section to do so.
- (5) In this section and section 28 references to a trustee of a trust scheme do not include—
  - (a) a trustee, or
  - (b) a trustee of a scheme,falling within a prescribed class or description.

**Modifications etc. (not altering text)**

**C115** Ss. 27-30 applied (with modifications) (11.11.1999 for specified purposes, 1.10.2000 in so far as not already in force) by [Welfare Reform and Pensions Act 1999 \(c. 30\)](#), s. 89(5)(a), [Sch. 1 para. 1\(1\)\(2\)\(b\)\(ii\)](#); [S.I. 2000/1047](#), art. 2(2)(c), Sch. Pt. 3 (as amended (9.12.2005) by [Pensions Act 2004 \(c. 35\)](#), s. 322(1), Sch. 12 para. 76(2)(b); [S.I. 2005/3331](#), art. 2(2), Sch. Pt. 2)

**C116** S. 27 modified (31.12.2000) by [The Occupational Pension Schemes \(Republic of Ireland Schemes Exemption\) Regulations 2000 \(S.I. 2000/3198\)](#), regs. 1(1), 3

**Commencement Information**

**I16** S. 27 in force at 6.4.1996 for specified purposes by [S.I. 1996/778](#), art. 2(5)(a), [Sch. Pt. V](#)

**I17** S. 27 in force at 6.4.1997 in so far as not already in force by [S.I. 1997/664](#), art. 2(3), [Sch. Pt. 3](#)

**28 Section 27: consequences.**

- (1) Any person who acts as an auditor or actuary of a trust scheme in contravention of section 27(4) is guilty of an offence and liable—
  - (a) on summary conviction, to a fine not exceeding the statutory maximum, and
  - (b) on conviction on indictment, to imprisonment or a fine, or both.
- (2) An offence under subsection (1) may be charged by reference to any day or longer period of time; and a person may be convicted of a second or subsequent offence under that subsection by reference to any period of time following the preceding conviction of the offence.
- (3) Acts done as an auditor or actuary of a trust scheme by a person who is ineligible under section 27 to do so are not invalid merely because of that fact.

<sup>F75</sup>(4) . . . . .

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### Textual Amendments

**F75** S. 28(4) repealed (6.4.2005) by [Pensions Act 2004 \(c. 35\)](#), s. 322(1), Sch. 12 para. 44, **Sch. 13**; S.I. 2005/695, art. 2(7), Sch. 1

### Modifications etc. (not altering text)

**C115** Ss. 27-30 applied (with modifications) (11.11.1999 for specified purposes, 1.10.2000 in so far as not already in force) by [Welfare Reform and Pensions Act 1999 \(c. 30\)](#), s. 89(5)(a), **Sch. 1 para. 1(1)(2)(b)(ii)**; S.I. 2000/1047, art. 2(2)(c), Sch. Pt. 3 (as amended (9.12.2005) by [Pensions Act 2004 \(c. 35\)](#), s. 322(1), Sch. 12 para. 76(2)(b); S.I. 2005/3331, art. 2(2), Sch. Pt. 2)

### Commencement Information

**I18** S. 28 in force at 6.4.1997 by S.I. 1997/664, art. 2(3), **Sch. Pt. 3**

## 29 Persons disqualified for being trustees.

(1) Subject to subsection (5), a person is disqualified for being a trustee of any trust scheme if—

- (a) he has been convicted of any offence involving dishonesty or deception,
- (b) he has been [<sup>F76</sup>made] bankrupt or sequestration of his estate has been awarded and (in either case) he has not been discharged [<sup>F77</sup>or he is the subject of a bankruptcy restrictions order or an interim [<sup>F78</sup>bankruptcy restrictions] order],
- [<sup>F79</sup>(ba) a moratorium period under a debt relief order (under Part 7A of the Insolvency Act 1986) applies in relation to him or he is the subject of a debt relief restrictions order or an interim debt relief restrictions order (under Schedule 4ZB of the Insolvency Act 1986),]
- (c) where the person is a company, if any director of the company is disqualified under this section,
- (d) where the person is a Scottish partnership, if any partner is disqualified under this section,
- (e) he has made a composition contract or an arrangement with, or granted a trust deed for the behoof of, his creditors and has not been discharged in respect of it, or
- (f) he is [<sup>F80</sup>subject to a disqualification order or disqualification undertaking under the Company Directors Disqualification Act 1986 or the Company Directors Disqualification (Northern Ireland) Order 2002] or to an order made under section 429(2)(b) of the <sup>M4</sup>Insolvency Act 1986 (failure to pay under county court administration order).

(2) In subsection (1)—

- (a) paragraph (a) applies whether the conviction occurred before or after the coming into force of that subsection, but does not apply in relation to any conviction which is a spent conviction for the purposes of the <sup>M5</sup>Rehabilitation of Offenders Act 1974,
- (b) paragraph (b) applies whether the adjudication of bankruptcy or the sequestration [<sup>F81</sup>or the making of the bankruptcy restrictions order or an interim order] occurred before or after the coming into force of that subsection,
- (c) paragraph (e) applies whether the composition contract or arrangement was made, or the trust deed was granted, before or after the coming into force of that subsection, and

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- (d) paragraph (f) applies in relation to orders made before or after the coming into force of that subsection.

<sup>F82</sup>(3) .....

<sup>F82</sup>(4) .....

- (5) The Authority may, on the application of any person disqualified under this section—

(a) give notice in writing to him waiving his disqualification,

<sup>F83</sup>(b) .....

either generally or in relation to a particular scheme or particular [<sup>F84</sup>description] of schemes.

- (6) A notice given<sup>F85</sup> ... at any time by virtue of subsection (5) cannot affect anything done before that time.

#### Textual Amendments

- F76** Word in s. 29(1)(b) substituted (6.4.2016) by The Enterprise and Regulatory Reform Act 2013 (Consequential Amendments) (Bankruptcy) and the Small Business, Enterprise and Employment Act 2015 (Consequential Amendments) Regulations 2016 (S.I. 2016/481), reg. 1, **Sch. 1 para. 11(3)**
- F77** Words in s. 29(1)(b) inserted (29.6.2006) by The Enterprise Act 2002 (Disqualification from Office: General) Order 2006 (S.I. 2006/1722), art. 1(1), **Sch. 2 para. 5(a)**
- F78** Words in s. 29(1)(b) inserted (1.10.2012) by The Tribunals, Courts and Enforcement Act 2007 (Consequential Amendments) Order 2012 (S.I. 2012/2404), art. 1, **Sch. 2 para. 34(3)(a)** (with art. 5)
- F79** S. 29(1)(ba) inserted (1.10.2012) by The Tribunals, Courts and Enforcement Act 2007 (Consequential Amendments) Order 2012 (S.I. 2012/2404), art. 1, **Sch. 2 para. 34(3)(b)** (with arts. 5, 9)
- F80** Words in s. 29(1)(f) substituted (1.10.2009) by The Companies Act 2006 (Consequential Amendments, Transitional Provisions and Savings) Order 2009 (S.I. 2009/1941), art. 1(2), **Sch. 1 para. 155(4)** (with art. 10)
- F81** Words in s. 29(2)(b) inserted (29.6.2006) by The Enterprise Act 2002 (Disqualification from Office: General) Order 2006 (S.I. 2006/1722), art. 1(1), **Sch. 2 para. 5(b)**
- F82** S. 29(3)(4) repealed (6.4.2005) by Pensions Act 2004 (c. 35), s. 322(1), **Sch. 13**; S.I. 2005/695, art. 2(7), Sch. 1
- F83** S. 29(5)(b) repealed (6.4.2005) by Pensions Act 2004 (c. 35), s. 322(1), **Sch. 13**; S.I. 2005/695, art. 2(7), Sch. 1
- F84** Word in s. 29(5) substituted (9.12.2005) by Pensions Act 2004 (c. 35), s. 322(1), **Sch. 12 para. 45**; S.I. 2005/3331, art. 2(2), Sch. Pt. 2
- F85** Words in s. 29(6) repealed (6.4.2005) by Pensions Act 2004 (c. 35), s. 322(1), **Sch. 13**; S.I. 2005/695, art. 2(7), Sch. 1

#### Modifications etc. (not altering text)

- C115** Ss. 27-30 applied (with modifications) (11.11.1999 for specified purposes, 1.10.2000 in so far as not already in force) by Welfare Reform and Pensions Act 1999 (c. 30), s. 89(5)(a), **Sch. 1 para. 1(1)(2)(b)(ii)**; S.I. 2000/1047, art. 2(2)(c), Sch. Pt. 3 (as amended (9.12.2005) by Pensions Act 2004 (c. 35), s. 322(1), Sch. 12 para. 76(2)(b); S.I. 2005/3331, art. 2(2), Sch. Pt. 2)

#### Commencement Information

- I19** S. 29 in force at 6.4.1997 by S.I. 1997/664, art. 2(3), **Sch. Pt. 3**

#### Marginal Citations

- M4** 1986 c. 45.

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M5 1974 c. 53.

### 30 Persons disqualified: consequences.

<sup>F86</sup>(1) Where a person who is a trustee of a trust scheme becomes disqualified under section 29 in relation to the scheme, his becoming so disqualified has the effect of removing him as a trustee.]

(2) Where—

(a) a trustee of a trust scheme becomes disqualified under section 29, <sup>F87</sup>...

<sup>F87</sup>(b) .....

the Authority may exercise [<sup>F88</sup>by order] the same jurisdiction and powers as are exercisable by the High Court or, in relation to a trust scheme subject to the law of Scotland, the Court of Session for vesting any property in, or transferring any property to, the trustees.

(3) A person who purports to act as a trustee of a trust scheme while he is disqualified under section 29 is guilty of an offence and liable—

(a) on summary conviction to a fine not exceeding the statutory maximum, and

(b) on conviction on indictment, to a fine or imprisonment or both.

(4) An offence under subsection (3) may be charged by reference to any day or longer period of time; and a person may be convicted of a second or subsequent offence under that subsection by reference to any period of time following the preceding conviction of the offence.

(5) Things done by a person disqualified under section 29 while purporting to act as trustee of a trust scheme are not invalid merely because of that disqualification.

(6) Nothing in section 29 or this section affects the liability of any person for things done, or omitted to be done, by him while purporting to act as trustee of a trust scheme.

<sup>F89</sup>(7) .....

<sup>F89</sup>(8) .....

#### Textual Amendments

**F86** S. 30(1) substituted (6.4.2005) by Pensions Act 2004 (c. 35), ss. 37, 322(1) (with s. 313); S.I. 2005/275, art. 2(7), Sch. Pt. 7

**F87** S. 30(2)(b) and preceding word repealed (6.4.2005) by Pensions Act 2004 (c. 35), s. 322(1), Sch. 13; S.I. 2005/695, art. 2(7), Sch. 1

**F88** Words in s. 30(2) inserted (9.12.2005) by Pensions Act 2004 (c. 35), s. 322(1), Sch. 12 para. 46(a); S.I. 2005/3331, art. 2(2), Sch. Pt. 2

**F89** S. 30(7)(8) repealed (6.4.2005) by Pensions Act 2004 (c. 35), s. 322(1), Sch. 12 para. 46(b), Sch. 13; S.I. 2005/695, art. 2(7), Sch. 1

#### Modifications etc. (not altering text)

**C115** Ss. 27-30 applied (with modifications) (11.11.1999 for specified purposes, 1.10.2000 in so far as not already in force) by Welfare Reform and Pensions Act 1999 (c. 30), s. 89(5)(a), Sch. 1 para. 1(1)(2)(b)(ii); S.I. 2000/1047, art. 2(2)(c), Sch. Pt. 3 (as amended (9.12.2005) by Pensions Act 2004 (c. 35), s. 322(1), Sch. 12 para. 76(2)(b); S.I. 2005/3331, art. 2(2), Sch. Pt. 2)

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**Commencement Information**

**I20** S. 30 in force at 6.4.1997 by S.I. 1997/664, art. 2(3), Sch. Pt. 3

**<sup>F90</sup>30A Accessibility of register of disqualified trustees**

.....

**Textual Amendments**

**F90** S. 30A repealed (6.4.2005) by Pensions Act 2004 (c. 35), s. 322(1), Sch. 12 para. 47, Sch. 13; S.I. 2005/695, art. 2(7), Sch. 1

**<sup>F91</sup>31 Trustees not to be indemnified for fines or civil penalties.**

.....

**Textual Amendments**

**F91** S. 31 repealed (6.4.2005) by Pensions Act 2004 (c. 35), s. 322(1), Sch. 13; S.I. 2005/695, art. 2(7), Sch. 1

*Functions of trustees*

**32 Decisions by majority.**

- (1) Decisions of the trustees of a trust scheme may, unless the scheme provides otherwise, be taken by agreement of a majority of the trustees.
- (2) Where decisions of the trustees of a trust scheme may be taken by agreement of a majority of the trustees—
  - (a) the trustees may, unless the scheme provides otherwise, by a determination under this subsection require not less than the number of trustees specified in the determination to be present when any decision is so taken, and
  - (b) notice of any occasions at which decisions may be so taken must, unless the occasion falls within a prescribed class or description, be given to each trustee to whom it is reasonably practicable to give such notice.
- (3) Notice under subsection (2)(b) must be given in a prescribed manner and not later than the beginning of a prescribed period.
- (4) This section is subject to sections 8(4)(b) [<sup>F92</sup>and 25(2) of this Act and section 241(6) of the Pensions Act 2004].
- (5) If subsection (2)(b) is not complied with, [<sup>F93</sup>section 10 applies] to any trustee who has failed to take all such steps as are reasonable to secure compliance.

**Textual Amendments**

**F92** Words in s. 32(4) substituted (6.4.2006) by Pensions Act 2004 (c. 35), s. 322(1), Sch. 12 para. 48(a); S.I. 2006/560, art. 2(3), Sch. Pt. 3

*Status: Point in time view as at 31/05/2021.*

**Changes to legislation:** Pensions Act 1995, Part I is up to date with all changes known to be in force on or before 23 June 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)

**F93** Words in s. 32(5) substituted (6.4.2006) by Pensions Act 2004 (c. 35), s. 322(1), **Sch. 12 para. 48(b)**; S.I. 2006/560, art. 2(3), Sch. Pt. 3

**Modifications etc. (not altering text)**

**C117** Ss. 32-36 modified (11.11.1999 for specified purposes, 1.10.2000 in so far as not already in force) by Welfare Reform and Pensions Act 1999 (c. 30), s. 89(5)(a), **Sch. 1 para. 1(1)(2)(b)(iii)**; S.I. 2000/1047, art. 2(2)(c), Sch. Pt. III

**Commencement Information**

**I21** S. 32 in force at 6.4.1996 for specified purposes by S.I. 1996/778, art. 2(5)(a), **Sch. Pt. V**

**I22** S. 32 in force at 6.4.1997 in so far as not already in force by S.I. 1997/664, art. 2(3), **Sch. Pt. 3**

**33 Investment powers: duty of care.**

- (1) Liability for breach of an obligation under any rule of law to take care or exercise skill in the performance of any investment functions, where the function is exercisable—
- (a) by a trustee of a trust scheme, or
  - (b) by a person to whom the function has been delegated under section 34, cannot be excluded or restricted by any instrument or agreement.
- (2) In this section, references to excluding or restricting liability include—
- (a) making the liability or its enforcement subject to restrictive or onerous conditions,
  - (b) excluding or restricting any right or remedy in respect of the liability, or subjecting a person to any prejudice in consequence of his pursuing any such right or remedy, or
  - (c) excluding or restricting rules of evidence or procedure.
- (3) This section does not apply—
- (a) to a scheme falling within any prescribed class or description, or
  - (b) to any prescribed description of exclusion or restriction.

**Modifications etc. (not altering text)**

**C117** Ss. 32-36 modified (11.11.1999 for specified purposes, 1.10.2000 in so far as not already in force) by Welfare Reform and Pensions Act 1999 (c. 30), s. 89(5)(a), **Sch. 1 para. 1(1)(2)(b)(iii)**; S.I. 2000/1047, art. 2(2)(c), Sch. Pt. III

**Commencement Information**

**I23** S. 33 in force at 6.4.1996 for specified purposes by S.I. 1996/778, art. 2(5)(a), **Sch. Pt. V**

**I24** S. 33 in force at 6.4.1997 in so far as not already in force by S.I. 1997/664, art. 2(3), **Sch. Pt. 3**

**34 Power of investment and delegation.**

- (1) The trustees of a trust scheme have, subject to [<sup>F94</sup>section 36(1) and to] any restriction imposed by the scheme, the same power to make an investment of any kind as if they were absolutely entitled to the assets of the scheme.
- (2) Any discretion of the trustees of a trust scheme to make any decision about investments—



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- (a) may be delegated by or on behalf of the trustees to a fund manager to whom subsection (3) applies to be exercised in accordance with section 36, but
  - (b) may not otherwise be delegated except under section 25 of the <sup>M6</sup>Trustee Act 1925 (delegation of trusts [<sup>F95</sup>during absence abroad][<sup>F95</sup>for period not exceeding twelve months]) or subsection (5) below.
- [<sup>F96</sup>(3) This subsection applies to a fund manager who, in relation to the investments, may take the decisions in question without contravening the prohibition imposed by section 19 of the Financial Services and Markets Act 2000 (prohibition on carrying on regulated activities unless authorised or exempt).]
- (4) The trustees are not responsible for the act or default of any fund manager in the exercise of any discretion delegated to him under subsection (2)(a) if they have taken all such steps as are reasonable to satisfy themselves or the person who made the delegation on their behalf has taken all such steps as are reasonable to satisfy himself—
    - (a) that the fund manager has the appropriate knowledge and experience for managing the investments of the scheme, and
    - (b) that he is carrying out his work competently and complying with section 36.
  - (5) Subject to any restriction imposed by a trust scheme—
    - (a) the trustees may authorise two or more of their number to exercise on their behalf any discretion to make any decision about investments, and
    - (b) any such discretion may, where giving effect to the decision would not constitute [<sup>F97</sup>the carrying on, in the United Kingdom, of a regulated activity (within the meaning of the Financial Services and Markets Act 2000)], be delegated by or on behalf of the trustees to a fund manager to whom subsection (3) does not apply to be exercised in accordance with section 36; but in either case the trustees are liable for any acts or defaults in the exercise of the discretion if they would be so liable if they were the acts or defaults of the trustees as a whole.
  - (6) Section 33 does not prevent the exclusion or restriction of any liability of the trustees of a trust scheme for the acts or defaults of a fund manager in the exercise of a discretion delegated to him under subsection (5)(b) where the trustees have taken all such steps as are reasonable to satisfy themselves, or the person who made the delegation on their behalf has taken all such steps as are reasonable to satisfy himself—
    - (a) that the fund manager has the appropriate knowledge and experience for managing the investments of the scheme, and
    - (b) that he is carrying out his work competently and complying with section 36; and subsection (2) of section 33 applies for the purposes of this subsection as it applies for the purposes of that section.
  - (7) The provisions of this section override any restriction inconsistent with the provisions imposed by any rule of law or by or under any enactment, other than an enactment contained in, or made under, this Part or the <sup>M7</sup>Pension Schemes Act 1993.

#### Textual Amendments

**F94** Words in s. 34(1) inserted (4.12.2005 for specified purposes, 30.12.2005 in so far as not already in force) by Pensions Act 2004 (c. 35), s. 322(1), **Sch. 12 para. 49**; S.I. 2005/3331, art. 2(1)(a)(b), Sch. Pt. 1

*Status: Point in time view as at 31/05/2021.*

*Changes to legislation: Pensions Act 1995, Part I is up to date with all changes known to be in force on or before 23 June 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

**F95** Words in s. 34(2)(b) substituted (E.W.) (1.3.2000) by [Trustee Delegation Act 1999 \(c. 15\), ss. 5\(3\), 13\(1\)](#); S.I. 2000/216, art. 2

**F96** S. 34(3) substituted (1.12.2001) by [The Financial Services and Markets Act 2000 \(Consequential Amendments and Repeals\) Order 2001 \(S.I. 2001/3649\), art. 139](#)

**F97** Words in s. 34(5)(b) substituted (1.12.2001) by [The Financial Services and Markets Act 2000 \(Consequential Amendments and Repeals\) Order 2001 \(S.I. 2001/3649\), art. 139](#)

#### **Modifications etc. (not altering text)**

**C117** Ss. 32-36 modified (11.11.1999 for specified purposes, 1.10.2000 in so far as not already in force) by [Welfare Reform and Pensions Act 1999 \(c. 30\), s. 89\(5\)\(a\), Sch. 1 para. 1\(1\)\(2\)\(b\)\(iii\)](#); S.I. 2000/1047, art. 2(2)(c), Sch. Pt. III

#### **Commencement Information**

**I25** S. 34 in force at 6.4.1997 by [S.I. 1997/664, art. 2\(3\), Sch. Pt. 3](#)

#### **Marginal Citations**

**M6** 1925 c. 19.

**M7** 1993 c. 48.

### [<sup>F98</sup> 35 Investment principles.

- (1) The trustees of a trust scheme must secure—
  - (a) that a statement of investment principles is prepared and maintained for the scheme, and
  - (b) that the statement is reviewed at such intervals, and on such occasions, as may be prescribed and, if necessary, revised.
- (2) In this section “statement of investment principles”, in relation to a trust scheme, means a written statement of the investment principles governing decisions about investments for the purposes of the scheme.
- (3) Before preparing or revising a statement of investment principles, the trustees of a trust scheme must comply with any prescribed requirements.
- (4) A statement of investment principles must be in the prescribed form and cover, amongst other things, the prescribed matters.
- (5) Neither a trust scheme nor a statement of investment principles may impose restrictions (however expressed) on any power to make investments by reference to the consent of the employer.
- (6) If in the case of a trust scheme—
  - (a) a statement of investment principles has not been prepared, is not being maintained or has not been reviewed or revised, as required by this section, or
  - (b) the trustees have not complied with the obligation imposed on them by subsection (3),
 section 10 applies to any trustee who has failed to take all reasonable steps to secure compliance.
- (7) Regulations may provide that this section is not to apply to any scheme which is of a prescribed description.]

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#### Textual Amendments

**F98** S. 35 substituted (4.12.2005 for specified purposes, 30.12.2005 in so far as not already in force) by Pensions Act 2004 (c. 35), ss. 244, 322(1) (with s. 313); S.I. 2005/3331, art. 2(1)(a)(b), Sch. Pt. 1

#### Modifications etc. (not altering text)

**C117** Ss. 32-36 modified (11.11.1999 for specified purposes, 1.10.2000 in so far as not already in force) by Welfare Reform and Pensions Act 1999 (c. 30), s. 89(5)(a), Sch. 1 para. 1(1)(2)(b)(iii); S.I. 2000/1047, art. 2(2)(c), Sch. Pt. III

**C118** S. 35 excluded (30.12.2005) by The Occupational Pension Schemes (Investment) Regulations 2005 (S.I. 2005/3378), regs. 1(1), 6

**C119** S. 35(1)-(4) applied (24.10.2011) by Constitutional Reform and Governance Act 2010 (c. 25), s. 52, Sch. 6 para. 7(4); S.I. 2011/2485, art. 2(1)(2)(b)(i)

#### Commencement Information

**I26** S. 35 in force at 6.4.1996 for specified purposes by S.I. 1996/778, art. 2(5)(a), Sch. Pt. V

**I27** S. 35 in force at 6.4.1997 in so far as not already in force by S.I. 1997/664, art. 2(3), Sch. Pt. 3

## 36 Choosing investments.

[<sup>F99</sup>(1) The trustees of a trust scheme must exercise their powers of investment in accordance with regulations and in accordance with subsections (3) and (4), and any fund manager to whom any discretion has been delegated under section 34 must exercise the discretion in accordance with regulations.

(1A) Regulations under subsection (1) may, in particular—

- (a) specify criteria to be applied in choosing investments, and
- (b) require diversification of investments.]

[<sup>F100</sup>(2) .....

(3) Before investing in any manner (other than in a manner mentioned in Part I of Schedule 1 to the <sup>M8</sup>Trustee Investments Act 1961) the trustees must obtain and consider proper advice on the question whether the investment is satisfactory having regard to [<sup>F101</sup>the requirements of regulations under subsection (1), so far as relating to the suitability of investments, and to] the principles contained in the statement under section 35.

(4) Trustees retaining any investment must—

- (a) determine at what intervals the circumstances, and in particular the nature of the investment, make it desirable to obtain such advice as is mentioned in subsection (3), and
- (b) obtain and consider such advice accordingly.

(5) The trustees, or the fund manager to whom any discretion has been delegated under section 34, must exercise their powers of investment with a view to giving effect to the principles contained in the statement under section 35, so far as reasonably practicable.

(6) For the purposes of this section “proper advice” means—

- [<sup>F102</sup>(a) if the giving of the advice constitutes the carrying on, in the United Kingdom, of a regulated activity (within the meaning of the Financial Services and Markets Act 2000), advice given by a person who may give it without

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contravening the prohibition imposed by section 19 of that Act (prohibition on carrying on regulated activities unless authorised or exempt);]

- (b) in any other case, the advice of a person who is reasonably believed by the trustees to be qualified by his ability in and practical experience of financial matters and to have the appropriate knowledge and experience of the management of the investments of trust schemes.

- (7) Trustees shall not be treated as having complied with subsection (3) or (4) unless the advice was given or has subsequently been confirmed in writing.

[<sup>F103</sup>(8) If the trustees of a trust scheme—

- (a) fail to comply with regulations under subsection (1), or  
(b) do not obtain and consider advice in accordance with this section,  
section 10 applies to any trustee who has failed to take all reasonable steps to secure compliance.]

[<sup>F104</sup>(9) Regulations may exclude the application of any of the preceding provisions of this section to any scheme which is of a prescribed description.]

#### Textual Amendments

- F99** S. 36(1)(1A) substituted for s. 36(1) (4.12.2005 for specified purposes, 30.12.2005 in so far as not already in force) by [Pensions Act 2004 \(c. 35\)](#), **ss. 245(2)**, 322(1) (with s. 313); S.I. 2005/3331, art. 2(1)(a)(b), Sch. Pt. 1
- F100** S. 36(2) repealed (4.12.2005 for specified purposes, 30.12.2005 in so far as not already in force) by [Pensions Act 2004 \(c. 35\)](#), **ss. 245(3)**, 322(1), **Sch. 13** (with s. 313); S.I. 2005/3331, art. 2(1)(a)(b), Sch. Pt. 1
- F101** Words in s. 36(3) substituted (4.12.2005 for specified purposes, 30.12.2005 in so far as not already in force) by [Pensions Act 2004 \(c. 35\)](#), **ss. 245(4)**, 322(1) (with s. 313); S.I. 2005/3331, art. 2(1)(a)(b), Sch. Pt. 1
- F102** S. 36(6)(a) substituted (1.12.2001) by [The Financial Services and Markets Act 2000 \(Consequential Amendments and Repeals\) Order 2001 \(S.I. 2001/3649\)](#), arts. 1, **140**
- F103** S. 36(8) substituted (4.12.2005 for specified purposes, 30.12.2005 in so far as not already in force) by [Pensions Act 2004 \(c. 35\)](#), **ss. 245(5)**, 322(1) (with s. 313); S.I. 2005/3331, art. 2(1)(a)(b), Sch. Pt. 1
- F104** S. 36(9) inserted (4.12.2005 for specified purposes, 30.12.2005 in so far as not already in force) by [Pensions Act 2004 \(c. 35\)](#), **ss. 245(6)**, 322(1) (with s. 313); S.I. 2005/3331, art. 2(1)(a), **Sch. Pt. 1**

#### Modifications etc. (not altering text)

- C117** **Ss. 32-36** modified (11.11.1999 for specified purposes, 1.10.2000 in so far as not already in force) by [Welfare Reform and Pensions Act 1999 \(c. 30\)](#), s. 89(5)(a), **Sch. 1 para. 1(1)(2)(b)(iii)**; S.I. 2000/1047, art. 2(2)(c), Sch. Pt. III

#### Commencement Information

- I28** S. 36 in force at 6.4.1997 by S.I. 1997/664, art. 2(3), **Sch. Pt. 3**

#### Marginal Citations

- M8** 1961 c. 62.

*Status: Point in time view as at 31/05/2021.*

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### [<sup>F105</sup>36A Restriction on borrowing by trustees

Regulations may prohibit the trustees of a trust scheme, or the fund manager to whom any discretion has been delegated under section 34, from borrowing money or acting as a guarantor, except in prescribed cases.]

#### Textual Amendments

**F105** S. 36A inserted (4.12.2005 for specified purposes, 30.12.2005 in so far as not already in force) by Pensions Act 2004 (c. 35), ss. 246, 322(1) (with s. 313); S.I. 2005/3331, art. 2(1)(a)(b), Sch. Pt. 1

### [<sup>F106</sup>37 Payment of surplus to employer.

- (1) This section applies to a trust scheme if—
- (a) apart from this section power is conferred on the employer or any other person to make payments to the employer out of funds held for the purposes of the scheme, and
  - (b) the scheme is not being wound up.

[ But this section does not apply in the case of any of the payments listed in paragraphs <sup>F107</sup>(1A) (c) to (f) of section 175 of the Finance Act 2004 (authorised employer payments other than public service scheme payments or authorised surplus payments).]

- (2) Where the power referred to in subsection (1)(a) is conferred by the scheme on a person other than the trustees—
- (a) it cannot be exercised by that person but may instead be exercised by the trustees, and
  - (b) any restriction imposed by the scheme on the exercise of the power shall, so far as capable of doing so, apply to its exercise by the trustees.
- (3) The power referred to in subsection (1)(a) may only be exercised if—
- (a) the trustees have obtained a written valuation of the scheme's assets and liabilities prepared and signed by a prescribed person;
  - (b) there is a certificate in force—
    - (i) stating that in the opinion of that person the prescribed requirements are met as at the date by reference to which the assets are valued and the liabilities are calculated, and
    - (ii) specifying what in the opinion of that person is the maximum amount of payment that may be made to the employer;
  - (c) the payment does not exceed the maximum amount specified in the certificate;
  - (d) the trustees are satisfied that it is in the interests of the members that the power is exercised in the manner proposed;
  - (e) where the power is conferred by the scheme on the employer, the employer has asked for the power to be exercised, or consented to its being exercised, in the manner proposed;
  - (f) there is no freezing order in force in relation to the scheme under section 23 of the Pensions Act 2004; and
  - (g) notice of the proposal to exercise the power has been given, in accordance with prescribed requirements, to the members of the scheme.

- (4) Provision may be made by regulations as to—

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- (a) the requirements (which may be alternative requirements) that must be met, in relation to any proposed payment to the employer out of funds held for the purposes of a scheme, with respect to the value of the scheme's assets and the amount of its liabilities;
  - (b) the assets and liabilities to be taken into account for that purpose and the manner in which their value or amount is to be determined, calculated and verified;
  - (c) the maximum amount of the payment that may be made to the employer, having regard to the value of the scheme's assets and the amount of its liabilities;
  - (d) the giving of a certificate as to the matters mentioned in paragraphs (a) and (c); and
  - (e) the period for which such a certificate is to be in force.
- (5) The trustees must also comply with any other prescribed requirements in connection with the making of a payment under this section.
- (6) If the trustees—
- (a) purport to exercise the power referred to in subsection (1)(a) without complying with the requirements of this section, or
  - (b) fail to comply with any requirement of regulations under subsection (5),
- section 10 applies to any of them who has failed to take all reasonable steps to secure compliance.
- (7) If a person other than the trustees purports to exercise the power referred to in subsection (1)(a), section 10 applies to him.
- (8) Regulations may provide that in prescribed circumstances this section does not apply, or applies with prescribed modifications, to schemes of a prescribed description.]

#### Textual Amendments

**F106** S. 37 substituted (9.3.2006 for specified purposes, 6.4.2006 in so far as not already in force) by

[Pensions Act 2004 \(c. 35\)](#), ss. **250**, 322(1) (with s. 313); S.I. 2006/560, art. 2(1)(a)(b), Sch. Pt. 1

**F107** S. 37(1A) inserted (6.4.2009) by [Pensions Act 2008 \(c. 30\)](#), ss. **130**, 149(1); S.I. 2009/82, art. 2(2)(c)

#### Modifications etc. (not altering text)

**C120** S. 37 excluded (31.12.2000) by [The Occupational Pension Schemes \(Republic of Ireland Schemes Exemption\) Regulations 2000 \(S.I. 2000/3198\)](#), regs. 1(1), 2, **Sch.**

**C121** S. 37 modified (6.4.2006) by [The Occupational Pension Schemes \(Payments to Employer\) Regulations 2006 \(S.I. 2006/802\)](#), regs. 1, **2(2)(a)**

**C122** S. 37 excluded (6.4.2006) by [The Occupational Pension Schemes \(Payments to Employer\) Regulations 2006 \(S.I. 2006/802\)](#), regs. 1, **12(1)**

**C123** S. 37 modified (6.4.2006) by [The Occupational Pension Schemes \(Payments to Employer\) Regulations 2006 \(S.I. 2006/802\)](#), regs. 1, **14**

**C124** S. 37 modified (6.4.2006) by [The Occupational Pension Schemes \(Payments to Employer\) Regulations 2006 \(S.I. 2006/802\)](#), regs. 1, **18(6)**

**C125** S. 37 excluded (24.7.2014) by [The Pensions Act 2011 \(Transitional, Consequential and Supplementary Provisions\) Regulations 2014 \(S.I. 2014/1711\)](#), regs. 1(1), **37(1)(a)**

#### Commencement Information

**I29** S. 37 in force at 6.4.1996 for specified purposes by S.I. 1996/778, art. 2(5)(a), **Sch. Pt. V**

*Status: Point in time view as at 31/05/2021.*

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**I30** S. 37 in force at 6.4.1997 in so far as not already in force by [S.I. 1997/664](#), art. 2(3), [Sch. Pt. 3](#)

### **38 Power to defer winding up.**

(1) If, apart from this section, the rules of a trust scheme would require the scheme to be wound up, the trustees may determine—

- <sup>F108</sup>(a) that the scheme is not for the time being to be wound up but that no new members are to be admitted to it, or
- (b) that the scheme is not for the time being to be wound up but that no new members, except pension credit members, are to be admitted to it.]

(2) Where the trustees make a determination under subsection (1), they may also determine—

- (a) that no further contributions are to be paid towards the scheme [<sup>F109</sup>(other than those due to be paid before the determination is made)], or
- (b) that no <sup>F110</sup>...benefits are to accrue to, or in respect of, members of the scheme;

<sup>F111</sup> ...

<sup>F112</sup>(2A) Subsection (2) does not authorise the trustees to determine—

- (a) where there are accrued rights or pension credit rights to any benefit, that the benefit is not to be increased, or
- (b) where the power conferred by that subsection is exercisable by virtue of a determination under subsection (1)(b), that members of the scheme may not acquire pension credit rights under it.]

(3) This section does not apply to—

- (a) a money purchase scheme, or
- (b) a scheme falling within a prescribed class or description.

<sup>F113</sup>(4) This section also does not apply in relation to a trust scheme where the trustees are required to wind up, or continue the winding up, of the scheme under section 154(1) of the Pensions Act 2004 (requirement to wind up certain schemes with sufficient assets to meet protected liabilities).]

#### **Textual Amendments**

**F108** S. 38(1)(a)(b) substituted for words (1.12.2000) by [Welfare Reform and Pensions Act 1999 \(c. 30\)](#), s. 89(1), [Sch. 12 para. 50\(2\)](#); [S.I. 2000/1047](#), art. 2(2)(d) Sch. Pt. 4

**F109** Words in s. 38(2)(a) inserted (9.12.2005) by [Pensions Act 2004 \(c. 35\)](#), s. 322(1), [Sch. 12 para. 50\(2\)\(a\)](#); [S.I. 2005/3331](#), art. 2(2), Sch. Pt. 2

**F110** Word in s. 38(2)(b) repealed (9.12.2005) by [Pensions Act 2004 \(c. 35\)](#), s. 322(1), [Sch. 12 para. 50\(2\)\(b\)](#), [Sch. 13](#); [S.I. 2005/3331](#), art. 2(2), Sch. Pt. 2

**F111** Words in s. 38(2) repealed (1.12.2000) by [Welfare Reform and Pensions Act 1999 \(c. 30\)](#), s. 89(1), [Sch. 12 para. 50\(3\)](#), [Sch. 13 Pt. III](#); [S.I. 2000/1047](#), art. 2(2)(d) Sch. Pt. 4

**F112** S. 38(2A) inserted (1.12.2000) by [Welfare Reform and Pensions Act 1999 \(c. 30\)](#), s. 89(1), [Sch. 12 para. 50\(4\)](#); [S.I. 2000/1047](#), art. 2(2)(d) Sch. Pt. 4

**F113** S. 38(4) inserted (9.12.2005) by [Pensions Act 2004 \(c. 35\)](#), s. 322(1), [Sch. 12 para. 50\(3\)](#); [S.I. 2005/3331](#), art. 2(2), Sch. Pt. 2

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#### **Modifications etc. (not altering text)**

- C126** S. 38 excluded (6.4.1997) by [The Occupational Pension Schemes \(Winding Up\) Regulations 1996](#) (S.I. 1996/3126), regs. 1(1), **10** (as amended (6.4.2005) by S.I. 2005/678, reg. 1(2), **Sch. 2 para. 2**; and (6.4.2016) by S.I. 2016/200, arts. 1(2), **9(3)**)
- C127** S. 38 applied (6.4.1997) by [The Occupational Pension Schemes\(Winding Up\) Regulations 1996](#) (S.I. 1996/3126), regs. 1(1), **12(3)** (with reg. 1(2))

#### **Commencement Information**

- I31** S. 38 in force at 6.4.1996 for specified purposes by [S.I. 1996/778](#), art. 2(5)(a), **Sch. Pt. V**
- I32** S. 38 in force at 6.4.1997 in so far as not already in force by [S.I. 1997/664](#), art. 2(3), **Sch. Pt. 3**

### **39 Exercise of powers by member trustees.**

No rule of law that a trustee may not exercise the powers vested in him so as to give rise to a conflict between his personal interest and his duties to the beneficiaries shall apply to a trustee of a trust scheme, who is also a member of the scheme, exercising the powers vested in him in any manner, merely because their exercise in that manner benefits, or may benefit, him as a member of the scheme.

#### **Modifications etc. (not altering text)**

- C128** S. 39 modified (11.11.1999 for specified purposes, 1.10.2000 in so far as not already in force) by [Welfare Reform and Pensions Act 1999](#) (c. 30), s. 89(5)(a), **Sch. 1 para. 1(1)(2)(b)(iii)**; [S.I. 2000/1047](#), art. 2(2)(c), **Sch. Pt. III**

#### **Commencement Information**

- I33** S. 39 in force at 1.1.1996 by [S.I. 1995/3104](#), **art. 2(1)**

### *Functions of trustees or managers*

### **40 Restriction on employer-related investments.**

- (1) The trustees or managers of an occupational pension scheme must secure that the scheme complies with any prescribed restrictions with respect to the proportion of its resources that may at any time be invested in, or in any description of, employer-related investments.
- (2) In this section—
- “employer-related investments” means—
- shares or other securities issued by the employer or by any person who is connected with, or an associate of, the employer,
  - land which is occupied or used by, or subject to a lease in favour of, the employer or any such person,
  - property (other than land) which is used for the purposes of any business carried on by the employer or any such person,
  - loans to the employer or any such person, and
  - other prescribed investments,

F114



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[<sup>F115</sup>(2A) In the definition of “employer-related investments” in subsection (2) “securities” means—

- (a) shares,
- (b) instruments creating or acknowledging indebtedness,
- (c) instruments giving entitlements to investments,
- (d) certificates representing securities.]

[<sup>F115</sup>(2B) Subsection (2A) must be read with—

- (a) section 22 of the Financial Services and Markets Act 2000,
  - (b) any relevant order made under that section, and
  - (c) Schedule 2 to that Act.]
- (3) To the extent (if any) that sums due and payable by a person to the trustees or managers of an occupational pension scheme remain unpaid—
    - (a) they shall be regarded for the purposes of this section as loans made to that person by the trustees or managers, and
    - (b) resources of the scheme shall be regarded as invested accordingly.
  - (4) If in the case of a trust scheme subsection (1) is not complied with, [<sup>F116</sup>section 10 applies] to any trustee who fails to take all such steps as are reasonable to secure compliance.
  - (5) If any resources of an occupational pension scheme are invested in contravention of subsection (1), any trustee or manager who agreed in the determination to make the investment is guilty of an offence and liable—
    - (a) on summary conviction, to a fine not exceeding the statutory maximum, and
    - (b) on conviction on indictment, to a fine or imprisonment, or both.

#### Textual Amendments

- F114** Words in s. 40(2) repealed (1.12.2001) by [The Financial Services and Markets Act 2000 \(Consequential Amendments and Repeals\) Order 2001 \(S.I. 2001/3649\)](#), arts. 1, **141(2)**
- F115** S. 40(2A)(2B) substituted (4.3.2004) by [The Financial Services and Markets Act 2000 \(Consequential Amendments\) Order 2004 \(S.I. 2004/355\)](#), arts. 1(1), **5(2)**
- F116** Words in s. 40(4) substituted (4.12.2005 for specified purposes, 30.12.2005 in so far as not already in force) by [Pensions Act 2004 \(c. 35\)](#), s. 322(1), **Sch. 12 para. 51**; S.I. 2005/3331, art. 2(1)(a)(b), Sch. Pt. 1

#### Commencement Information

- I34** S. 40 in force at 6.4.1996 for specified purposes by [S.I. 1996/778](#), art. 2(5)(a), **Sch. Pt. V**
- I35** S. 40 in force at 6.4.1997 in so far as not already in force by [S.I. 1997/664](#), art. 2(3), **Sch. Pt. 3**

## 41 Provision of documents for members.

- (1) Regulations may require the trustees or managers of an occupational pension scheme—
  - (a) to obtain at prescribed times the documents mentioned in subsection (2), and
  - (b) to make copies of them, and of the documents mentioned in subsection (3), available to the persons mentioned in subsection (4).
- (2) The documents referred to in subsection (1)(a) are—

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- (a) the accounts audited by the auditor of the scheme,
  - (b) the auditor’s statement about contributions under the scheme,
  - <sup>F117</sup>(c) .....
- <sup>F118</sup>(3) The documents referred to in subsection (1)(b) are—
- (a) any statement of funding principles prepared or revised under section 223 of the Pensions Act 2004,
  - (b) any valuation or report prepared by the actuary under section 224 of that Act,
  - (c) any certificate given by the actuary under section 225 or 227 of that Act.]
- (4) The persons referred to in subsection (1)(b) are—
- (a) members and prospective members of the scheme,
  - (b) spouses [<sup>F119</sup>or civil partners] of members and of prospective members,
  - (c) persons within the application of the scheme and qualifying or prospectively qualifying for its benefits,
  - (d) independent trade unions recognised to any extent for the purposes of collective bargaining in relation to members and prospective members of the scheme.
- <sup>F120</sup>(5) Regulations may in the case of occupational pension schemes provide for—
- (a) prescribed persons,
  - (b) persons with prescribed qualifications or experience, or
  - (c) persons approved by the Secretary of State,
- to act for the purposes of subsection (2) instead of scheme auditors or actuaries.
- (5A) Regulations may impose duties on the trustees or managers of an occupational pension scheme to disclose information to, and make documents available to, a person acting under subsection (5).
- (5B) If any duty imposed under subsection (5A) is not complied with, [<sup>F121</sup>section 10 applies to any trustee, and] to any manager, who has failed to take all such steps as are reasonable to secure compliance.]
- (6) Regulations shall make provision for referring to an [<sup>F122</sup>employment tribunal] any question whether an organisation is such a trade union as is mentioned in subsection (4) (d) and may make provision as to the form and content of any such document as is referred to in subsection (2).

#### Textual Amendments

- F117** S. 41(2)(c) repealed (4.12.2005 for specified purposes, 30.12.2005 in so far as not already in force) by [Pensions Act 2004 \(c. 35\), s. 322\(1\), Sch. 13](#); S.I. 2005/3331, art. 2(1)(a)(b), Sch. Pt. 1
- F118** S. 41(3) substituted (4.12.2005 for specified purposes, 30.12.2005 in so far as not already in force) by [Pensions Act 2004 \(c. 35\), s. 322\(1\), Sch. 12 para. 52\(a\)](#); S.I. 2005/3331, art. 2(1)(a)(b), Sch. Pt. 1
- F119** Words in s. 41(4)(b) inserted (5.12.2005) by [The Civil Partnership \(Pensions and Benefit Payments\) \(Consequential, etc. Provisions\) Order 2005 \(S.I. 2005/2053\), art. 1\(3\), Sch. para. 20](#)
- F120** S. 41(5)-(5B) substituted for s. 41(5) (1.1.2001) by [Child Support, Pensions and Social Security Act 2000 \(c. 19\), s. 86\(1\)\(b\)\(2\), Sch. 5 para. 12\(1\)](#) (with s. 83(6)); S.I. 2000/3166, art. 2(3)(b)(vii)
- F121** Words in s. 41(5B) substituted (4.12.2005 for specified purposes, 30.12.2005 in so far as not already in force) by [Pensions Act 2004 \(c. 35\), s. 322\(1\), Sch. 12 para. 52\(b\)](#); S.I. 2005/3331, art. 2(1)(a)(b), Sch. Pt. 1

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**F122** Words in s. 41(6) substituted (1.8.1998) by Employment Rights (Dispute Resolution) Act 1998 (c. 8), ss. 1(2)(a), 17(1) (with s. 16(2)); S.I. 1998/1658, art. 2, Sch. I

**Modifications etc. (not altering text)**

**C129** S. 41 modified (11.11.1999 for specified purposes, 1.10.2000 in so far as not already in force) by Welfare Reform and Pensions Act 1999 (c. 30), s. 89(5)(a), **Sch. 1 para. 1(1)(2)(b)(iv)**; S.I. 2000/1047, art. 2(2)(c), Sch. Pt. III

**Commencement Information**

**I36** S. 41 in force at 6.4.1996 for specified purposes by S.I. 1996/778, art. 2(5)(a), **Sch. Pt. V**

**I37** S. 41 in force at 6.4.1997 in so far as not already in force by S.I. 1997/664, art. 2(3), **Sch. Pt. 3**

[<sup>F123</sup> **41A Climate change risk**

- (1) Regulations may impose requirements on the trustees or managers of an occupational pension scheme of a prescribed description with a view to securing that there is effective governance of the scheme with respect to the effects of climate change.
- (2) The effects of climate change in relation to which provision may be made under subsection (1) include, in particular—
  - (a) risks arising from steps taken because of climate change (whether by governments or otherwise), and
  - (b) opportunities relating to climate change.
- (3) The requirements which may be imposed by the regulations include, in particular, requirements about—
  - (a) reviewing the exposure of the scheme to risks of a prescribed description;
  - (b) assessing the assets of the scheme in a prescribed manner;
  - (c) determining, reviewing and (if necessary) revising a strategy for managing the scheme's exposure to risks of a prescribed description;
  - (d) determining, reviewing and (if necessary) revising targets relating to the scheme's exposure to risks of a prescribed description;
  - (e) measuring performance against such targets;
  - (f) preparing documents containing information of a prescribed description.
- (4) Regulations under subsection (3)(b) may, in particular, require—
  - (a) that assets are assessed by reference to their exposure to risks of a prescribed description, and
  - (b) that an assessment includes determining the contribution of the assets of the scheme to climate change.
- (5) The regulations may require the trustees or managers of the scheme to take into account—
  - (a) different ways in which the climate might change, and
  - (b) different steps that might be taken because of climate change.
- (6) Regulations under subsection (5) may require the trustees or managers of the scheme to adopt prescribed assumptions as to future events, including assumptions about—
  - (a) the steps that might be taken for the purpose of achieving the Paris Agreement goal or other climate change goal, or
  - (b) the achievement of the Paris Agreement goal or other climate change goal.

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- (7) In complying with requirements imposed by the regulations, a trustee or manager must have regard to guidance prepared from time to time by the Secretary of State.
- (8) In this section “the Paris Agreement goal” means the goal of holding the increase in the average global temperature to well below 2°C above pre-industrial levels referred to in Article 2(1)(a) of the agreement done at Paris on 12 December 2015.

#### Textual Amendments

**F123** Ss. 41A-41C inserted (31.5.2021) by Pension Schemes Act 2021 (c. 1), ss. 124(2), 131(1); S.I. 2021/620, reg. 2(2)(b)

### 41B Climate change risk: publication of information

- (1) Regulations may require the trustees or managers of an occupational pension scheme of a prescribed description to publish information of a prescribed description relating to the effects of climate change on the scheme (which may include information about matters to which regulations under section 41A may relate).
- (2) Regulations under subsection (1) may, among other things—
  - (a) require the trustees or managers to publish a document of a prescribed description;
  - (b) require information or a document to be made available free of charge;
  - (c) require information or a document to be provided in a form that is or by means that are prescribed or of a prescribed description.
- (3) In complying with requirements imposed by the regulations, a trustee or manager must have regard to guidance prepared from time to time by the Secretary of State.

#### Textual Amendments

**F123** Ss. 41A-41C inserted (31.5.2021) by Pension Schemes Act 2021 (c. 1), ss. 124(2), 131(1); S.I. 2021/620, reg. 2(2)(b)

### 41C Sections 41A and 41B: compliance

- (1) Regulations may make provision with a view to ensuring compliance with a provision of regulations under section 41A or 41B.
- (2) The regulations may in particular—
  - (a) provide for the Authority to issue a notice (a “compliance notice”) to a person with a view to ensuring the person's compliance with a provision of regulations under section 41A or 41B;
  - (b) provide for the Authority to issue a notice (a “third party compliance notice”) to a person with a view to ensuring another person's compliance with a provision of regulations under section 41A or 41B;
  - (c) provide for the Authority to issue a notice (a “penalty notice”) imposing a penalty on a person where the Authority are of the opinion that the person—
    - (i) has failed to comply with a compliance notice or third party compliance notice, or

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- (ii) has contravened a provision of regulations under section 41A or 41B;
  - (d) provide for the making of a reference to the First-tier Tribunal or Upper Tribunal in respect of the issue of a penalty notice or the amount of a penalty;
  - (e) confer other functions on the Authority.
- (3) The regulations may make provision for determining the amount, or the maximum amount, of a penalty in respect of a failure or contravention.
- (4) But the amount of a penalty imposed under the regulations in respect of a failure or contravention must not exceed—
- (a) £5,000, in the case of an individual, and
  - (b) £50,000, in any other case.]

**Textual Amendments**

**F123** Ss. 41A-41C inserted (31.5.2021) by Pension Schemes Act 2021 (c. 1), ss. 124(2), 131(1); S.I. 2021/620, reg. 2(2)(b)

*Employee trustees*

**<sup>F124</sup>42 Time off for performance of duties and for training.**

.....

**Textual Amendments**

**F124** Ss. 42-46 repealed (22.8.1996) by Employment Rights Act 1996 (c. 18), s. 243, Sch. 3 Pt. I (with ss. 191, 192, 194, 195, 202, 241, Sch. 2)

**<sup>F124</sup>43 Payment for time off.**

.....

**Textual Amendments**

**F124** Ss. 42-46 repealed (22.8.1996) by Employment Rights Act 1996 (c. 18), s. 243, Sch. 3 Pt. I (with ss. 191, 192, 194, 195, 202, 241, Sch. 2)

**<sup>F124</sup>44 Time limit for proceedings.**

.....

**Textual Amendments**

**F124** Ss. 42-46 repealed (22.8.1996) by Employment Rights Act 1996 (c. 18), s. 243, Sch. 3 Pt. I (with ss. 191, 192, 194, 195, 202, 241, Sch. 2)

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## <sup>F124</sup>45 Remedies.

.....

### Textual Amendments

**F124** Ss. 42-46 repealed (22.8.1996) by [Employment Rights Act 1996 \(c. 18\)](#), s. 243, **Sch. 3 Pt. I** (with ss. 191, 192, 194, 195, 202, 241, Sch. 2)

## <sup>F124</sup>46 Right not to suffer detriment in employment or be unfairly dismissed.

.....

### Textual Amendments

**F124** Ss. 42-46 repealed (22.8.1996) by [Employment Rights Act 1996 \(c. 18\)](#), s. 243, **Sch. 3 Pt. I** (with ss. 191, 192, 194, 195, 202, 241, Sch. 2)

### *Advisers*

## 47 Professional advisers.

- (1) For every occupational pension scheme there shall be—
- (a) an individual, or a firm, appointed by the trustees or managers as auditor (referred to in this Part, in relation to the scheme, as “the auditor”), and
  - (b) an individual appointed by the trustees or managers as actuary (referred to in this Part, in relation to the scheme, as “the actuary”).

- (2) For every occupational pension scheme the assets of which consist of or include investments<sup>F125</sup> ... there shall be an individual or a firm appointed by or on behalf of the trustees or managers as fund manager.

[<sup>F126</sup>(2A) References in this section to investments must be read with—

- (a) section 22 of the Financial Services and Markets Act 2000;
- (b) any relevant order under that section; and
- (c) Schedule 2 to that Act.]

- (3) If in the case of an occupational pension scheme any person—
- (a) is appointed otherwise than by the trustees or managers as legal adviser or to exercise any prescribed functions in relation to the scheme, or
  - (b) is appointed otherwise than by or on behalf of the trustees or managers as a fund manager,

[<sup>F127</sup>section 10 applies to any trustee, and] to any manager, who in exercising any of his functions places reliance on the skill or judgement of that person.

- (4) In this Part, in relation to an occupational pension scheme—
- (a) the auditor, actuary and legal adviser appointed by the trustees or managers,
  - (b) any fund manager appointed by or on behalf of the trustees or managers, and
  - (c) any person appointed by the trustees or managers to exercise any of the functions referred to in subsection (3)(a),

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are referred to as “professional advisers”.

- (5) This section does not apply to an occupational pension scheme falling within a prescribed class or description and regulations may—
  - (a) make exceptions to subsections (1) to (3),
  - (b) specify the qualifications and experience, or approval, required for appointment as a professional adviser.
- (6) Regulations may make provision as to—
  - (a) the manner in which professional advisers may be appointed and removed,
  - (b) the terms on which professional advisers may be appointed (including the manner in which the professional advisers may resign).
- (7) Subject to regulations made by virtue of subsection (6), professional advisers shall be appointed on such terms as the trustees or managers may determine.
- (8) If in the case of an occupational pension scheme an auditor, actuary or fund manager is required under this section to be appointed but the appointment has not been made, or not been made in accordance with any requirements imposed under this section, [<sup>F128</sup>section 10 applies to any trustee, and] to any manager, who has failed to take all such steps as are reasonable to secure compliance.
- (9) Regulations may in the case of occupational pension schemes—
  - (a) impose duties on any person who is or has been the employer, and on any person who acts as auditor or actuary to such a person, to disclose information to the trustees or managers and to the scheme’s professional advisers,
  - (b) impose duties on the trustees or managers to disclose information to, and make documents available to, the scheme’s professional advisers.
- (10) If in the case of an occupational pension scheme a person fails to comply with any duty imposed under subsection (9)(a), section 10 applies to him.
- (11) If in the case of an occupational pension scheme any duty imposed under subsection (9)(b) is not complied with, [<sup>F129</sup>section 10 applies to any trustee, and] to any manager, who has failed to take all such steps as are reasonable to secure compliance.

#### **Textual Amendments**

- F125** Words in s. 47(2) repealed (1.12.2001) by [The Financial Services and Markets Act 2000 \(Consequential Amendments and Repeals\) Order 2001 \(S.I. 2001/3649\)](#), arts. 1, **142(2)**
- F126** S. 47(2A) inserted (1.12.2001) by [The Financial Services and Markets Act 2000 \(Consequential Amendments and Repeals\) Order 2001 \(S.I. 2001/3649\)](#), arts. 1, **142(3)**
- F127** Words in s. 47(3) substituted (6.4.2006) by [Pensions Act 2004 \(c. 35\)](#), s. 322(1), **Sch. 12 para. 53**; S.I. 2005/3331, art. 2(6), Sch. Pt. 6
- F128** Words in s. 47(8) substituted (6.4.2006) by [Pensions Act 2004 \(c. 35\)](#), s. 322(1), **Sch. 12 para. 53**; S.I. 2005/3331, art. 2(6), Sch. Pt. 6
- F129** Words in s. 47(11) substituted (6.4.2006) by [Pensions Act 2004 \(c. 35\)](#), s. 322(1), **Sch. 12 para. 53**; S.I. 2005/3331, art. 2(6), Sch. Pt. 6

#### **Modifications etc. (not altering text)**

- C130** S. 47 excluded in part (6.4.1997) by [The Occupational Pension Schemes \(Scheme Administration\) Regulations 1996 \(S.I. 1996/1715\)](#), regs. 1(1), **3** (as amended by S.I. 1998/1494, regs. 1, 2; S.I.

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2001/3649, arts. 1, 528; S.I. 2005/2426, regs. 1(2), 3; S.I. 2006/778, regs. 1(1)(a), 4(3); S.I. 2010/499, regs. 1, 3; S.I. 2011/672, regs. 1(2)(b), 5)

**C131** S. 47 modified (11.11.1999 for specified purposes, 1.10.2000 in so far as not already in force) by Welfare Reform and Pensions Act 1999 (c. 30), s. 89(5)(a), **Sch. 1 para. 1(1)(2)(b)(v)(3)**; S.I. 2000/1047, art. 2(2)(c), Sch. Pt. III (as amended (9.12.2005) by Pensions Act 2004 (c. 35), s. 322(1), Sch. 12 para. 76(2)(d); S.I. 2005/3331, art. 2(2), Sch. Pt. 2)

**C132** S. 47 excluded (31.12.2000) by The Occupational Pension Schemes (Republic of Ireland Schemes Exemption) Regulations 2000 (S.I. 2000/3198), regs. 1(1), 2, **Sch.**

**Commencement Information**

**I38** S. 47 in force at 6.4.1996 for specified purposes by S.I. 1996/778, art. 2(5)(a), **Sch. Pt. V**

**I39** S. 47 in force at 6.4.1997 in so far as not already in force by S.I. 1997/664, art. 2(3), **Sch. Pt. 3**

<sup>F130</sup>**48** “Blowing the whistle”.

.....

**Textual Amendments**

**F130** S. 48 repealed (6.4.2005) by Pensions Act 2004 (c. 35), s. 322(1), **Sch. 13**; S.I. 2005/695, art. 2(7), Sch. 1

*Receipts, payments and records*

**49 Other responsibilities of trustees, employers, etc.**

(1) The trustees of any trust scheme must, except in any prescribed circumstances, keep any money received by them in a separate account kept by them [<sup>F131</sup>with a deposit-taker].

<sup>F132</sup>(1A) .....

- (2) Regulations may require the trustees of any trust scheme to keep—
  - (a) records of their meetings (including meetings of any of their number), and
  - (b) books and records relating to any prescribed transaction.
- (3) Regulations may, in the case of any trust scheme, require the employer, and any prescribed person acting in connection with the scheme, to keep books and records relating to any prescribed transaction.
- (4) Regulations may require books or records kept under subsection (2) or (3) to be kept in a prescribed form and manner and for a prescribed period.
- (5) Regulations must, in cases where payments of benefit to members of trust schemes are made by the employer, require the employer to make into a separate account kept by him [<sup>F133</sup>with a deposit-taker] any payments of benefit which have not been made to the members within any prescribed period.
- (6) If in the case of any trust scheme any requirements imposed by or under subsection (1) or (2) are not complied with, [<sup>F134</sup>section 10 applies] to any trustee who has failed to take all such steps as are reasonable to secure compliance.



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- (7) If in the case of any trust scheme any person fails to comply with any requirement imposed under subsection (3) or (5), section 10 applies to him.
- [<sup>F135</sup>(8) Where on making a payment of any earnings in respect of any employment there is deducted any amount corresponding to any contribution payable on behalf of an active member of an occupational pension scheme, the amount deducted is to be paid, within a prescribed period, to the trustees or managers of the scheme.
- [ “Deposit taker” means—
- <sup>F136</sup>(8A) (a) a person who has permission under [<sup>F137</sup>Part 4A] of the Financial Services and Markets Act 2000 to accept deposits;
- <sup>F138</sup>(b) . . . . .
- (c) the Bank of England <sup>F139</sup> . . . ;
- (d) the National Savings Bank; or
- (e) a municipal bank, that is to say a company which was, immediately before the repeal of the Banking Act 1987 exempted from the prohibition in section 3 of that Act by virtue of section 4(1) of, and paragraph 4 of Schedule 2 to, that Act.
- (8B) Paragraphs (a) and (b) of subsection (8A) must be read with—
- (a) section 22 of the Financial Services and Markets Act 2000;
- (b) any relevant order under that section; and
- (c) Schedule 2 to that Act.]
- (9) If in any case there is a failure to comply with subsection (8)—
- (a) section 10 applies to the employer; and
- [ if the trustees or managers have reasonable cause to believe that the failure is
- <sup>F140</sup>(b) likely to be of material significance in the exercise by the Authority of any of their functions, they must, except in prescribed circumstances, give notice of the failure to the Authority and the member within a reasonable period after the end of the prescribed period under subsection (8).]
- (10) If in any case subsection (9)(b) is not complied with—
- <sup>F141</sup>(a) . . . . .
- (b) section 10 applies to any trustee or manager who has failed to take all [<sup>F142</sup>reasonable steps to secure compliance].
- (11) If any person is knowingly concerned in the fraudulent evasion of the obligation imposed by subsection (8) in any case, he is guilty of an offence.
- (12) A person guilty of an offence under subsection (11) is liable—
- (a) on summary conviction, to a fine not exceeding the statutory maximum; and
- (b) on conviction on indictment, to imprisonment for a term not exceeding seven years or a fine or both.
- (13) A person shall not be required by virtue of subsection (9)(a) above to pay a penalty under section 10 in respect of a failure if in respect of that failure he has been—
- (a) required to pay a penalty under that section by virtue of section 3(7) of the Welfare Reform and Pensions Act 1999 (failures in respect of stakeholder pensions), or
- (b) convicted of an offence under subsection (11) above.]

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### Textual Amendments

- F131** Words in s. 49(1) substituted (1.12.2001) by [The Financial Services and Markets Act 2000 \(Consequential Amendments and Repeals\) Order 2001 \(S.I. 2001/3649\)](#), arts. 1, **143(2)**
- F132** S. 49(1A) repealed (1.12.2001) by [The Financial Services and Markets Act 2000 \(Consequential Amendments and Repeals\) Order 2001 \(S.I. 2001/3649\)](#), arts. 1, **143(3)**
- F133** Words in s. 49(5) substituted (1.12.2001) by [The Financial Services and Markets Act 2000 \(Consequential Amendments and Repeals\) Order 2001 \(S.I. 2001/3649\)](#), arts. 1, **143(4)**
- F134** Words in s. 49(6) substituted (9.12.2005) by [Pensions Act 2004 \(c. 35\)](#), s. 322(1), **Sch. 12 para. 54(a)**; [S.I. 2005/3331](#), art. 2(2), Sch. Pt. 2
- F135** S. 49(8)-(13) substituted for s. 49(8) (11.11.1999 for specified purposes, 3.4.2000 in so far as not already in force) by [Welfare Reform and Pensions Act 1999 \(c. 30\)](#), ss. **10(1)**, 89(5)(a); [S.I. 2000/629](#), art. 2
- F136** S. 49(8A)(8B) inserted (1.12.2001) by [The Financial Services and Markets Act 2000 \(Consequential Amendments and Repeals\) Order 2001 \(S.I. 2001/3649\)](#), arts. 1, **143(5)**
- F137** Words in s. 49(8A)(a) substituted (1.4.2013) by [Financial Services Act 2012 \(c. 21\)](#), s. 122(3), **Sch. 18 para. 82(2)** (with Sch. 20); [S.I. 2013/423](#), art. 3, Sch.
- F138** S. 49(8A)(b) omitted (31.12.2020) by virtue of [The Occupational and Personal Pension Schemes \(Amendment etc.\) \(EU Exit\) Regulations 2019 \(S.I. 2019/192\)](#), regs. 1, **3(2)(a)**; 2020 c. 1, Sch. 5 para. 1(1)
- F139** Words in s. 49(8A)(c) omitted (31.12.2020) by virtue of [The Occupational and Personal Pension Schemes \(Amendment etc.\) \(EU Exit\) Regulations 2019 \(S.I. 2019/192\)](#), regs. 1, **3(2)(b)**; 2020 c. 1, Sch. 5 para. 1(1)
- F140** S. 49(9)(b) substituted (1.7.2005 for specified purposes, 6.4.2006 in so far as not already in force) by [Pensions Act 2004 \(c. 35\)](#), ss. **269(1)**, 322(1) (with s. 313); [S.I. 2005/1720](#), art. 2(15)(a)(b), Sch. Pt. 2
- F141** S. 49(10)(a) repealed (9.12.2005) by [Pensions Act 2004 \(c. 35\)](#), s. 322(1), Sch. 12 para. 54(b)(i), **Sch. 13**; [S.I. 2005/3331](#), art. 2(2), Sch. Pt. 2
- F142** Words in s. 49(10)(b) substituted (9.12.2005) by [Pensions Act 2004 \(c. 35\)](#), s. 322(1), **Sch. 12 para. 54(b)(ii)**; [S.I. 2005/3331](#), art. 2(2), Sch. Pt. 2

### Modifications etc. (not altering text)

- C133** S. 49 applied (with modifications) in part (11.11.1999 for specified purposes, 1.10.2000 in so far as not already in force) by [Welfare Reform and Pensions Act 1999 \(c. 30\)](#), s. 89(5)(a), **Sch. 1 para. 1(1)(2)(b)** (vi); [S.I. 2000/1047](#), art. 2(2)(c), Sch. Pt. III
- C134** S. 49(8) excluded (11.2.2021 for specified purposes) by [Pension Schemes Act 2021 \(c. 1\)](#), s. 131(1)(3) (a), **Sch. 2 para. 1(2)(b)**

### Commencement Information

- I40** S. 49 in force at 6.4.1996 for specified purposes by [S.I. 1996/778](#), art. 2(5)(a), **Sch. Pt. V**
- I41** S. 49 in force at 6.4.1997 in so far as not already in force by [S.I. 1997/664](#), art. 2(3), **Sch. Pt. 3**

## [<sup>F143</sup>49A Record of winding-up decisions.

- (1) Except so far as regulations otherwise provide, the trustees or managers of an occupational pension scheme shall keep written records of—
- (a) any determination for the winding-up of the scheme in accordance with its rules;
  - (b) decisions as to the time from which steps for the purposes of the winding-up of the scheme are to be taken;
  - (c) determinations under section 38;

*Status: Point in time view as at 31/05/2021.*

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- (d) determinations in accordance with the rules of the scheme to postpone the commencement of a winding-up of the scheme.
- (2) For the purpose of this section—
  - (a) the determinations and decisions of which written records must be kept under this section include determinations and decisions by persons who—
    - (i) are not trustees or managers of a scheme, but
    - (ii) are entitled, in accordance with the rules of a scheme, to make a determination for its winding-up;
  - and
  - (b) regulations may, in relation to such determinations or decisions as are mentioned in paragraph (a), impose obligations to keep written records on the persons making the determinations or decisions (as well as, or instead of, on the trustees or managers).
- (3) Regulations may provide for the form and content of any records that are required to be kept under this section.
- <sup>F144</sup>(4) . . . . .
- (5) Section 10 applies to any trustee or manager of a scheme who fails to take all such steps as are reasonable to secure compliance by the trustees or managers of that scheme with those obligations.]

**Textual Amendments**

**F143** S. 49A inserted (1.3.2002 for specified purposes, 1.4.2002 in so far as not already in force) by [Child Support, Pensions and Social Security Act 2000 \(c. 19\)](#), **ss. 49(3)**, 86(1)(b)(2) (with s. 83(6)); S.I. 2002/437, art. 3(1)(e)(2)

**F144** S. 49A(4) repealed (9.12.2005) by [Pensions Act 2004 \(c. 35\)](#), s. 322(1), Sch. 12 para. 55, **Sch. 13**; S.I. 2005/3331, art. 2(2), Sch. Pt. 2

**Modifications etc. (not altering text)**

**C135** S. 49A restricted (1.4.2002) by [The Occupational Pension Schemes \(Winding Up Notices and Reports etc.\) Regulations 2002 \(S.I. 2002/459\)](#), regs. 1(1), **13(1)**

*Resolution of disputes*

<sup>F145</sup>**50 Requirement for dispute resolution arrangements**

- (1) The trustees or managers of an occupational pension scheme must secure that dispute resolution arrangements complying with the requirements of this section are made and implemented.
- (2) Dispute resolution arrangements are arrangements for the resolution of pension disputes.
- (3) For this purpose a pension dispute is a dispute which—
  - (a) is between—
    - (i) the trustees or managers of a scheme, and
    - (ii) one or more persons with an interest in the scheme (see section 50A),

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- (b) is about matters relating to the scheme, and
  - (c) is not an exempted dispute (see subsection (9)).
- (4) The dispute resolution arrangements must provide a procedure—
- (a) for any of the parties to the dispute mentioned in subsection (3)(a)(ii) to make an application for a decision to be taken on the matters in dispute (“an application for the resolution of a pension dispute”), and
  - (b) for the trustees or managers to take that decision.
- (4A) The dispute resolution arrangements may make provision for securing that an application for the resolution of a pension dispute may not be made to the trustees or managers unless—
- (a) the matters in dispute have been previously referred to a person of a description specified in the arrangements (“the specified person”) in order for him to consider those matters, and
  - (b) the specified person has given his decision on those matters,
- and for enabling the specified person's decision to be confirmed or replaced by the decision taken by the trustees or managers on the application, after reconsidering those matters.
- (5) Where an application for the resolution of a pension dispute is made in accordance with the dispute resolution arrangements, the trustees or managers must—
- (a) take the decision required on the matters in dispute within a reasonable period of the receipt of the application by them, and
  - (b) notify the applicant of the decision within a reasonable period of it having been taken.
- (5A) In a case where a reference is made to the specified person in accordance with provision made under subsection (4A), subsection (5) applies in relation to the specified person as it applies in relation to the trustees or managers in a case where an application for the resolution of a pension dispute is made to them.
- (6) The procedure provided for by the dispute resolution arrangements in pursuance of subsection (4) must include the provision required by section 50B.
- (7) Dispute resolution arrangements under subsection (1) must, in the case of existing schemes, have effect on and after the date of commencement of this section in relation to applications made on or after that date.
- (8) This section does not apply in relation to an occupational pension scheme if—
- (a) every member of the scheme is a trustee of the scheme,
  - (b) the scheme has no more than one member, or
  - (c) the scheme is of a prescribed description.
- (9) For the purposes of this section a dispute is an exempted dispute if—
- (a) proceedings in respect of it have been commenced in any court or tribunal,
  - (b) the Pensions Ombudsman has commenced an investigation in respect of it as a result of a complaint made or a dispute referred to him, or
  - (c) it is of a prescribed description.
- (10) If, in the case of an occupational pension scheme, the dispute resolution arrangements required by this section to be made—
- (a) have not been made, or

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(b) are not being implemented,  
section 10 applies to any of the trustees or managers who have failed to take all reasonable steps to secure that such arrangements are made or implemented.

#### Textual Amendments

**F145** Ss. 50-50B substituted for s. 50 (5.3.2008 for specified purposes, 6.4.2008 in so far as not already in force) by Pensions Act 2004 (c. 35), ss. 273, 322(1) (with s. 313) (as amended by Pensions Act 2007 (c. 22), ss. 16, 30(3)); S.I. 2008/627, art. 2(a)(b)

#### Modifications etc. (not altering text)

**C136** S. 50 modified (11.11.1999 for specified purposes, 1.10.2000 in so far as not already in force) by Welfare Reform and Pensions Act 1999 (c. 30), s. 89(5)(a), Sch. 1 para. 1(1)(2)(b)(vii); S.I. 2000/1047, art. 2(2)(c), Sch. Pt. III

**C137** S. 50 modified in part (30.12.2005) by The Occupational Pension Schemes (Cross-border Activities) Regulations 2005 (S.I. 2005/3381), regs. 1, 14, Sch. 2 paras. 2, 4

### 50A Meaning of “person with an interest in the scheme”

- (1) For the purposes of section 50 a person is a person with an interest in an occupational pension scheme if—
- he is a member of the scheme,
  - he is a widow, widower [<sup>F146</sup>, surviving civil partner] or surviving dependant of a deceased member of the scheme,
  - he is a surviving non-dependant beneficiary of a deceased member of the scheme,
  - he is a prospective member of the scheme,
  - he has ceased to be within any of the categories of persons referred to in paragraphs (a) to (d), or
  - he claims to be such a person as is mentioned in paragraphs (a) to (e) and the dispute relates to whether he is such a person.
- (2) In subsection (1)(c) a “non-dependant beneficiary”, in relation to a deceased member of an occupational pension scheme, means a person who, on the death of the member, is entitled to the payment of benefits under the scheme.
- (3) In subsection (1)(d) a “prospective member” means any person who, under the terms of his contract of service or the rules of the scheme—
- is able, at his own option, to become a member of the scheme,
  - will become so able if he continues in the same employment for a sufficiently long period,
  - will be admitted to the scheme automatically unless he makes an election not to become a member, or
  - may be admitted to it subject to the consent of his employer.

#### Textual Amendments

**F145** Ss. 50-50B substituted for s. 50 (5.3.2008 for specified purposes, 6.4.2008 in so far as not already in force) by Pensions Act 2004 (c. 35), ss. 273, 322(1) (with s. 313) (as amended by Pensions Act 2007 (c. 22), ss. 16, 30(3)); S.I. 2008/627, art. 2(a)(b)

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**F146** Words in s. 50A(1)(b) inserted (5.12.2005) by [The Civil Partnership \(Pensions and Benefit Payments\) \(Consequential, etc. Provisions\) Order 2005 \(S.I. 2005/2053\)](#), art. 1(3), **Sch. para. 21**

## **50B The dispute resolution procedure**

- (1) The procedure provided for by the dispute resolution arrangements in pursuance of section 50(4) must (in accordance with section 50(6)) include the following provision.
- (2) The procedure must provide that an application for the resolution of a pension dispute under section 50(4) may be made or continued on behalf of a person who is a party to the dispute mentioned in section 50(3)(a)(ii)—
  - (a) where the person dies, by his personal representative,
  - (b) where the person is a minor or is otherwise incapable of acting for himself, by a member of his family or some other person suitable to represent him, and
  - (c) in any other case, by a representative nominated by him.
- (3) The procedure—
  - (a) must include provision requiring an application to which subsection (3A) applies to be made by the end of such reasonable period as is specified;
  - (b) may include provision about the time limits for making such other applications for the resolution of pension disputes as are specified.
- (3A) This subsection applies to—
  - (a) any application by a person with an interest in a scheme as mentioned in section 50A(1)(e), and
  - (b) any application by a person with an interest in a scheme as mentioned in section 50A(1)(f) who is claiming to be such a person as is mentioned in section 50A(1)(e).
- (4) The procedure must include provision about—
  - (a) the manner in which an application for the resolution of a pension dispute is to be made,
  - (b) the particulars which must be included in such an application, and
  - (c) the manner in which any decisions required in relation to such an application are to be reached and given.
- (4A) The provision made under subsection (4)(c) may include provision for decisions of the trustees or managers to be taken on their behalf by one or more of their number.
- (5) The procedure must provide that if, after an application for the resolution of a pension dispute has been made, the dispute becomes an exempted dispute within the meaning of section 50(9)(a) or (b), the resolution of the dispute under the procedure ceases.]

### **Textual Amendments**

**F145** [Ss. 50-50B](#) substituted for s. 50 (5.3.2008 for specified purposes, 6.4.2008 in so far as not already in force) by [Pensions Act 2004 \(c. 35\)](#), **ss. 273, 322(1)** (with [s. 313](#)) (as amended by [Pensions Act 2007 \(c. 22\)](#), **ss. 16, 30(3)**); [S.I. 2008/627](#), art. 2(a)(b)

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## Indexation

### 51 Annual increase in rate of pension.

- (1) Subject to <sup>F147</sup>subsections (6) and (7)] this section applies to a pension under an occupational pension scheme if—
- (a) the scheme—
    - <sup>F148</sup>(i) is a registered pension scheme under section 153 of the Finance Act 2004, and]
    - (ii) is not a public service pension scheme, and
    - <sup>F149</sup>(iii) in the case where the pension becomes a pension in payment on or after the commencement day, is not a money purchase scheme, and]
  - <sup>F150</sup>(b) the whole, or any part of, the pension is attributable—
    - (i) to pensionable service on or after <sup>F151</sup>6 April 1997], or
    - (ii) in the case of money purchase benefits where the pension is in payment before the commencement day, to payments in respect of employment carried on on or after <sup>F151</sup>6 April 1997], and
  - (c) apart from this section—
    - (i) the annual rate of the pension, or
    - (ii) if only part of the pension is attributable as described in paragraph (b), so much of the annual rate as is attributable to that part,would not be increased each year by at least the appropriate percentage of that rate.]
- <sup>F152</sup>(1A) Where a pension scheme is divided into sections, each section that is a collective money purchase scheme for the purposes of Part 1 of the Pension Schemes Act 2021 (see section 1(2)(b) of that Act) is to be treated for the purposes of this section as a separate occupational pension scheme which is a money purchase scheme.]
- (2) <sup>F153</sup>Subject to sections 51A and 52], where a pension to which this section applies, or any part of it, is attributable to pensionable service on or after <sup>F151</sup>6 April 1997] or, in the case of money purchase benefits <sup>F154</sup>where the pension is in payment before the commencement day], to payments in respect of employment carried on on or after <sup>F151</sup>6 April 1997]—
- (a) the annual rate of the pension, or
  - (b) if only part of the pension is attributable to pensionable service or, as the case may be, to payments in respect of employment carried on on or after <sup>F151</sup>6 April 1997], so much of the annual rate as is attributable to that part,
- must be increased annually by at least the appropriate percentage.
- <sup>F155</sup>(3) Subsection (2) does not apply to the annual rate of a pension under an occupational pension scheme, or to a part of that rate, if under the rules of the scheme the rate or part is for the time being being increased at intervals of not more than twelve months by at least the relevant percentage.
- (4) For the purposes of subsection (3) the relevant percentage is—
- (a) the percentage increase in the consumer prices index for the reference period, being a period determined, in relation to each periodic increase, under the rules, or
  - (b) if lower, the default percentage for that period.

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- (4ZA) Subsection (2) does not apply to the annual rate of a pension under an occupational pension scheme, or to a part of that rate, if subsection (4ZB) applies to the rate or part.
- (4ZB) Subject to subsection (4ZD), this subsection applies to the rate or part if, under the rules of the scheme, the rate or part is for the time being increased, and since the relevant time has always been increased, at intervals of not more than twelve months by at least—
- (a) the percentage increase in the retail prices index for the reference period, being a period determined, in relation to each periodic increase, under the rules, or
  - (b) if lower, the default percentage for that period.
- (4ZC) In subsection (4ZB) “the relevant time” means—
- (a) the beginning of 2011 or, if later, the time when the pension became a pension in payment, or
  - (b) if the pension was transferred to the scheme from another occupational pension scheme as a pension in payment after the beginning of 2011, the time of the transfer.
- (4ZD) If the pension was transferred to the scheme as mentioned in subsection (4ZC)(b), subsection (4ZB) does not apply to the rate or part unless, immediately before the transfer, subsection (4ZB) (read with this subsection if relevant) applied to the rate or part by reference to the scheme from which the pension was transferred (or would have applied had subsection (4ZB) been in force immediately before the transfer).
- (4ZE) If only part of the pension is attributable to pensionable service or, as the case may be, to payments in respect of employment carried on on or after [<sup>F151</sup>6 April 1997], in subsections (3) to (4ZD) references to the annual rate of the pension are references to so much of that rate as is attributable to that part.
- (4ZF) For the purposes of subsections (4) and (4ZB) the default percentage for a period is the percentage for that period which corresponds to—
- (a) in the case of a category X pension, 5% per annum, and
  - (b) in the case of a category Y pension, 2.5% per annum.
- (4ZG) In subsections (4) and (4ZB)—
- “consumer prices index” means—
- (a) the general index of consumer prices (for all items) published by the Statistics Board, or
  - (b) where that index is not published for a month, any substituted index or figures published by the Board;
- “retail prices index” means—
- (a) the general index of retail prices (for all items) published by the Statistics Board, or
  - (b) where that index is not published for a month, any substituted index or figures published by the Board.]
- [<sup>F156</sup>(4A) For the purposes of this section, a pension is a category X pension if it is—
- (a) a pension which became a pension in payment before the commencement day, or
  - (b) a pension—
    - (i) which becomes a pension in payment on or after the commencement day, and



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- (ii) the whole of which is attributable to pensionable service before that day.
- (4B) For the purposes of this section, a pension is a category Y pension if it is a pension—
- which becomes a pension in payment on or after the commencement day, and
  - the whole of which is attributable to pensionable service on or after the commencement day.
- (4C) For the purposes of applying this section in the case of a pension—
- which becomes a pension in payment on or after the commencement day,
  - part of which is attributable to pensionable service before the commencement day, and
  - part of which is attributable to pensionable service on or after that day,
- each of those parts of the pension is to be treated as if it were a separate pension.]
- (5) Regulations may provide that [<sup>F157</sup>any of the provisions of this section] apply in relation to a pension as if so much of it as would not otherwise be attributable to pensionable service or to payments in respect of employment were attributable to pensionable service or, as the case may be, payments in respect of employment—
- before [<sup>F151</sup>6 April 1997][<sup>F158</sup>or the commencement day],
  - on or after that day, or
  - partly before and partly on or after that day.
- (6) This section does not apply to any pension or part of a pension [<sup>F159</sup>which is attributable (directly or indirectly) to a pension credit or] which, in the opinion of the trustees or managers, is derived from the payment by any member of the scheme of voluntary contributions.
- [<sup>F160</sup>(7) This section does not apply to any pension (or part of a pension) under a relevant occupational pension scheme which—
- is a cash balance benefit (see section 51ZB), and
  - first comes into payment on or after the day on which section 21 of the Pensions Act 2011 comes into force.]

[<sup>F161</sup>(8) An occupational pension scheme is a “relevant occupational pension scheme” if—

    - it has not, at any time on or after 6 April 1997, been a salary related contracted-out scheme (see section 7B of the Pension Schemes Act 1993), or
    - it has, at any time on or after 6 April 1997, been a salary related contracted-out scheme but no person is entitled to receive, or has accrued rights to, benefits under the scheme attributable to a period on or after that day when it was such a scheme.]

#### Textual Amendments

**F147** Words in s. 51(1) substituted (3.1.2012) by [Pensions Act 2011 \(c. 19\), ss. 21\(2\), 38\(4\)](#); S.I. 2011/3034, art. 3(c)

**F148** S. 51(1)(a)(i) substituted (6.4.2006) by [The Taxation of Pension Schemes \(Consequential Amendments\) Order 2006 \(S.I. 2006/745\), arts. 1, 10\(2\)](#)

**F149** S. 51(1)(a)(iii) inserted (15.3.2005 for specified purposes, 6.4.2005 in so far as not already in force) by [Pensions Act 2004 \(c. 35\), ss. 278\(2\)\(b\), 322\(1\)](#) (with s. 313); S.I. 2005/275, art. 2(7), Sch. Pt. 7; S.I. 2005/695, art. 2(4)

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- F150** S. 51(1)(b)(c) substituted for s. 51(1)(b) (15.3.2005 for specified purposes, 6.4.2005 in so far as not already in force) by Pensions Act 2004 (c. 35), **ss. 278(2)(c)**, 322(1) (with s. 313); S.I. 2005/275, art. 2(7), Sch. Pt. 7; S.I. 2005/695, art. 2(4)
- F151** Words in s. 51 substituted (6.4.2016) by Pensions Act 2014 (c. 19), s. 56(4), **Sch. 13 para. 59(2)**
- F152** S. 51(1A) inserted (11.2.2021 for specified purposes) by Pension Schemes Act 2021 (c. 1), s. 131(1)(3) (a), **Sch. 3 para. 7**
- F153** Words in s. 51(2) substituted (1.12.2000) by Child Support, Pensions and Social Security Act 2000 (c. 19), **ss. 51(1)**, 86(1)(b)(2) (with s. 83(6)); S.I. 2000/3166, art. 2(2)(b)
- F154** Words in s. 51(2) inserted (15.3.2005 for specified purposes, 6.4.2005 in so far as not already in force) by Pensions Act 2004 (c. 35), **ss. 278(3)**, 322(1) (with s. 313); S.I. 2005/275, art. 2(7), Sch. Pt. 7; S.I. 2005/695, art. 2(4)
- F155** S. 51(3)-(4ZG) substituted for s. 51(3)(4) (3.1.2012) by Pensions Act 2011 (c. 19), **ss. 19(8)**, 38(4); S.I. 2011/3034, art. 3(b)
- F156** S. 51(4A)-(4C) inserted (15.3.2005 for specified purposes, 6.4.2005 in so far as not already in force) by Pensions Act 2004 (c. 35), **ss. 278(5)**, 322(1) (with s. 313); S.I. 2005/275, art. 2(7), Sch. Pt. 7; S.I. 2005/695, art. 2(4)
- F157** Words in s. 51(5) substituted (15.3.2005 for specified purposes, 6.4.2005 in so far as not already in force) by Pensions Act 2004 (c. 35), **ss. 278(6)(a)**, 322(1) (with s. 313); S.I. 2005/275, art. 2(7), Sch. Pt. 7; S.I. 2005/695, art. 2(4)
- F158** Words in s. 51(5)(a) inserted (15.3.2005 for specified purposes, 6.4.2005 in so far as not already in force) by Pensions Act 2004 (c. 35), **ss. 278(6)(b)**, 322(1) (with s. 313); S.I. 2005/275, art. 2(7), Sch. Pt. 7; S.I. 2005/695, art. 2(4)
- F159** Words in s. 51(6) inserted (1.12.2000) by Welfare Reform and Pensions Act 1999 (c. 30), s. 89(1), **Sch. 12 para. 51**; S.I. 2000/1047, art. 2(2)(d) Sch. Pt. 4
- F160** S. 51(7)(8) inserted (3.1.2012) by Pensions Act 2011 (c. 19), **ss. 21(3)**, 38(4); S.I. 2011/3034, art. 3(c)
- F161** S. 51(8) substituted (6.4.2016) by Pensions Act 2014 (c. 19), s. 56(4), **Sch. 13 para. 59(3)**

#### Modifications etc. (not altering text)

- C138** Ss. 51-54 modified (30.12.2005) by The Occupational Pension Schemes (Cross-border Activities) Regulations 2005 (S.I. 2005/3381), regs. 1, 14, **Sch. 2 para. 3**
- C139** S. 51 modified (6.4.2005) by The Personal and Occupational Pension Schemes (Indexation and Disclosure of Information) (Miscellaneous Amendments) Regulations 2005 (S.I. 2005/704), regs. 1(2), 2
- C140** S. 51 excluded (24.7.2014) by The Pensions Act 2011 (Transitional, Consequential and Supplementary Provisions) Regulations 2014 (S.I. 2014/1711), regs. 1(1), **26(1)**

#### Commencement Information

- I42** S. 51 in force at 6.4.1996 for specified purposes by S.I. 1996/778, art. 2(5)(a), **Sch. Pt. V**
- I43** S. 51 in force at 6.4.1997 in so far as not already in force by S.I. 1997/664, art. 2(3), **Sch. Pt. 3**

#### [<sup>F162</sup>51Z] Meaning of “the appropriate percentage”

- (1) For the purposes of section 51(1)(c) and (2), “the appropriate percentage” in relation to an increase in the whole or part of the annual rate of a pension—
- (a) in the case of a category X pension, means the [<sup>F163</sup>higher revaluation percentage] for the latest revaluation period specified in the order under paragraph 2 of Schedule 3 to the Pension Schemes Act 1993 (revaluation of accrued pension benefits) which is in force at the time of the increase, and
- [<sup>F164</sup>(b) in the case of a category Y pension, means the lower revaluation percentage for that period.]

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- (2) In this section [<sup>F165</sup>“the higher revaluation percentage”, “the lower revaluation percentage”] and “the revaluation period” have the same meaning as in paragraph 2 of Schedule 3 to the Pension Schemes Act 1993.]

#### Textual Amendments

- F162** S. 51ZA inserted (15.3.2005 for specified purposes, 6.4.2005 in so far as not already in force) by Pensions Act 2004 (c. 35), ss. 278(7), 322(1) (with s. 313); S.I. 2005/275, art. 2(7), Sch. Pt. 7; S.I. 2005/695, art. 2(4)
- F163** Words in s. 51ZA(1)(a) substituted (6.4.2009) by Pensions Act 2008 (c. 30), s. 149(1), Sch. 2 para. 8(2)(a) (with s. 101(2)(3)); S.I. 2009/82, art. 2(2)(f)
- F164** S. 51ZA(1)(b) substituted (6.4.2009) by Pensions Act 2008 (c. 30), s. 149(1), Sch. 2 para. 8(2)(b) (with s. 101(2)(3)); S.I. 2009/82, art. 2(2)(f)
- F165** Words in s. 51ZA(2) substituted (6.4.2009) by Pensions Act 2008 (c. 30), s. 149(1), Sch. 2 para. 8(3) (with s. 101(2)(3)); S.I. 2009/82, art. 2(2)(f)

#### Modifications etc. (not altering text)

- C138** Ss. 51–54 modified (30.12.2005) by The Occupational Pension Schemes (Cross-border Activities) Regulations 2005 (S.I. 2005/3381), regs. 1, 14, Sch. 2 para. 3

#### [<sup>F166</sup>51ZB] Meaning of “cash balance benefit”

- (1) For the purposes of section 51(7)(a), a pension provided to or in respect of a member of an occupational pension scheme is a “cash balance benefit” if conditions 1 and 2 are met.
- (2) Condition 1 is that the rate of the pension is calculated by reference to a sum of money (“the available sum”) which is available under the scheme for the provision of benefits to or in respect of the member.
- (3) Condition 2 is that under the scheme—
- there is a promise about the amount of the available sum, but
  - there is no promise about the rate or amount of the benefits to be provided.
- (4) The promise mentioned in subsection (3)(a) includes in particular a promise about the change in the value of, or the return from, payments made under the scheme by the member or by any other person in respect of the member.
- (5) The promise mentioned in subsection (3)(b) includes a promise that—
- the amount of the available sum will be sufficient to provide benefits of a particular rate or amount;
  - the rate or amount of a benefit will represent a particular proportion of the available sum.
- (6) But a pension is not prevented from being a cash balance benefit merely because under the scheme there is a promise that—
- the rate or amount of a benefit payable in respect of a deceased member will be a particular proportion of the rate or amount of a benefit which was (or would have been) payable to the member;
  - the amount of a lump sum payable to a member, or in respect of a deceased member, will represent a particular proportion of the available sum.]

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#### Textual Amendments

**F166** S. 51ZB inserted (3.1.2012) by [Pensions Act 2011 \(c. 19\)](#), **ss. 21(4)**, 38(4); S.I. 2011/3034, art. 3(c)

#### Modifications etc. (not altering text)

**C138** Ss. 51-54 modified (30.12.2005) by [The Occupational Pension Schemes \(Cross-border Activities\) Regulations 2005 \(S.I. 2005/3381\)](#), regs. 1, 14, **Sch. 2 para. 3**

### [<sup>F167</sup>51A Restriction on increase where annuity tied to investments.

- (1) No increase under section 51 is required to be made, at any time on or after the relevant date, of so much of any pension under a money purchase scheme as—
- (a) is payable by way of an annuity the amount of which for any year after the first year of payment is determined (whether under the terms of the scheme or under the terms of the annuity contract in pursuance of which it is payable) by reference to fluctuations in the value of, or the return from, particular investments; [<sup>F168</sup>and]
  - <sup>F169</sup>(b) . . . . .
  - (c) satisfies such other conditions (if any) as may be prescribed.
- (2) For the purposes of this section it shall be immaterial whether the annuity in question is payable out of the funds of the scheme in question or under an annuity contract entered into for the purposes of the scheme.
- (3) In this section “the relevant date” means the date appointed for the coming into force of section 51 of the Child Support, Pensions and Social Security Act 2000.]

#### Textual Amendments

**F167** S. 51A inserted (1.12.2000) by [Child Support, Pensions and Social Security Act 2000 \(c. 19\)](#), **ss. 51(2)**, 86(1)(b)(2) (with s. 83(6)); S.I. 2000/3166, art. 2(2)(b)

**F168** Word in s. 51A(1)(a) added (6.4.2012) by [The Pensions Act 2008 \(Abolition of Protected Rights\) \(Consequential Amendments\) \(No.2\) Order 2011 \(S.I. 2011/1730\)](#), arts. 1(2)(b), **6(2)(a)**

**F169** S. 51A(1)(b) omitted (6.4.2012) by virtue of [The Pensions Act 2008 \(Abolition of Protected Rights\) \(Consequential Amendments\) \(No.2\) Order 2011 \(S.I. 2011/1730\)](#), arts. 1(2)(b), **6(2)(b)**

#### Modifications etc. (not altering text)

**C138** Ss. 51-54 modified (30.12.2005) by [The Occupational Pension Schemes \(Cross-border Activities\) Regulations 2005 \(S.I. 2005/3381\)](#), regs. 1, 14, **Sch. 2 para. 3**

### 52 Restriction on increase where member is under 55.

- (1) Subject to subsection (2), no increase under section 51 is required to be paid to or for a member of a scheme whose pension is in payment but who has not attained the age of 55 at the time when the increase takes effect.
- (2) Subsection (1) does not apply if the member—
- (a) is permanently incapacitated by mental or physical infirmity from engaging in regular full-time employment, or

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- (b) has retired on account of mental or physical infirmity from the employment in respect of which, or on retirement from which, the pension is payable.
- (3) The rules of a scheme may provide that if, in a case where a pension has been paid to or for a member under the age of 55 at an increased rate in consequence of subsection (2), the member—
- (a) ceases to suffer from the infirmity in question before he attains the age of 55, but
  - (b) continues to be entitled to the pension,
- any increases subsequently taking effect under section 51 in the annual rate of the pension shall not be paid or shall not be paid in full.
- (4) In any case where—
- (a) by virtue only of subsection (1) or (3), increases are not paid to or for a member or are not paid in full, but
  - (b) the member attains the age of 55 or, in a case falling within subsection (3), again satisfies the condition set out in subsection (2)(a) or (b),
- his pension shall then become payable at the annual rate at which it would have been payable apart from subsection (1) or (3).

**Modifications etc. (not altering text)**

**C138** Ss. 51-54 modified (30.12.2005) by [The Occupational Pension Schemes \(Cross-border Activities\) Regulations 2005 \(S.I. 2005/3381\)](#), regs. 1, 14, **Sch. 2 para. 3**

**Commencement Information**

**I44** S. 52 in force at 6.4.1997 by [S.I. 1997/664](#), art. 2(3), **Sch. Pt. 3**

**53 Effect of increases above the statutory requirement.**

- (1) Where in any tax year the trustees or managers of an occupational pension scheme make an increase in a person's pension, not being an increase required by section 109 of the <sup>M9</sup>Pension Schemes Act 1993 or section 51 of this Act, they may deduct the amount of the increase from any increase which, but for this subsection, they would be required to make under either of those sections in the next tax year.
  - (2) Where in any tax year the trustees or managers of such a scheme make an increase in a person's pension and part of the increase is not required by section 109 of the Pension Schemes Act 1993 or section 51 of this Act, they may deduct that part of the increase from any increase which, but for this subsection, they would be required to make under either of those sections in the next tax year.
  - (3) Where by virtue of subsection (1) or (2) any pensions are not required to be increased in pursuance of section 109 of the Pension Schemes Act 1993 or section 51 of this Act, or not by the full amount that they otherwise would be, their amount shall be calculated for any purpose as if they had been increased in pursuance of the section in question or, as the case may be, by that full amount.
- [<sup>F170</sup>(3A) In subsections (1) and (2), the references to a person's pension do not include any pension which is attributable (directly or indirectly) to a pension credit.]

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- (4) In section 110 of the <sup>M10</sup>Pension Schemes Act 1993 (resources for annual increase of guaranteed minimum pension)—
- (a) subsections (2) to (4) are omitted, and
  - (b) in subsection (1), for “subsection (2) or (3)” there is substituted “ section 53 of the Pensions Act 1995 ”.

#### Textual Amendments

**F170** S. 53(3A) inserted (1.12.2000) by [Welfare Reform and Pensions Act 1999 \(c. 30\)](#), s. 89(1), **Sch. 12 para. 52**; [S.I. 2000/1047](#), art. 2(2)(d) Sch. Pt. 4

#### Modifications etc. (not altering text)

**C138** Ss. 51-54 modified (30.12.2005) by [The Occupational Pension Schemes \(Cross-border Activities\) Regulations 2005 \(S.I. 2005/3381\)](#), regs. 1, 14, **Sch. 2 para. 3**

#### Commencement Information

**I45** S. 53 in force at 6.4.1997 by [S.I. 1997/664](#), art. 2(3), **Sch. Pt. 3**

#### Marginal Citations

**M9** 1993 c. 48.

**M10** 1993 c. 48.

## 54 Sections 51 to 53: supplementary.

- (1) The first increase required by section 51 in the rate of a pension must take effect not later than the first anniversary of the date on which the pension is first paid; and subsequent increases must take effect at intervals of not more than twelve months.
- (2) Where the first such increase is to take effect on a date when the pension has been in payment for a period of less than twelve months, the increase must be of an amount at least equal to one twelfth of the amount of the increase so required (apart from this subsection) for each complete month in that period.
- (3) In sections 51 to 53 and this section—
 

“annual rate”, in relation to a pension, means the annual rate of the pension, as previously increased under the rules of the scheme or under section 51,

F171 .....

F172 .....

[<sup>F173</sup>“the commencement day” means the day appointed for the coming into force of section 278 of the Pensions Act 2004 (amendments to section 51),]

“pension”, in relation to a scheme, means any pension in payment under the scheme and includes an annuity.

#### Textual Amendments

**F171** Words in s. 54(3) omitted (6.4.2016) by virtue of [Pensions Act 2014 \(c. 19\)](#), s. 56(4), **Sch. 13 para. 60**

**F172** Words in s. 54(3) repealed (6.4.2005) by [Pensions Act 2004 \(c. 35\)](#), s. 322(1), **Sch. 13**; [S.I. 2005/275](#), art. 2(7), Sch. Pt. 7

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**F173** Words in s. 54(3) inserted (15.3.2005 for specified purposes, 6.4.2005 in so far as not already in force) by Pensions Act 2004 (c. 35), **ss. 278(8), 322(1)** (with s. 313); S.I. 2005/275, art. 2(7), Sch. Pt. 7; S.I. 2005/695, art. 2(4)

**Modifications etc. (not altering text)**

**C138** Ss. 51-54 modified (30.12.2005) by The Occupational Pension Schemes (Cross-border Activities) Regulations 2005 (S.I. 2005/3381), regs. 1, 14, **Sch. 2 para. 3**

**Commencement Information**

**I46** S. 54 in force at 6.4.1997 by S.I. 1997/664, art. 2(3), **Sch. Pt. 3**

**55 Section 51: end of annual increase in GMP.**

In section 109 of the <sup>M11</sup>Pension Schemes Act 1993 (annual increase of guaranteed minimum pensions)—

- (a) in subsection (2) (increase in rate of that part of guaranteed minimum pension attributable to earnings factors for tax year 1988-89 and subsequent tax years) for “the tax year 1988-89 and subsequent tax years” there is substituted “ the tax years in the relevant period ”, and
- (b) after subsection (3) there is inserted—

“(3A) The relevant period is the period—

- (a) beginning with the tax year 1988-89, and
- (b) ending with the last tax year that begins before the principal appointed day for the purposes of Part III of the Pensions Act 1995”.

**Commencement Information**

**I47** S. 55 in force at 4.2.1997 by S.I. 1997/216, **art. 2(2)**

**Marginal Citations**

**M11** 1993 c. 48.

*Minimum funding requirement*

<sup>F174</sup>**56 Minimum funding requirement.**

.....

**Textual Amendments**

**F174** Ss. 56-61 repealed (4.12.2005 for specified purposes, 30.12.2005 in so far as not already in force) by Pensions Act 2004 (c. 35), s. 322(1), **Sch. 13**; S.I. 2005/3331, art. 2(1)(a)(b), Sch. Pt. 1 (with S.I. 2005/3377, reg. 1, Sch. 4 Pt. 2)

<sup>F174</sup>**57 Valuation and certification of assets and liabilities.**

.....

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**Textual Amendments**

**F174** Ss. 56-61 repealed (4.12.2005 for specified purposes, 30.12.2005 in so far as not already in force) by Pensions Act 2004 (c. 35), s. 322(1), **Sch. 13**; S.I. 2005/3331, art. 2(1)(a)(b), Sch. Pt. 1 (with S.I. 2005/3377, reg. 1, Sch. 4 Pt. 2)

**F174** **58 Schedules of contributions.**

.....

**Textual Amendments**

**F174** Ss. 56-61 repealed (4.12.2005 for specified purposes, 30.12.2005 in so far as not already in force) by Pensions Act 2004 (c. 35), s. 322(1), **Sch. 13**; S.I. 2005/3331, art. 2(1)(a)(b), Sch. Pt. 1 (with S.I. 2005/3377, reg. 1, Sch. 4 Pt. 2)

**F174** **59 Determination of contributions: supplementary.**

.....

**Textual Amendments**

**F174** Ss. 56-61 repealed (4.12.2005 for specified purposes, 30.12.2005 in so far as not already in force) by Pensions Act 2004 (c. 35), s. 322(1), **Sch. 13**; S.I. 2005/3331, art. 2(1)(a)(b), Sch. Pt. 1 (with S.I. 2005/3377, reg. 1, Sch. 4 Pt. 2)

**F174** **60 Serious underprovision.**

.....

**Textual Amendments**

**F174** Ss. 56-61 repealed (4.12.2005 for specified purposes, 30.12.2005 in so far as not already in force) by Pensions Act 2004 (c. 35), s. 322(1), **Sch. 13**; S.I. 2005/3331, art. 2(1)(a)(b), Sch. Pt. 1 (with S.I. 2005/3377, reg. 1, Sch. 4 Pt. 2)

**F174** **61 Sections 56 to 60: supplementary.**

.....

**Textual Amendments**

**F174** Ss. 56-61 repealed (4.12.2005 for specified purposes, 30.12.2005 in so far as not already in force) by Pensions Act 2004 (c. 35), s. 322(1), **Sch. 13**; S.I. 2005/3331, art. 2(1)(a)(b), Sch. Pt. 1 (with S.I. 2005/3377, reg. 1, Sch. 4 Pt. 2)



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## Equal treatment

### <sup>F175</sup>62 The equal treatment rule.

.....

#### Textual Amendments

**F175** Ss. 62-66 repealed (1.10.2010) by Equality Act 2010 (c. 15), s. 216(3), **Sch. 27 Pt. 1** (with ss. 6(4), 205) (as amended by S.I. 2010/2279, art. 13, Sch. 2); S.I. 2010/2317, art. 2(15)(f) (with arts. 4-25, Schs. 1-15)

### <sup>F175</sup>63 Equal treatment rule: supplementary.

.....

#### Textual Amendments

**F175** Ss. 62-66 repealed (1.10.2010) by Equality Act 2010 (c. 15), s. 216(3), **Sch. 27 Pt. 1** (with ss. 6(4), 205) (as amended by S.I. 2010/2279, art. 13, Sch. 2); S.I. 2010/2317, art. 2(15)(f) (with arts. 4-25, Schs. 1-15)

### <sup>F175</sup>64 Equal treatment rule: exceptions.

.....

#### Textual Amendments

**F175** Ss. 62-66 repealed (1.10.2010) by Equality Act 2010 (c. 15), s. 216(3), **Sch. 27 Pt. 1** (with ss. 6(4), 205) (as amended by S.I. 2010/2279, art. 13, Sch. 2); S.I. 2010/2317, art. 2(15)(f) (with arts. 4-25, Schs. 1-15)

### <sup>F175</sup>65 Equal treatment rule: consequential alteration of schemes.

.....

#### Textual Amendments

**F175** Ss. 62-66 repealed (1.10.2010) by Equality Act 2010 (c. 15), s. 216(3), **Sch. 27 Pt. 1** (with ss. 6(4), 205) (as amended by S.I. 2010/2279, art. 13, Sch. 2); S.I. 2010/2317, art. 2(15)(f) (with arts. 4-25, Schs. 1-15)

### <sup>F175</sup>66 Equal treatment rule: effect on terms of employment, etc.

.....

*Status: Point in time view as at 31/05/2021.*

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#### Textual Amendments

**F175** Ss. 62-66 repealed (1.10.2010) by Equality Act 2010 (c. 15), s. 216(3), **Sch. 27 Pt. 1** (with ss. 6(4), 205) (as amended by S.I. 2010/2279, art. 13, Sch. 2); S.I. 2010/2317, art. 2(15)(f) (with arts. 4-25, Schs. 1-15)

*[<sup>F176</sup>Treatment of overseas residents etc.*

#### Textual Amendments

**F176** S. 66A and cross-heading inserted (23.7.2001) by Child Support, Pensions and Social Security Act 2000 (c. 19), ss. 55, 86(1)(b)(2) (with s. 83(6)); S.I. 2001/2295, art. 2(a)

### **66A Prohibition on different rules for overseas residents etc.**

- (1) This section applies where an occupational pension scheme contains provisions contravening subsection (2) or (3).
- (2) Except so far as regulations otherwise provide, provisions of an occupational pension scheme contravene this subsection to the extent that they would (apart from this section) have an effect with respect to—
  - (a) the entitlement of any person to benefits under the scheme, or
  - (b) the payment to any person of benefits under the scheme,
 which would be different according to whether or not a place outside the United Kingdom is specified by that person as the place to which he requires payments of benefits under the scheme to be made to him.
- (3) Except so far as regulations otherwise provide, provisions of an occupational pension scheme contravene this subsection to the extent that they would (apart from this section) have an effect with respect to—
  - (a) the entitlement of any person to remain a member of the scheme,
  - (b) the eligibility of any person to remain a person by or in respect of whom contributions are made towards or under the scheme, or
  - (c) the making by or in respect of any person who is a member of the scheme of any contributions towards or under the scheme,
 which would be different according to whether that person works wholly in the United Kingdom or wholly or partly outside the United Kingdom.
- (4) Provisions contravening subsection (2) shall have effect, in relation to all times after the coming into force of section 55 of the Child Support, Pensions and Social Security Act 2000, as if they made the same provision in relation to a person who requires payments of benefits to be made to a place outside the United Kingdom as they make in relation to a person in whose case all payments of benefits fall to be made to a place in the United Kingdom.
- (5) Provisions contravening subsection (3) shall have effect, in relation to all times after the coming into force of section 55 of the Child Support, Pensions and Social Security Act 2000, as if they made the same provision in relation to persons working wholly or partly outside the United Kingdom as they make in relation to persons working wholly in the United Kingdom.

*Status: Point in time view as at 31/05/2021.*

**Changes to legislation:** Pensions Act 1995, Part I is up to date with all changes known to be in force on or before 23 June 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)

- (6) This section—
- (a) shall be without prejudice to any enactment under which any amount is to be or may be deducted, or treated as deducted, from amounts payable by way of benefits under the scheme or treated as so payable; and
  - (b) shall not apply in relation to so much of any provision of a scheme as is required for securing compliance with the conditions of any [<sup>F177</sup>registration], exemption or relief given or available under the Tax Acts.]

**Textual Amendments**

**F177** Word in s. 66A(6)(b) substituted (6.4.2006) by [The Taxation of Pension Schemes \(Consequential Amendments\) Order 2006 \(S.I. 2006/745\)](#), arts. 1, **10(3)**

*Modification of schemes*

**[<sup>F178</sup>67 The subsisting rights provisions**

- (1) The subsisting rights provisions apply to any power conferred on any person by an occupational pension scheme to modify the scheme, other than a power conferred by—
- (a) a public service pension scheme, or
  - (b) a prescribed scheme or a scheme of a prescribed description.

**[ Any exercise of such a power to make a prohibited modification is void.]**  
<sup>F179</sup>(1A)

- (2) Any exercise of such a power to make a regulated modification is voidable in accordance with section 67G unless the following are satisfied in respect of the modification—
- (a) in the case of each affected member—
    - (i) if the modification is a protected modification, [<sup>F180</sup>or the scheme is a collective money purchase scheme within the meaning of Part 1 of the Pension Schemes Act 2021,] the consent requirements (see section 67B),
    - (ii) [<sup>F181</sup>if sub-paragraph (i) does not apply], either the consent requirements or the actuarial equivalence requirements (see section 67C),
  - (b) the trustee approval requirement (see section 67E), and
  - (c) the reporting requirement (see section 67F).

- (3) The subsisting rights provisions do not apply in relation to the exercise of a power—
- (a) for a purpose connected with debits under section 29(1) of the Welfare Reform and Pensions Act 1999, <sup>F182</sup>...

<sup>F182</sup>(b) .....

**[ Regulations may provide for cases in which the subsisting rights provisions do not**  
<sup>F183</sup>(3A) apply.]

- (4) References in this section and sections 67A to 67I to “the subsisting rights provisions” are to this section and those sections.

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- (5) Subsection (6) applies in relation to the exercise of a power to which the subsisting rights provisions apply to make a regulated modification where a member of the scheme dies before the requirements mentioned in subsection (2), so far as they apply in his case, have been complied with in respect of the modification if—
- (a) before he died he had given his consent to the modification in accordance with section 67B(4)(b), or
  - (b) before he died, or before the trustees of the scheme had become aware that he had died, the trustees had complied with section 67C(4)(a), (b) and (d) in respect of the modification in his case.
- (6) Any of the requirements mentioned in subsection (2), as it applies in respect of the modification—
- (a) which is satisfied in the case of the member, or
  - (b) which would have been satisfied in his case had he not died before it was satisfied,
- is to be taken to be satisfied in the case of any survivor of the member in respect of the modification.

#### Textual Amendments

- F178** Ss. 67-67I substituted for s. 67 (1.11.2005 for specified purposes, 6.4.2006 in so far as not already in force) by [Pensions Act 2004 \(c. 35\)](#), **ss. 262, 322(1)** (with s. 313); S.I. 2005/2447, art. 2(5)(a)(b), Sch. Pt. 2
- F179** S. 67(1A) inserted (11.2.2021 for specified purposes) by [Pension Schemes Act 2021 \(c. 1\)](#), **ss. 24(2)(a)**, 131(1)(3)(a)
- F180** Words in s. 67(2)(a)(i) inserted (11.2.2021 for specified purposes) by [Pension Schemes Act 2021 \(c. 1\)](#), **ss. 24(2)(b)**, 131(1)(3)(a)
- F181** Words in s. 67(2)(a)(ii) substituted (11.2.2021 for specified purposes) by [Pension Schemes Act 2021 \(c. 1\)](#), **ss. 24(2)(c)**, 131(1)(3)(a)
- F182** S. 67(3)(b) and preceding word omitted (11.2.2021 for specified purposes) by virtue of [Pension Schemes Act 2021 \(c. 1\)](#), **ss. 24(2)(d)**, 131(1)(3)(a)
- F183** S. 67(3A) inserted (11.2.2021 for specified purposes) by [Pension Schemes Act 2021 \(c. 1\)](#), **ss. 24(2)(e)**, 131(1)(3)(a)

#### 67A The subsisting rights provisions: interpretation

- (1) In the subsisting rights provisions, each of the following expressions has the meaning given to it by the following provisions of this section—

[<sup>F184</sup>“prohibited modification”]  
 “regulated modification”  
 “protected modification”  
 “detrimental modification”  
 “affected member”  
 “subsisting right”  
 “scheme rules”.

[ “Prohibited modification” means a modification of an occupational pension scheme  
<sup>F185</sup>(1A) which on taking effect would or might result in any subsisting right of—

- (a) a member of the scheme, or

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- (b) a survivor of a member of the scheme,  
which is not a right or entitlement to money purchase benefits becoming, or being replaced with, a right or entitlement to collective money purchase benefits under the scheme rules.]
- (2) “Regulated modification” means a modification which is—
- (a) a protected modification, or
  - (b) a detrimental modification,
- or is both.
- (3) “Protected modification” means a modification [<sup>F186</sup>, other than a prohibited modification,] of an occupational pension scheme which—
- <sup>F187</sup>(a) on taking effect would or might result in a relevant transformation of any subsisting right of a member of the scheme or a survivor of a member of the scheme (see subsection (3A)),]
  - (b) would or might result in a reduction in the prevailing rate of any pension in payment under the scheme rules [<sup>F188</sup>, other than a pension that is a collective money purchase benefit], or
  - (c) is of a prescribed description.
- <sup>F189</sup> ...
- [<sup>F190</sup> For the purposes of subsection (3)(a), there is a relevant transformation of a subsisting (3A) right where—
- (a) a subsisting right that is not a right or entitlement to money purchase benefits becomes, or is replaced with, a right or entitlement to money purchase benefits under the scheme rules,
  - (b) a subsisting right that is a right or entitlement to money purchase benefits other than collective money purchase benefits becomes, or is replaced with, a right or entitlement to collective money purchase benefits under the scheme rules, or
  - (c) a subsisting right that is a right or entitlement to collective money purchase benefits becomes, or is replaced with, a right or entitlement to money purchase benefits other than collective money purchase benefits under the scheme rules.
- (3B) For the purposes of subsection (3A), the reference in the definition of “money purchase benefits” in section 181(1) of the Pension Schemes Act 1993 to the widow, widower or surviving civil partner of a member of an occupational pension scheme is to be read as including any other survivor of the member.]
- (4) “Detrimental modification” means a modification [<sup>F191</sup>, other than a prohibited modification,] of an occupational pension scheme which on taking effect would or might adversely affect any subsisting right of—
- (a) any member of the scheme, or
  - (b) any survivor of a member of the scheme.
- (5) A person is an “affected member”—
- (a) in relation to a protected modification within paragraph (a) or (b) of subsection (3), if, at the time the modification takes effect, he is—
    - (i) a member of the scheme, or
    - (ii) a survivor of a member of the scheme,

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- and, on taking effect, the modification would or might affect any of his subsisting rights as mentioned in that paragraph,
- (b) in relation to a protected modification within paragraph (c) of that subsection, if he is of a prescribed description, and
  - (c) in relation to a detrimental modification which is not a protected modification if, at the time the modification takes effect, he is—
    - (i) a member of the scheme, or
    - (ii) a survivor of a member of the scheme,
 and, on taking effect, the modification would or might adversely affect any of his subsisting rights.

- (6) “Subsisting right” means—
- (a) in relation to a member of an occupational pension scheme, at any time—
    - (i) any right which at that time has accrued to or in respect of him to future benefits under the scheme rules, or
    - (ii) any entitlement to the present payment of a pension or other benefit which he has at that time, under the scheme rules, and
  - (b) in relation to the survivor of a member of an occupational pension scheme, at any time, any entitlement to benefits, or right to future benefits, which he has at that time under the scheme rules in respect of the member.

For this purpose, “right” includes a pension credit right.

- (7) At any time when the pensionable service of a member of an occupational pension scheme is continuing, his subsisting rights are to be determined as if he had opted, immediately before that time, to terminate that service.
- (8) “Scheme rules”, in relation to a scheme, means—
- (a) the rules of the scheme, except so far as overridden by a relevant legislative provision,
  - (b) the relevant legislative provisions, to the extent that they have effect in relation to the scheme and are not reflected in the rules of the scheme, and
  - (c) any provision which the rules of the scheme do not contain but which the scheme must contain if it is to conform with the requirements of Chapter 1 of Part 4 of the Pension Schemes Act 1993 (preservation of benefit under occupational pension schemes).
- (9) For the purposes of subsection (8)—
- (a) “relevant legislative provision” means any provision contained in any of the following provisions—
    - (i) Schedule 5 to the Social Security Act 1989 (equal treatment for men and women);
    - [<sup>F192</sup>(ii) Chapter 2 or 3 of Part 4 of the Pension Schemes Act 1993 (certain protection for early leavers) or regulations made under either of those Chapters;
    - (iia) Chapter 1 or 2 of Part 4ZA of that Act (transfers and contribution refunds) or regulations made under either of those Chapters;]
    - (iii) Part 4A of that Act (requirements relating to pension credit benefit) or regulations made under that Part;
    - (iv) section 110(1) of that Act (requirement as to resources for annual increase of guaranteed minimum pensions);

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- (v) this Part of this Act (occupational pensions) or subordinate legislation made or having effect as if made under this Part;
  - (vi) section 31 of the Welfare Reform and Pensions Act 1999 (pension debits: reduction of benefit);
  - (vii) any provision mentioned in section 306(2) of the Pensions Act 2004;  
[ section 55 of the Pension Schemes Act 2015;
  - <sup>F193</sup>(xi) (xii) regulations made under section 56 or 57 of the Pension Schemes Act 2015;]  
[ sections 21, 23, 26, 28, 29 and 33 of and Schedule 1 to the Pension
  - <sup>F194</sup>(xiii) Schemes Act 2017;]  
[ regulations made under section 18(4) of or paragraph 1(6) of
  - <sup>F195</sup>(xiv) Schedule 2 to the Pension Schemes Act 2021;
  - (xv) sections 34, 39, 41, 42 and 45 of the Pension Schemes Act 2021;]
  - (b) a relevant legislative provision is to be taken to override any of the provisions of the scheme if, and only if, it does so by virtue of any of the following provisions—
    - (i) paragraph 3 of Schedule 5 to the Social Security Act 1989;
    - (ii) section 129(1) of the Pension Schemes Act 1993;
    - (iii) section 117(1) of this Act;
    - (iv) section 31(4) of the Welfare Reform and Pensions Act 1999;
    - (v) section 306(1) of the Pensions Act 2004;  
[ section 55(3) of the Pension Schemes Act 2015;
    - <sup>F196</sup>(ix) (x) regulations made under section 56(4) or 57(4) of the Pension Schemes Act 2015;]  
[ sections 21(7), 23(7), 26(9), 28(6), 29(2) and 33(5) of and paragraph
    - <sup>F197</sup>(xi) 1(7) of Schedule 1 to the Pension Schemes Act 2017;]  
[ sections 18(7)(b), 34(5), 39(6), 41(6), 42(2) and 45(5) of and
    - <sup>F198</sup>(xii) paragraph 1(7) of Schedule 2 to the Pension Schemes Act 2021.]
- (10) For the purposes of this section—
- (a) “survivor”, in relation to a member of an occupational pension scheme, means a person who—
    - (i) is the widow or widower of the member, or
    - (ii) has survived the member and has any entitlement to benefit, or right to future benefits, under the scheme rules in respect of the member, and
  - (b) a modification would or might adversely affect a person’s subsisting right if it would alter the nature or extent of the entitlement or right so that the benefits, or future benefits, to which the entitlement or right relates would or might be less generous.
- (11) In the subsisting rights provisions, in relation to—
- (a) the exercise of a power to modify an occupational pension scheme to which the subsisting rights provisions apply, or
  - (b) a modification made, or to be made, in exercise of such a power,
- references to “the scheme” are to be read as references to the scheme mentioned in paragraph (a).

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### Textual Amendments

- F178** Ss. 67-67I substituted for s. 67 (1.11.2005 for specified purposes, 6.4.2006 in so far as not already in force) by Pensions Act 2004 (c. 35), **ss. 262**, 322(1) (with s. 313); S.I. 2005/2447, art. 2(5)(a)(b), Sch. Pt. 2
- F184** Words in s. 67A(1) inserted (11.2.2021 for specified purposes) by Pension Schemes Act 2021 (c. 1), **ss. 24(3)**, 131(1)(3)(a)
- F185** S. 67A(1A) inserted (11.2.2021 for specified purposes) by Pension Schemes Act 2021 (c. 1), **ss. 24(4)**, 131(1)(3)(a)
- F186** Words in s. 67A(3) inserted (11.2.2021 for specified purposes) by Pension Schemes Act 2021 (c. 1), **ss. 24(5)(a)**, 131(1)(3)(a)
- F187** S. 67A(3)(a) substituted (11.2.2021 for specified purposes) by Pension Schemes Act 2021 (c. 1), **ss. 24(5)(b)**, 131(1)(3)(a)
- F188** Words in s. 67A(3)(b) inserted (11.2.2021 for specified purposes) by Pension Schemes Act 2021 (c. 1), **ss. 24(5)(c)**, 131(1)(3)(a)
- F189** Words in s. 67A(3) omitted (11.2.2021 for specified purposes) by virtue of Pension Schemes Act 2021 (c. 1), **ss. 24(5)(d)**, 131(1)(3)(a)
- F190** S. 67A(3A)(3B) inserted (11.2.2021 for specified purposes) by Pension Schemes Act 2021 (c. 1), **ss. 24(6)**, 131(1)(3)(a)
- F191** Words in s. 67A(4) inserted (11.2.2021 for specified purposes) by Pension Schemes Act 2021 (c. 1), **ss. 24(7)**, 131(1)(3)(a)
- F192** S. 67A(9)(a)(ii)(ia) substituted for s. 67A(9)(a)(ii) (6.4.2015) by Pension Schemes Act 2015 (c. 8), s. 89(3)(b), **Sch. 4 para. 29** (with s. 87)
- F193** S. 67A(9)(a)(xi)(xii) inserted (6.4.2015) by Pension Schemes Act 2015 (c. 8), **ss. 60(2)(a)**, 89(3)(b) (with s. 87)
- F194** S. 67A(9)(a)(xiii) inserted (27.4.2017) by Pension Schemes Act 2017 (c. 17), s. 44(1)(c), **Sch. 3 para. 4(a)**
- F195** S. 67A(9)(a)(xiv)(xv) inserted (11.2.2021 for specified purposes) by Pension Schemes Act 2021 (c. 1), **ss. 24(8)(a)**, 131(1)(3)(a)
- F196** S. 67A(9)(b)(ix)(x) inserted (6.4.2015) by Pension Schemes Act 2015 (c. 8), **ss. 60(2)(b)**, 89(3)(b) (with s. 87)
- F197** S. 67A(9)(b)(xi) inserted (27.4.2017) by Pension Schemes Act 2017 (c. 17), s. 44(1)(c), **Sch. 3 para. 4(b)**
- F198** S. 67A(9)(b)(xii) inserted (11.2.2021 for specified purposes) by Pension Schemes Act 2021 (c. 1), **ss. 24(8)(b)**, 131(1)(3)(a)

### Modifications etc. (not altering text)

- C141** S. 67A modified (24.7.2014) by The Pensions Act 2011 (Transitional, Consequential and Supplementary Provisions) Regulations 2014 (S.I. 2014/1711), regs. 1(1), **9(2)**
- C142** S. 67A(3)(a) modified (24.7.2014) by The Pensions Act 2011 (Transitional, Consequential and Supplementary Provisions) Regulations 2014 (S.I. 2014/1711), regs. 1(1), **8(3)**

## 67B The consent requirements

- (1) References in the subsisting rights provisions to the consent requirements, in respect of a regulated modification, are to be read in accordance with this section.
- (2) The consent requirements apply in the case of an affected member—
  - (a) if the modification is a protected modification;
  - (b) if it is not a protected modification, unless the actuarial equivalence requirements apply in his case.



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- (3) The consent requirements consist of—
- (a) the informed consent requirement (see subsection (4)), and
  - (b) the timing requirement (see subsection (6)).
- (4) The informed consent requirement is satisfied in the case of an affected member if before the modification is made—
- (a) the trustees have—
    - (i) given him information in writing adequate to explain the nature of the modification and its effect on him,
    - (ii) notified him in writing that he may make representations to the trustees about the modification,
    - (iii) afforded him a reasonable opportunity to make such representations, and
    - (iv) notified him in writing that the consent requirements apply in his case in respect of the modification, and
  - (b) after the trustees have complied with paragraph (a)(i), (ii) and (iv), the affected member has given his consent in writing to the modification.
- (5) If—
- (a) the modification is not a protected modification, and
  - (b) before the modification is made the trustees notify an affected member in writing that—
    - (i) if he gives his consent to the modification for the purposes of the consent requirements, those requirements apply in his case in respect of the modification, but
    - (ii) otherwise, the actuarial equivalence requirements apply in his case in respect of the modification,
- the trustees are to be taken to have complied with subsection (4)(a)(iv) in respect of him.
- (6) The timing requirement is satisfied in the case of an affected member if the modification takes effect within a reasonable period after the member has given his consent to the modification in accordance with subsection (4)(b).

#### **Textual Amendments**

**F178** Ss. 67-67I substituted for s. 67 (1.11.2005 for specified purposes, 6.4.2006 in so far as not already in force) by [Pensions Act 2004 \(c. 35\)](#), **ss. 262, 322(1)** (with s. 313); [S.I. 2005/2447](#), art. 2(5)(a)(b), [Sch. Pt. 2](#)

### **67C The actuarial equivalence requirements**

- (1) References in the subsisting rights provisions to the actuarial equivalence requirements, in respect of a detrimental modification which is not a protected modification, are to be read in accordance with this section and section 67D.
- (2) The actuarial equivalence requirements apply in the case of an affected member only if—
  - (a) the modification is not a protected modification, and
  - (b) the trustees of the scheme determine that they are to apply in his case.

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- (3) The actuarial equivalence requirements consist of—
- (a) the information requirement (see subsection (4)),
  - (b) the actuarial value requirement (see subsection (5)), and
  - (c) the actuarial equivalence statement requirement (see subsection (6)).
- (4) The information requirement is satisfied in the case of an affected member if before the modification is made the trustees have taken all reasonable steps to—
- (a) give him information in writing adequate to explain the nature of the modification and its effect on him,
  - (b) notify him in writing that he may make representations to the trustees about the modification,
  - (c) afford him a reasonable opportunity to make such representations, and
  - (d) notify him in writing that the actuarial equivalence requirements apply in his case in respect of the modification.
- (5) The actuarial value requirement is satisfied in the case of an affected member if before the modification is made the trustees have made such arrangements, or taken such steps, as are adequate to secure that actuarial value will be maintained.
- (6) The actuarial equivalence statement requirement is satisfied in the case of an affected member if the trustees have, within a reasonable period beginning with the date on which the modification takes effect, obtained an actuarial equivalence statement relating to the affected member in respect of the modification.
- (7) For the purposes of subsection (6) “actuarial equivalence statement” means a statement in writing which—
- (a) is given by—
    - (i) the actuary appointed in relation to the scheme under section 47(1)(b), or
    - (ii) a person with prescribed qualifications or experience or who is approved by the Secretary of State, and
  - (b) certifies that actuarial value has been maintained.
- (8) For the purposes of subsections (5) and (7) as they apply in relation to an affected member, actuarial value is maintained if the actuarial value, immediately after the time at which the modification takes effect, of the affected member’s subsisting rights is equal to or greater than the actuarial value of his subsisting rights immediately before that time.

#### Textual Amendments

**F178** Ss. 67-67I substituted for s. 67 (1.11.2005 for specified purposes, 6.4.2006 in so far as not already in force) by [Pensions Act 2004 \(c. 35\)](#), **ss. 262, 322(1)** (with [s. 313](#)); [S.I. 2005/2447](#), [art. 2\(5\)\(a\)\(b\)](#), [Sch. Pt. 2](#)

#### **67D The actuarial equivalence requirements: further provisions**

- (1) This section applies for the purposes of section 67C.
- (2) Where—

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- (a) the information requirement has been satisfied in the case of an affected member in respect of a proposed modification (“the original modification”),
  - (b) before the trustees have made a determination, or given their consent, for the purposes of section 67E(1) in relation to the original modification, the original modification has been revised, and
  - (c) the modification as so revised (“the revised modification”) does not differ from the original modification in any material respect,the information requirement is to be taken to have been satisfied in relation to the revised modification.
- (3) The trustees are to be regarded as having taken all reasonable steps to notify an affected member as mentioned in section 67C(4)(d) in respect of a modification if they have taken all reasonable steps to notify him in writing that—
  - (a) if he gives his consent to the modification for the purposes of the consent requirements, those requirements apply in his case in respect of the modification, but
  - (b) otherwise, the actuarial equivalence requirements apply in his case in respect of the modification.
- (4) Any calculation for the purposes of section 67C of the actuarial value of an affected member’s subsisting rights at any time must conform with such requirements as may be prescribed.
- (5) Requirements prescribed by regulations under subsection (4) may include requirements for any such calculation to be made in accordance with guidance that [F199] is prepared and from time to time revised by a prescribed body].
- (6) Nothing in subsections (6) and (7) of section 67C precludes actuarial equivalence statements relating to—
  - (a) two or more affected members, or
  - (b) affected members of any particular description,in respect of a modification being given in a single document.

#### Textual Amendments

- F178** Ss. 67-67I substituted for s. 67 (1.11.2005 for specified purposes, 6.4.2006 in so far as not already in force) by [Pensions Act 2004 \(c. 35\)](#), **ss. 262, 322(1)** (with s. 313); S.I. 2005/2447, art. 2(5)(a)(b), Sch. Pt. 2
- F199** Words in s. 67D(5) substituted (1.11.2007) by [Pensions Act 2007 \(c. 22\)](#), s. 30(2), **Sch. 5 para. 7**; S.I. 2007/3063, art. 2(b)

### 67E The trustee approval requirement

- (1) For the purposes of section 67(2)(b), the trustee approval requirement is satisfied in relation to the exercise of a power to make a regulated modification if—
  - (a) the trustees of the scheme have determined to exercise the power to make the modification, or
  - (b) if the power is exercised by another person, the trustees have consented to the exercise of the power to make the modification,and the making of the determination, or giving of consent, complies with subsections (2) and (3).

*Status: Point in time view as at 31/05/2021.*

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- (2) The trustees must not make a determination, or give their consent, for the purposes of subsection (1) unless, in the case of each affected member—
- (a) if the modification is a protected modification, the informed consent requirement is satisfied (within the meaning of section 67B), or
  - (b) if it is not a protected modification—
    - (i) the informed consent requirement is satisfied, or
    - (ii) the information and actuarial value requirements are satisfied (within the meaning of section 67C),
 in respect of the modification.
- (3) The trustees must not make a determination, or give their consent, for the purposes of subsection (1) more than a reasonable period after the first consent given by an affected member under section 67B(4)(b) in respect of the modification was given.

#### Textual Amendments

**F178** Ss. 67-67I substituted for s. 67 (1.11.2005 for specified purposes, 6.4.2006 in so far as not already in force) by [Pensions Act 2004 \(c. 35\)](#), **ss. 262, 322(1)** (with [s. 313](#)); [S.I. 2005/2447](#), [art. 2\(5\)\(a\)\(b\)](#), [Sch. Pt. 2](#)

### 67F The reporting requirement

- (1) For the purposes of section 67(2)(c), the reporting requirement is satisfied in relation to the exercise of a power to which the subsisting rights provisions apply to make a regulated modification if the trustees have, in accordance with subsection (2)—
- (a) notified each affected member in whose case the consent requirements apply in respect of the modification, and
  - (b) taken all reasonable steps to notify each affected member in whose case the actuarial equivalence requirements apply in respect of the modification,
- that they have made a determination, or given their consent, for the purposes of section 67E(1) in relation to the exercise of the power to make the modification.
- (2) The trustees must give (or, where the actuarial equivalence requirements apply, take all reasonable steps to give) the notification—
- (a) within a reasonable period beginning with the date of the determination or giving of consent mentioned in subsection (1), and
  - (b) before the date on which the modification takes effect.

#### Textual Amendments

**F178** Ss. 67-67I substituted for s. 67 (1.11.2005 for specified purposes, 6.4.2006 in so far as not already in force) by [Pensions Act 2004 \(c. 35\)](#), **ss. 262, 322(1)** (with [s. 313](#)); [S.I. 2005/2447](#), [art. 2\(5\)\(a\)\(b\)](#), [Sch. Pt. 2](#)

### 67G Powers of the Authority: voidable modifications

- (1) Subsection (2) applies in relation to a regulated modification made in exercise of a power to which the subsisting rights provisions apply which is voidable by virtue of—
- (a) section 67(2), or

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- (b) section 67H(3).
- (2) The Authority may make an order declaring that subsection (6) applies in relation to the regulated modification.
- (3) An order under subsection (2) relating to a regulated modification may also declare that subsection (6) applies in relation to—
- (a) any other modification of the scheme made by the exercise of the power mentioned in subsection (1), or
  - (b) the grant of any rights under the scheme (whether by virtue of the attribution of notional periods as pensionable service or otherwise) in connection with the regulated modification.
- (4) An order under subsection (2) relating to a regulated modification must specify the affected member or affected members or description of affected members in respect of whom subsection (6) applies (“the specified persons”).
- (5) An order under subsection (2) relating to a regulated modification may also—
- (a) require the trustees to take, within the time specified in the order, such steps as are so specified for the purpose of giving effect to the order;
  - (b) declare that subsection (7) applies in relation to anything done by the trustees after the time at which the modification would, disregarding the order, have taken effect which—
    - (i) would not have contravened any provision of the scheme rules if the modification had taken effect at that time, but
    - (ii) as a result of the modification being void to any extent by virtue of the order, would (but for that subsection) contravene such a provision.

This is without prejudice to section 174(3).

- (6) Where the Authority make an order declaring that this subsection applies in relation to a modification of a scheme, or the grant of any rights under the scheme, the modification or grant is void to the extent specified in the order, and in respect of the specified persons, as from the time when it would, disregarding the order, have taken effect.
- (7) Where, by virtue of subsection (5)(b), the Authority make an order under subsection (2) declaring that this subsection applies in relation to anything done by the trustees, that thing is to be taken, for such purposes as are specified in the order, not to have contravened any provision of the trust deed or scheme rules.
- (8) An order under subsection (2) relating to a regulated modification, or other modification, of a scheme or the grant of any rights under the scheme may be made before or after the time at which the modification or grant would, disregarding the order, have taken effect.

#### **Textual Amendments**

**F178** Ss. 67-67I substituted for s. 67 (1.11.2005 for specified purposes, 6.4.2006 in so far as not already in force) by [Pensions Act 2004 \(c. 35\)](#), **ss. 262, 322(1)** (with s. 313); S.I. 2005/2447, art. 2(5)(a)(b), Sch. Pt. 2

*Status: Point in time view as at 31/05/2021.*

*Changes to legislation: Pensions Act 1995, Part I is up to date with all changes known to be in force on or before 23 June 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

## 67H Powers of the Authority to intervene

- (1) Subsection (2) applies where the Authority have reasonable grounds to believe that a power to which the subsisting rights provisions apply—
  - (a) will be exercised, or
  - (b) has been exercised,
 to make a regulated modification in circumstances where the modification will be voidable by virtue of section 67(2).
- (2) The Authority may by order—
  - (a) in a case within subsection (1)(a), direct the person on whom the power is conferred not to exercise the power to make the regulated modification;
  - (b) require the trustees to take, within the time specified in the order, such steps as are so specified for the purpose of securing that any of the requirements mentioned in section 67(2) is satisfied.
- (3) A regulated modification made in exercise of a power to which the subsisting rights provisions apply is voidable in accordance with section 67G if—
  - (a) the exercise of the power contravened an order under paragraph (a) of subsection (2), or
  - (b) the trustees fail to comply with a requirement imposed by an order under paragraph (b) of that subsection relating to any exercise of the power to make the modification.

### Textual Amendments

**F178** Ss. 67-67I substituted for s. 67 (1.11.2005 for specified purposes, 6.4.2006 in so far as not already in force) by [Pensions Act 2004 \(c. 35\)](#), **ss. 262, 322(1)** (with s. 313); S.I. 2005/2447, art. 2(5)(a)(b), Sch. Pt. 2

## 67I Subsisting rights provisions: civil penalties

- (1) Subsections (2) and (3) apply where a regulated modification is voidable by virtue of section 67(2).
- (2) Where the modification was made by the exercise of a power—
  - (a) by the trustees of the scheme, or
  - (b) by any other person in circumstances which do not fall within subsection (3),
 section 10 applies to any trustee who has failed to take all reasonable steps to secure that the modification is not so voidable.
- (3) Section 10 applies to any person other than the trustees of the scheme who, without reasonable excuse, exercises a power to make the modification if—
  - (a) the trustees have not given their consent, for the purposes of section 67E(1), to the exercise of the power to make the modification, or
  - (b) in the case of any affected member, the timing requirement is not satisfied (within the meaning of section 67B) in respect of the modification.
- (4) Where the trustees fail to comply with any requirement imposed, by virtue of subsection (5)(a) of section 67G, by an order under subsection (2) of that section, section 10 applies to any trustee who has failed to take all reasonable steps to secure such compliance.

*Status: Point in time view as at 31/05/2021.*

*Changes to legislation: Pensions Act 1995, Part I is up to date with all changes known to be in force on or before 23 June 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

- (5) Where a regulated modification is made by the exercise of a power in contravention of an order under section 67H(2)(a)—
  - (a) if the power is exercised by the trustees, section 10 applies to any trustee who has failed to take all reasonable steps to secure that the order was not contravened;
  - (b) section 10 applies to any other person who without reasonable excuse exercises the power in contravention of the order.
- (6) Where the trustees fail to comply with any requirement specified in an order under section 67H(2)(b), section 10 applies to any trustee who has failed to take all reasonable steps to secure such compliance.]

#### Textual Amendments

**F178** Ss. 67-67I substituted for s. 67 (1.11.2005 for specified purposes, 6.4.2006 in so far as not already in force) by [Pensions Act 2004 \(c. 35\)](#), **ss. 262, 322(1)** (with [s. 313](#)); [S.I. 2005/2447](#), [art. 2\(5\)\(a\)\(b\)](#), [Sch. Pt. 2](#)

## 68 Power of trustees to modify schemes by resolution.

- (1) The trustees of a trust scheme may by resolution modify the scheme with a view to achieving any of the purposes specified in subsection (2).
- (2) The purposes referred to in subsection (1) are—
  - (a) to extend the class of persons who may receive benefits under the scheme in respect of the death of a member of the scheme,
  - (b) to enable the scheme to conform with such arrangements as are required by <sup>[F200]</sup>section 241 of the Pensions Act 2004],
  - <sup>[F201]</sup>(c) to enable the scheme to comply with such terms and conditions as may be imposed by the Board of the Pension Protection Fund in relation to any payment made by it under section 185 or 186 of the Pensions Act 2004,]
  - (d) to enable the scheme to conform with section 37(2), 76(2), 91 or 92,
  - <sup>[F202]</sup>(da) to enable the scheme to accommodate persons with pension credits or pension credit rights, and]
  - (e) prescribed purposes.
- (3) No modification may be made by virtue of subsection (2)(a) without the consent of the employer.
- (4) Modifications made by virtue of subsection (2)(b) may include in particular—
  - (a) modification of any limit on the number of, or of any category of, trustees, or
  - (b) provision for the transfer or vesting of property.
- (5) Nothing done by virtue of subsection (2)(d), or any corresponding provisions in force in Northern Ireland, shall be treated as effecting an alteration to the scheme in question for the purposes of section 591B (cessation of approval) of the Taxes Act 1988.
- (6) Regulations may provide that this section does not apply to trust schemes falling within a prescribed class or description.

*Status: Point in time view as at 31/05/2021.*

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#### Extent Information

**E1** S. 68 extends to Great Britain with the exception of s. 68(5) which also extends to Northern Ireland.

#### Textual Amendments

**F200** Words in s. 68(2)(b) substituted (6.4.2006) by [Pensions Act 2004 \(c. 35\)](#), s. 322(1), [Sch. 12 para. 56\(a\)](#); [S.I. 2005/3331](#), art. 2(6), Sch. Pt. 6

**F201** S. 68(2)(c) substituted (1.9.2005) by [Pensions Act 2004 \(c. 35\)](#), s. 322(1), [Sch. 12 para. 56\(b\)](#); [S.I. 2005/1720](#), art. 2(16), Sch. Pt. 3

**F202** S. 68(2)(da) substituted for word (1.12.2000) by [Welfare Reform and Pensions Act 1999 \(c. 30\)](#), s. 89(1), [Sch. 12 para. 54](#); [S.I. 2000/1047](#), art. 2(2)(d), Sch. Pt. IV

#### Modifications etc. (not altering text)

**C143** S. 68 applied (with modifications) in part (11.11.1999 for specified purposes, 1.10.2000 in so far as not already in force) by [Welfare Reform and Pensions Act 1999 \(c. 30\)](#), s. 89(5)(a), [Sch. 1 para. 1\(1\)\(2\)\(b\)\(viii\)\(4\)](#); [S.I. 2000/1047](#), art. 2(2)(c), Sch. Pt. III

**C144** S. 68 excluded (31.12.2000) by [The Occupational Pension Schemes \(Republic of Ireland Schemes Exemption\) Regulations 2000 \(S.I. 2000/3198\)](#), regs. 1(1), 2, [Sch.](#)

#### Commencement Information

**I48** S. 68 in force at 6.4.1996 for specified purposes by [S.I. 1996/778](#), art. 2(5)(a), [Sch. Pt. V](#)

**I49** S. 68 in force at 6.10.1996 for specified purposes by [S.I. 1996/778](#), [art. 2\(5\)\(c\)](#)

**I50** S. 68 in force at 6.4.1997 in so far as not already in force by [S.I. 1997/664](#), art. 2(3), [Sch. Pt. 3](#)

### [<sup>F203</sup>69 Grounds for applying for modifications: winding up registered schemes

- (1) The Authority may, on an application made to them by the trustees of a registered pension scheme which is being wound up, make an order—
  - (a) modifying the scheme for the purpose of enabling assets remaining after the liabilities of the scheme have been fully discharged to be distributed to the employer, or
  - (b) authorising the trustees to modify the scheme for that purpose.
- (2) But the Authority may act under subsection (1) only if prescribed requirements in relation to the distribution are satisfied.
- (3) Regulations may make provision requiring applications under subsection (1) to meet prescribed requirements.
- (4) Regulations may provide that in prescribed circumstances this section does not apply to schemes falling within a prescribed class or description or applies to them with prescribed modifications.
- (5) In this section “registered pension scheme” means an occupational pension scheme registered under section 153 of the Finance Act 2004 (other than a public service pension scheme).]

#### Textual Amendments

**F203** S. 69 substituted (6.4.2016) by [Pensions Act 2014 \(c. 19\)](#), s. 56(4), [Sch. 13 para. 61](#)



*Status: Point in time view as at 31/05/2021.*

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**Modifications etc. (not altering text)**

**C145** S. 69 excluded (31.12.2000) by [The Occupational Pension Schemes \(Republic of Ireland Schemes Exemption\) Regulations 2000 \(S.I. 2000/3198\)](#), regs. 1(1), 2, **Sch.**

**70 Section 69: supplementary.**

- (1) The Authority may not make an order under section 69 unless they are satisfied that the purposes for which the application for the order was made—
  - (a) cannot be achieved otherwise than by means of such an order, or
  - (b) can only be achieved in accordance with a procedure which—
    - (i) is liable to be unduly complex or protracted, or
    - (ii) involves the obtaining of consents which cannot be obtained, or can only be obtained with undue delay or difficulty.
- (2) The extent of the Authority’s powers to make such an order is not limited, in relation to any purposes for which they are exercisable, to the minimum necessary to achieve those purposes.

<sup>F204</sup>(3) .....

**Textual Amendments**

**F204** S. 70(3) omitted (6.4.2016) by virtue of [Pensions Act 2014 \(c. 19\)](#), s. 56(4), **Sch. 13 para. 62**

**Commencement Information**

**I51** S. 70 in force at 6.4.1997 by [S.I. 1997/664](#), art. 2(3), **Sch. Pt. 3**

**71 Effect of orders under section 69.**

- (1) An order under [<sup>F205</sup>paragraph (b)] of subsection (1) of section 69 may enable those exercising any power conferred by the order to exercise it retrospectively (whether or not the power could otherwise be so exercised) and an order under [<sup>F206</sup>paragraph (a)] of that subsection may modify a scheme retrospectively.
- (2) Any modification of a scheme made in pursuance of an order of the Authority under section 69 is as effective in law as if it had been made under powers conferred by or under the scheme.
- (3) An order under section 69 may be made and complied with in relation to a scheme—
  - (a) in spite of any enactment or rule of law, or any rule of the scheme, which would otherwise operate to prevent the modification being made, or
  - (b) without regard to any such enactment, rule of law or rule of the scheme as would otherwise require, or might otherwise be taken to require, the implementation of any procedure or the obtaining of any consent, with a view to the making of the modification.
- (4) In this section, “retrospectively” means with effect from a date before that on which the power is exercised or, as the case may be, the order is made.

*Status: Point in time view as at 31/05/2021.*

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**Textual Amendments**

**F205** Words in s. 71(1) substituted (6.4.2016) by Pensions Act 2014 (c. 19), s. 56(4), Sch. 13 para. 63(a)

**F206** Words in s. 71(1) substituted (6.4.2016) by Pensions Act 2014 (c. 19), s. 56(4), Sch. 13 para. 63(b)

**Commencement Information**

**I52** S. 71 in force at 6.4.1997 by S.I. 1997/664, art. 2(3), Sch. Pt. 3

**[<sup>F207</sup>71A Modification by Authority to secure winding-up.**

- (1) The Authority may at any time while—
  - (a) an occupational pension scheme is being wound up, and
  - (b) the employer in relation to the scheme is subject to an insolvency procedure, make an order modifying that scheme with a view to ensuring that it is properly wound up.
- (2) The Authority shall not make such an order except on an application made to them, at a time such as is mentioned in subsection (1), by the trustees or managers of the scheme.
- (3) Except in so far as regulations otherwise provide, an application for the purposes of this section must be made in writing.
- (4) Regulations may make provision—
  - (a) for the form and manner in which an application for the purposes of this section is to be made to the Authority;
  - (b) for the matters which are to be contained in such an application;
  - (c) for the documents which must be attached to an application for the purposes of this section or which must otherwise be delivered to the Authority with or in connection with any such application;
  - (d) for persons to be required, [<sup>F208</sup>before an application is made for the purposes of this section], to give such notifications of the making of [<sup>F209</sup>the application] as may be prescribed;
  - (e) for the matters which are to be contained in a notification of such an application;
  - <sup>F210</sup>(f) .....
  - <sup>F210</sup>(g) .....
- (5) The power of the Authority to make an order under this section—
  - (a) shall be limited to what they consider to be the minimum modification necessary to enable the scheme to be properly wound up; and
  - (b) shall not include power to make any modification that would have a significant adverse effect on—
    - (i) the accrued rights of any member of the scheme; or
    - (ii) any person’s entitlement under the scheme to receive any benefit.
- (6) A modification of an occupational pension scheme by an order of the Authority under this section shall be as effective in law as if—
  - (a) it had been made under powers conferred by or under the scheme;
  - (b) the modification made by the order were capable of being made in exercise of such powers notwithstanding any enactment, rule of law or rule of the scheme

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- that would have prevented their exercise for the making of that modification;  
and
- (c) the exercise of such powers for the making of that modification would not have been subject to any enactment, rule of law or rule of the scheme requiring the implementation of any procedure or the obtaining of any consent in connection with the making of a modification.
- (7) Regulations may provide that, in prescribed circumstances, this section—
- (a) does not apply in the case of occupational pension schemes of a prescribed class or description; or
- (b) in the case of occupational pension schemes of a prescribed class or description applies with prescribed modifications.
- (8) The times when an employer in relation to an occupational pension scheme shall be taken for the purposes of this section to be subject to an insolvency procedure are—
- (a) in the case of a trust scheme, while section 22 applies in relation to the scheme; and
- (b) in the case of a scheme that is not a trust scheme, while section 22 would apply in relation to the scheme if it were a trust scheme;
- and for the purposes of this subsection no account shall be taken of modifications or exclusions contained in any regulations under section 118.
- (9) The Authority shall not be entitled to make an order under this section in relation to a public service pension scheme.]

#### Textual Amendments

- F207** S. 71A inserted (1.3.2002 for specified purposes, 1.4.2002 in so far as not already in force) by [Child Support, Pensions and Social Security Act 2000 \(c. 19\)](#), **ss. 48**, 86(1)(b)(2) (with s. 83(6)); S.I. 2002/437, **art. 3(1)(a)(2)**
- F208** Words in s. 71A(4)(d) substituted (6.4.2006) by [Pensions Act 2004 \(c. 35\)](#), s. 322(1), **Sch. 12 para. 58(a)**; S.I. 2006/560, **art. 2(3)**, Sch. Pt. 3
- F209** Words in s. 71A(4)(d) substituted (6.4.2006) by [Pensions Act 2004 \(c. 35\)](#), s. 322(1), **Sch. 12 para. 58(b)**; S.I. 2006/560, **art. 2(3)**, Sch. Pt. 3
- F210** S. 71A(4)(f)(g) repealed (6.4.2006) by [Pensions Act 2004 \(c. 35\)](#), s. 322(1), **Sch. 13**; S.I. 2006/560, **art. 2(3)**, Sch. Pt. 3

## 72 Modification of public service pension schemes.

- (1) The appropriate authority may make such provision for the modification of a public service pension scheme as could be made in respect of a scheme other than a public service pension scheme by an order of the Authority under [F211section 69(1)(a)].
- (2) In this section “the appropriate authority”, in relation to a scheme, means such Minister of the Crown or government department as may be designated by the Treasury as having responsibility for the particular scheme.
- (3) The powers of the appropriate authority under this section are exercisable by means of an order—
- (a) directly modifying the scheme (without regard, in the case of a scheme contained in or made under powers conferred by an enactment, to the terms of the enactment or any of its restrictions), or

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- (b) modifying an enactment under which the scheme was made or by virtue of which it has effect.
- (4) Any such order may adapt, amend or repeal any such enactment as is referred to in paragraph (a) or (b) of subsection (3) as that authority thinks appropriate.

#### Textual Amendments

**F211** Words in s. 72(1) substituted (6.4.2016) by Pensions Act 2014 (c. 19), s. 56(4), Sch. 13 para. 64

#### Commencement Information

**I53** S. 72 in force at 6.4.1997 by S.I. 1997/664, art. 2(3), Sch. Pt. 3

### *F<sup>212</sup>Supervision of winding-up*

#### Textual Amendments

**F212** S. 72A and cross-heading inserted (1.3.2002 for specified purposes, 1.4.2002 for specified purposes) by Child Support, Pensions and Social Security Act 2000 (c. 19), ss. 49(1), 86(1)(b)(2) (with s. 83(6)); S.I. 2002/437, art. 3(1)(b)-(d)(2)

## 72A Reports to Authority about winding-up.

- (1) Where—
  - (a) an occupational pension scheme is being wound up, and
  - (b) the winding-up is one beginning at a time (whether before or after the passing of this Act) by reference to which regulations provide that it is to be a winding-up to which this section applies,
 it shall be the duty of the trustees or managers, in accordance with this section, to make periodic reports in writing to the Authority about the progress of the winding-up.
- (2) In the case of each winding-up, the first report to be made under this section shall be made—
  - (a) except in a case to which paragraph (b) applies—
    - (i) after the end of the prescribed period beginning with the day on which the winding-up began; and
    - (ii) before the end of the prescribed period that begins with the end of the period that applies for the purposes of sub-paragraph (i);
 and
  - (b) in a case where the winding-up began before the coming into force of the regulations which (for the purposes of subsection (1)(b)) prescribe the time by reference to which the winding-up is one to which this section applies, before such date as may be prescribed by those regulations.
- (3) Subject to subsection (4), each subsequent report made under this section in the case of a winding-up shall be made no more than twelve months after the date which (apart from any postponement under subsection (4)) was the latest date for the making of the previous report required to be made in the case of that winding-up.

*Status: Point in time view as at 31/05/2021.*

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- (4) If, in the case of any report required to be made under subsection (3), the Authority consider (whether on an application made for the purpose or otherwise) that it would be appropriate to do so, they may, at any time before the latest time for the making of that report, postpone that latest time by such period as they think fit.
- (5) The latest time for making a report shall not be postponed under subsection (4) by more than twelve months.
- (6) Subject to the application of the limit specified in subsection (5) to the cumulative period of the postponements, more than one postponement may be made under subsection (4) in the case of the same report.
- (7) A report under this section—
  - (a) must contain such information and statements as may be prescribed; and
  - (b) must be made in accordance with the prescribed requirements.
- (8) Regulations may—
  - (a) provide that, in prescribed circumstances, there shall be no obligation to make a report that would otherwise fall to be made under this section;
  - (b) make provision for the period within which, and the manner in which, applications may be made for a postponement under subsection (4); and
  - (c) modify subsections (3) and (5) by substituting periods of different lengths for the periods for the time being specified in those subsections.
- (9) If there is any failure by the trustees or managers of any scheme to comply with their duty to make a report in accordance with the requirements imposed by or under this section—
  - <sup>F213</sup>(a) .....
  - (b) section 10 applies (irrespective of the description of scheme involved) to any trustee or manager who has failed to take all such steps.]

**Textual Amendments**

**F213** S. 72A(9)(a) repealed (6.4.2005) by Pensions Act 2004 (c. 35), s. 322(1), Sch. 12 para. 59, Sch. 13; S.I. 2005/695, art. 2(7), Sch. 1 (with arts. 4-6, Sch. 2, Sch. 3); S.I. 2005/1108, art. 2(2), Sch.

[<sup>F214</sup>**72B Directions by Authority for facilitating winding-up.**

- (1) Subject to the following provisions of this section, the Authority shall have power, at any time after the winding-up of an occupational pension scheme has begun, to give directions under this section if they consider that the giving of the direction is appropriate on any of the grounds set out in subsection (2).
- (2) Those grounds are—
  - (a) that the trustees or managers of the scheme are not taking all the steps in connection with the winding-up that the Authority consider would be being taken if the trustees or managers were acting reasonably;
  - (b) that steps being taken by the trustees or managers for the purposes of the winding-up involve things being done with what the Authority consider to be unreasonable delay;

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- (c) that the winding-up is being obstructed or unreasonably delayed by the failure of any person—
    - (i) to provide information to the trustees or managers;
    - (ii) to provide information to a person involved in the administration of the scheme;
    - (iii) to provide information to a person of a prescribed description; or
    - (iv) to take any step (other than the provision of information) that he has been asked to take by the trustees or managers;
  - (d) that the winding-up would be likely to be facilitated or accelerated by the taking by any person other than the trustees or managers of any other steps;
  - (e) that in any prescribed circumstances not falling within paragraphs (a) to (d)—
    - (i) the provision by any person of any information to the trustees or managers or to any other person, or
    - (ii) the taking of any other step by any person,
 would be likely to facilitate or accelerate the progress of the winding-up.
- (3) Except in prescribed circumstances, the power of the Authority to give a direction under this section in the case of a winding-up shall be exercisable only where—
- (a) periodic reports about the progress of the winding-up are required to be made under section 72A; and
  - (b) the first report that has to be made for the purposes of that section in the case of that winding-up either has been made or should have been made.
- (4) Regulations may provide that, in prescribed circumstances, the Authority shall not give a direction on the ground set out in subsection (2)(e) except in response to an application made by the trustees or managers of the scheme for the giving of a direction on that ground.
- (5) A direction under this section is a direction in writing given to and imposing requirements on—
- (a) any or all of the trustees or managers of the scheme;
  - (b) a person who is involved in its administration; or
  - (c) a person of a prescribed description.
- (6) The requirements that may be imposed by a direction under this section are any requirement for the person to whom it is given, within such period specified in the direction as the Authority may consider reasonable—
- (a) to provide the trustees or managers with all such information as may be specified or described in the direction;
  - (b) to provide a person involved in the administration of the scheme with all such information as may be so specified or described;
  - (c) to provide a person who is of a prescribed description with all such information as may be so specified or described;
  - (d) to take such steps (other than the provision of information) as may be so specified or described.
- <sup>F215</sup>(7) .....
- (8) Regulations may—
- (a) impose limitations on the steps that a person may be required to take by a direction under this section;

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F216(b) .....

- (9) In this section references, in relation to a scheme, to a person involved in the administration of the scheme are (subject to subsection (10)) references to any person who is so involved otherwise than as—
- (a) the employer in relation to that scheme;
  - (b) a trustee or manager of the scheme;
  - (c) the auditor of the scheme or its actuary;
  - (d) a legal adviser of the trustees or managers of the scheme;
  - (e) a fund manager for the scheme;
  - (f) a person acting on behalf of a person who is involved in the administration of the scheme;
  - (g) a person providing services to a person so involved;
  - (h) a person acting in his capacity as an employee of a person so involved;
  - (i) a person who would fall within any of paragraphs (f) to (h) if persons acting in relation to the scheme in any capacity mentioned in the preceding paragraphs were treated as involved in the administration of a scheme.
- (10) In this section references, in relation to a scheme, to a person involved in the administration of the scheme do not include references to persons of a particular description if regulations provide for persons of that description to be excluded from those references.

**Textual Amendments**

- F214** Ss. 72B, 72C inserted (1.3.2002 for specified purposes, 1.4.2002 in so far as not already in force) by Child Support, Pensions and Social Security Act 2000 (c. 19), ss. 50, 86(1)(b)(2) (with s. 83(6)); S.I. 2002/437, art. 3(1)(f)(2)
- F215** S. 72B(7) repealed (6.4.2006) by Pensions Act 2004 (c. 35), s. 322(1), Sch. 13; S.I. 2006/560, art. 2(3), Sch. Pt. 3
- F216** S. 72B(8)(b) repealed (6.4.2006) by Pensions Act 2004 (c. 35), s. 322(1), Sch. 13; S.I. 2006/560, art. 2(3), Sch. Pt. 3

**72C Duty to comply with directions under s. 72B.**

- (1) It shall be the duty of any person to whom a direction is given under section 72B to comply with it.
- F217(2) .....
- (3) Section 10 applies to any trustee or manager of a scheme who fails, without reasonable excuse, to take all such steps as are reasonable to secure compliance by the trustees or managers of that scheme with any direction given to them under section 72B.
- (4) Section 10 applies to any person who—
- (a) is a person to whom a direction under section 72B is given otherwise than in the capacity of a trustee or manager; and
  - (b) without reasonable excuse, fails to comply with that direction.
- (5) For the purposes of this section it shall not be a reasonable excuse in relation to any failure to provide information in pursuance of a direction under section 72B that the provision of that information would (but for the duty imposed by subsection (1) of

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this section) involve a breach by any person of a duty owed to another not to disclose that information.]

#### Textual Amendments

**F214** Ss. 72B, 72C inserted (1.3.2002 for specified purposes, 1.4.2002 in so far as not already in force) by Child Support, Pensions and Social Security Act 2000 (c. 19), ss. 50, 86(1)(b)(2) (with s. 83(6)); S.I. 2002/437, art. 3(1)(f)(2)

**F217** S. 72C(2) repealed (6.4.2005) by Pensions Act 2004 (c. 35), s. 322(1), Sch. 12 para. 60, Sch. 13; S.I. 2005/695, art. 2(7), Sch. 1 (with arts. 4-6, Schs. 2, 3); S.I. 2005/1108, art. 2(2), Sch.

#### Winding up

#### [<sup>F218</sup>73 Preferential liabilities on winding up.

- (1) This section applies where an occupational pension scheme to which this section applies is being wound up to determine the order in which the assets of the scheme are to be applied towards satisfying the liabilities of the scheme in respect of pensions and other benefits.
- (2) This section applies to an occupational pension scheme other than a scheme which is—
  - (a) a money purchase scheme, or
  - (b) a prescribed scheme or a scheme of a prescribed description.
- (3) The assets of the scheme must be applied first towards satisfying the amounts of the liabilities mentioned in subsection (4) and, if the assets are insufficient to satisfy those amounts in full, then—
  - (a) the assets must be applied first towards satisfying the amounts of the liabilities mentioned in earlier paragraphs of subsection (4) before the amounts of the liabilities mentioned in later paragraphs, and
  - (b) where the amounts of the liabilities mentioned in one of those paragraphs cannot be satisfied in full, those amounts must be satisfied in the same proportions.
- (4) The liabilities referred to in subsection (3) are—
  - (a) where—
    - (i) the trustees or managers of the scheme are entitled to benefits under a relevant pre-1997 contract of insurance entered into in relation to the scheme, and
    - (ii) either that contract may not be surrendered or the amount payable on surrender does not exceed the liability secured by the contract, the liability so secured;
  - (b) any liability for pensions or other benefits to the extent that the amount of the liability does not exceed the corresponding PPF liability, other than a liability within paragraph (a);
  - (c) any liability for pensions or other benefits which, in the opinion of the trustees or managers, are derived from the payment by any member of voluntary contributions, other than a liability within paragraph (a) or (b);
  - (d) any other liability in respect of pensions or other benefits.
- (5) For the purposes of subsection (4)—



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“corresponding PPF liability” in relation to any liability for pensions or other benefits means—

- (a) where the liability is to a member of the scheme, the cost of securing benefits for or in respect of the member corresponding to the compensation which would be payable to or in respect of the member in accordance with the pension compensation provisions if the Board of the Pension Protection Fund assumed responsibility for the scheme in accordance with Chapter 3 of Part 2 of the Pensions Act 2004 (pension protection), and
- (b) where the liability is to another person in respect of a member of the scheme, the cost of securing benefits for that person corresponding to the compensation which would be payable to that person in respect of the member in accordance with the pension compensation provisions if the Board assumed responsibility for the scheme in accordance with that Chapter;

“relevant pre-1997 contract of insurance” means a contract of insurance which was entered into before 6th April 1997 with a view to securing the whole or part of the scheme’s liability for—

- (a) any pension or other benefit payable to or in respect of one particular person whose entitlement to payment of a pension or other benefit has arisen, and
- (b) any benefit which will be payable in respect of that person on his death.

(6) For the purposes of this section, when determining the corresponding PPF liability in relation to any liability of a scheme to, or in respect of, a member for pensions or other benefits, the pension compensation provisions apply with such modifications as may be prescribed.

(7) Regulations may modify subsection (4).

(8) For the purposes of that subsection—

- (a) regulations may prescribe how it is to be determined whether a liability for pensions or other benefits which, in the opinion of the trustees or managers of the scheme, are derived from the payment by any member of voluntary contributions falls within paragraph (a) or (b) of that subsection;
- (b) no pension or other benefit which is attributable (directly or indirectly) to a pension credit is to be regarded for the purposes of paragraph (c) of that subsection as derived from the payment of voluntary contributions.

(9) Where, on the commencement of the winding up period, a member becomes a person to whom [F219Chapter 2 of Part 4ZA] of the Pension Schemes Act 1993 (early leavers: cash transfer sums and contribution refunds) applies, that Chapter applies in relation to him with such modifications as may be prescribed.

(10) For the purposes of this section—

“assets” of a scheme to which this section applies do not include any assets representing the value of any rights in respect of money purchase benefits under the scheme rules;

“liabilities” of such a scheme do not include any liabilities in respect of money purchase benefits under the scheme rules;

“the pension compensation provisions” has the same meaning as in Part 2 of the Pensions Act 2004 (see section 162 of that Act);

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“scheme rules” has the same meaning as in the Pensions Act 2004 (see section 318 of that Act);

“winding up period”, in relation to an occupational pension scheme to which this section applies, means the period which—

- (a) begins with the day on which the time immediately after the beginning of the winding up of the scheme falls, and
- (b) ends when the winding up of the scheme is completed.

#### Textual Amendments

- F218** Ss. 73-73B substituted for s. 73 (10.2.2005 for specified purposes, 6.4.2005 in so far as not already in force) by [Pensions Act 2004 \(c. 35\)](#), **ss. 270(1)**, 322(1) (with s. 313); S.I. 2005/275, art. 2(3)(a)(b), Sch. Pt. 3 (with art. 2(8)(9))
- F219** Words in s. 73(9) substituted (6.4.2015) by [Pension Schemes Act 2015 \(c. 8\)](#), s. 89(3)(b), **Sch. 4 para. 30** (with s. 87)

#### Modifications etc. (not altering text)

- C146** Ss. 73-74 applied (with modifications) by [The Occupational Pension Schemes \(Winding Up\) Regulations 1996 \(S.I. 1996/3126\)](#), regs. 1(1), **12** (as amended (6.4.2005) by S.I. 2005/706, reg. 1(2), Sch. paras. 6, 7)
- C147** Ss. 73-73B modified in part (6.4.2005) by [The Occupational Pension Schemes \(Winding up etc.\) Regulations 2005 \(S.I. 2005/706\)](#), regs. 1(2), **10(2)**
- C148** S. 73 excluded (6.4.2005) by [The Occupational Pension Schemes \(Winding up etc.\) Regulations 2005 \(S.I. 2005/706\)](#), regs. 1(2), **3** (with reg. 1(3))
- C149** S. 73 modified (24.7.2014) by [The Pensions Act 2011 \(Transitional, Consequential and Supplementary Provisions\) Regulations 2014 \(S.I. 2014/1711\)](#), regs. 1(1), **11(2)**
- C150** S. 73 modified (24.7.2014) by [The Pensions Act 2011 \(Transitional, Consequential and Supplementary Provisions\) Regulations 2014 \(S.I. 2014/1711\)](#), regs. 1(1), **13(2)**
- C151** S. 73 applied (24.7.2014) by [The Pensions Act 2011 \(Transitional, Consequential and Supplementary Provisions\) Regulations 2014 \(S.I. 2014/1711\)](#), regs. 1(1), **14(2)**
- C152** S. 73 applied (24.7.2014) by [The Pensions Act 2011 \(Transitional, Consequential and Supplementary Provisions\) Regulations 2014 \(S.I. 2014/1711\)](#), regs. 1(1), **15(5)**
- C153** S. 73 applied (24.7.2014) by [The Pensions Act 2011 \(Transitional, Consequential and Supplementary Provisions\) Regulations 2014 \(S.I. 2014/1711\)](#), regs. 1(1), **16(4)**
- C154** S. 73 modified (6.4.2017) by [Pensions Act 2014 \(c. 19\)](#), s. 56(1), **Sch. 20 para. 15(2)** (with Sch. 20 paras. 9, 11); S.I. 2017/297, art. 2(b)

#### Commencement Information

- I54** S. 73 in force at 6.4.1997 in so far as not already in force by S.I. 1997/664, art. 2(3), **Sch. Pt. 3** (with art. 11(1))

### 73A Operation of scheme during winding up period

- (1) This section applies where an occupational pension scheme to which section 73 applies is being wound up.
- (2) During the winding up period, the trustees or managers of the scheme—
  - (a) must secure that any pensions or other benefits (other than money purchase benefits) paid to or in respect of a member are reduced, so far as necessary, to reflect the liabilities of the scheme to or in respect of the member which will be satisfied in accordance with section 73, and

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- (b) may, for the purposes of paragraph (a), take such steps as they consider appropriate (including steps adjusting future payments) to recover any overpayment or pay any shortfall.
- (3) During the winding up period—
  - (a) no benefits may accrue under the scheme rules to, or in respect of, members of the scheme, and
  - (b) no new members of any class may be admitted to the scheme.
- (4) Subsection (3) does not prevent any increase, in a benefit, which would otherwise accrue in accordance with the scheme or any enactment.
- (5) Subsection (3) does not prevent the accrual of money purchase benefits to the extent that they are derived from income or capital gains arising from the investment of payments which are made by, or in respect of, a member of the scheme.
- (6) Where a person is entitled to a pension credit derived from another person’s shareable rights under the scheme, subsection (3) does not prevent the trustees or managers of the scheme discharging their liability in respect of the credit under Chapter 1 of Part 4 of the Welfare Reform and Pensions Act 1999 (sharing of rights under pension arrangements) by conferring appropriate rights under the scheme on that person.
- <sup>F220</sup> [ During the winding up period no right or entitlement of any member, or of any other (6A) person in respect of a member, to a benefit that is not a money purchase benefit is to be converted into, or replaced with, a right or entitlement to a money purchase benefit under the scheme rules.]
- (7) Regulations may require the trustees or managers of the scheme, in prescribed circumstances—
  - (a) to adjust the entitlement of a person to a pension or other benefit under the scheme rules where the entitlement arises as a result of a discretionary award which takes effect during the winding up period;
  - (b) to adjust the entitlement of a person (“the survivor”) to a pension or other benefit under the scheme rules where—
    - (i) a member of the scheme, or a person who was (or might have become) entitled to a pension or other benefit in respect of a member, dies during the winding up period, and
    - (ii) the survivor’s entitlement is to a pension or other benefit in respect of the member (whether arising on the date of that death or subsequently).
- (8) Regulations under subsection (7) may, in particular—
  - (a) prescribe how the required adjustments to entitlement are to be determined and the manner in which they are to be made;
  - (b) in a case where the commencement of the winding up of the scheme is backdated (whether in accordance with section 154 of the Pensions Act 2004 (requirement to wind up schemes with sufficient assets to meet protected liabilities) or otherwise), require any adjustment to a person’s entitlement to be made with effect from the time the award takes effect;
  - (c) without prejudice to sections 10(3) to (9), 73B(2) and 116, make provision about the consequences of breaching the requirements of the regulations.
- (9) If the scheme confers power on any person other than the trustees or managers of the scheme to apply the assets of the scheme in respect of pensions or other benefits

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(including increases in pensions or benefits), it cannot be exercised by that person but may, subject to the provisions made by or by virtue of this section and sections 73 and 73B, be exercised instead by the trustees or managers.

(10) For the purposes of this section—

“appropriate rights” has the same meaning as in paragraph 5 of Schedule 5 to the Welfare Reform and Pensions Act 1999 (pension credits: mode of discharge);

“discretionary award” means an award of a prescribed description;

“shareable rights” has the same meaning as in Chapter 1 of Part 4 of the Welfare Reform and Pensions Act 1999 (sharing of rights under pension arrangements);

and subsection (10) of section 73 applies as it applies for the purposes of that section.

#### Textual Amendments

**F218** Ss. 73-73B substituted for s. 73 (10.2.2005 for specified purposes, 6.4.2005 in so far as not already in force) by [Pensions Act 2004 \(c. 35\)](#), [ss. 270\(1\), 322\(1\)](#) (with s. 313); [S.I. 2005/275](#), art. 2(3)(a)(b), Sch. Pt. 3 (with art. 2(8)(9))

**F220** [S. 73A\(6A\)](#) inserted (6.4.2015) by [Pension Schemes Act 2015 \(c. 8\)](#), [ss. 58\(1\), 89\(3\)\(b\)](#) (with s. 87)

#### Modifications etc. (not altering text)

**C146** Ss. 73-74 applied (with modifications) by [The Occupational Pension Schemes \(Winding Up\) Regulations 1996 \(S.I. 1996/3126\)](#), regs. 1(1), [12](#) (as amended (6.4.2005) by [S.I. 2005/706](#), reg. 1(2), Sch. paras. 6, 7)

**C147** Ss. 73-73B modified in part (6.4.2005) by [The Occupational Pension Schemes \(Winding up etc.\) Regulations 2005 \(S.I. 2005/706\)](#), regs. 1(2), [10\(2\)](#)

**C155** [S. 73A](#) modified (6.4.2017) by [Pensions Act 2014 \(c. 19\)](#), s. 56(1), [Sch. 20 para. 15\(2\)\(4\)](#) (with Sch. 20 paras. 9, 11); [S.I. 2017/297](#), art. 2(b)

**C156** [S. 73A\(2\)\(a\)\(b\)](#) applied (with modifications) (31.8.2005) by [The Occupational Pension Schemes \(Winding Up\) \(Modification for Multi-employer Schemes and Miscellaneous Amendments\) Regulations 2005 \(S.I. 2005/2159\)](#), regs. 1(2), [2\(4\)\(5\)](#)

### 73B Sections 73 and 73A: supplementary

- (1) Any action taken in contravention of section 73A(3) [<sup>F221</sup>or (6A)] is void.
- (2) If any provision made by or by virtue of the winding up provisions is not complied with in relation to a scheme to which section 73 applies, section 10 applies to any trustee or manager of the scheme who has failed to take all reasonable steps to secure compliance.
- (3) For the purposes of subsection (2), when determining whether section 73A(3) [<sup>F222</sup>or (6A)] has been complied with subsection (1) of this section is to be disregarded.
- (4) Regulations may—
  - (a) prescribe how, for the purposes of the winding up provisions—
    - (i) the assets and liabilities of a scheme to which section 73 applies, and
    - (ii) their value or amount,
 are to be determined, calculated and verified;

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- (b) modify any of the winding up provisions as it applies—
  - (i) to prescribed schemes or prescribed descriptions of schemes;
  - (ii) in relation to a scheme where only part of the scheme is being wound up;
  - (iii) in relation to a case where any liability of the scheme in respect of a member has been discharged by virtue of regulations under section 135(4) of the Pensions Act 2004 (power to make regulations permitting discharge of scheme’s liabilities during an assessment period).
- (5) Without prejudice to the generality of subsection (4), regulations under paragraph (b) (i) of that subsection may, in particular, modify any of the winding up provisions as it applies in relation to a scheme in relation to which there is more than one employer.
- (6) The winding up provisions do not apply—
  - (a) in relation to any liability for an amount by way of pensions or other benefits which a person became entitled to payment of, under the scheme rules, before commencement of the winding up period,
  - (b) in prescribed circumstances, in relation to any liability in respect of rights of a prescribed description to which a member of the scheme became entitled under the scheme rules by reason of his pensionable service under the scheme terminating before the commencement of the winding up period,
  - (c) in relation to any liability in respect of rights of prescribed descriptions to which a member of the scheme had become entitled under the scheme rules before the commencement of the winding up period, or
  - (d) in relation to any liability the discharge of which is validated under section 136 of the Pensions Act 2004 (power to validate actions taken during an assessment period to discharge liabilities of a scheme).
- (7) But nothing in subsection (6) prevents the winding up provisions applying in relation to a liability under [F223Chapter 1 of Part 4ZA] of the Pension Schemes Act 1993 (transfer values) which—
  - (a) arose before the commencement of the winding up of the scheme, and
  - (b) was not discharged before the commencement of the winding up period.
- (8) Regulations may provide that, in prescribed circumstances, where—
  - (a) an occupational pension scheme to which section 73 applies is being wound up,
  - (b) a member of the scheme died before the winding up began, and
  - (c) during the winding up period a person becomes entitled under the scheme rules to a benefit of a prescribed description in respect of the member,his entitlement to payment of all or part of the benefit is, for the purposes of subsection (6), to be treated as having arisen immediately before the commencement of the winding up period.
- (9) If, immediately before the winding up period in relation to an occupational pension scheme to which section 73 applies, a person is entitled to an amount but has postponed payment of it, he is not, for the purposes of subsection (6), to be regarded as having become entitled to payment of the amount before that period.
- (10) For the purposes of this section—
  - (a) “winding up provisions” means this section and sections 73, 73A and 74, and

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- (b) subsection (10) of section 73 applies as it applies for the purposes of that section.]

#### Textual Amendments

- F218** Ss. 73-73B substituted for s. 73 (10.2.2005 for specified purposes, 6.4.2005 in so far as not already in force) by [Pensions Act 2004 \(c. 35\)](#), **ss. 270(1)**, 322(1) (with s. 313); S.I. 2005/275, art. 2(3)(a)(b), Sch. Pt. 3 (with art. 2(8)(9))
- F221** Words in s. 73B(1) inserted (6.4.2015) by [Pension Schemes Act 2015 \(c. 8\)](#), **ss. 58(2)**, 89(3)(b) (with s. 87)
- F222** Words in s. 73B(3) inserted (6.4.2015) by [Pension Schemes Act 2015 \(c. 8\)](#), **ss. 58(2)**, 89(3)(b) (with s. 87)
- F223** Words in s. 73B(7) substituted (6.4.2015) by [Pension Schemes Act 2015 \(c. 8\)](#), s. 89(3)(b), **Sch. 4 para. 31** (with s. 87)

#### Modifications etc. (not altering text)

- C146** Ss. 73-74 applied (with modifications) by [The Occupational Pension Schemes \(Winding Up\) Regulations 1996 \(S.I. 1996/3126\)](#), **regs. 1(1)**, **12** (as amended (6.4.2005) by S.I. 2005/706, reg. 1(2), Sch. paras. 6, 7)
- C147** Ss. 73-73B modified in part (6.4.2005) by [The Occupational Pension Schemes \(Winding up etc.\) Regulations 2005 \(S.I. 2005/706\)](#), **regs. 1(2)**, **10(2)**

## 74 Discharge of liabilities by insurance, etc.

- (1) [<sup>F224</sup>This section applies where an occupational pension scheme to which section 73 applies is being wound up.]
- (2) A liability to or in respect of a member of the scheme in respect of pensions or other benefits <sup>F225</sup>... is to be treated as discharged (to the extent that it would not be so treated apart from this section) if the trustees or managers of the scheme have, in accordance with prescribed arrangements, provided for the discharge of the liability in one or more of the ways mentioned in subsection (3).
- (3) The ways referred to in subsection (2) are—
- by acquiring transfer credits allowed under the rules of another occupational pension scheme which satisfies prescribed requirements and the trustees or managers of which are able and willing to accept payment in respect of the member,
  - by acquiring rights allowed under the rules of a personal pension scheme which satisfies prescribed requirements and the trustees or managers of which are able and willing to accept payment in respect of the member's accrued rights [<sup>F226</sup>or pension credit rights],
  - by purchasing one or more annuities which satisfy prescribed requirements from one or more [<sup>F227</sup>insurers], being companies willing to accept payment in respect of the member from the trustees or managers,
  - by subscribing to other pension arrangements which satisfy prescribed requirements,
  - <sup>F228</sup>by the payment of a cash sum in circumstances where prescribed requirements are met.]
- (4) If the assets of the scheme are insufficient to satisfy in full the liabilities, as calculated in accordance with the [<sup>F229</sup>scheme rules], in respect of pensions and other benefits

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<sup>F230</sup>... , the reference in subsection (2) to providing for the discharge of any liability in one or more of the ways mentioned in subsection (3) is to applying any amount available, in accordance with section 73, in one or more of those ways.

- (5) Regulations may provide for this section—
- (a) to have effect in relation to so much of any liability as may be determined in accordance with the regulations,<sup>F231</sup> ...
  - <sup>F231</sup>(b) .....

- [<sup>F232</sup>(6) For the purposes of this section—
- (a) references to assets of the scheme do not include any assets representing the value of any rights in respect of money purchase benefits under the scheme rules, and
  - (b) references to liabilities of the scheme do not include any liabilities in respect of money purchase benefits under the scheme rules;
- and “scheme rules” has the same meaning as in the Pensions Act 2004 (see section 318 of that Act).]

#### Textual Amendments

- F224** S. 74(1) substituted (10.2.2005 for specified purposes, 6.4.2005 in so far as not already in force) by Pensions Act 2004 (c. 35), ss. 270(2)(a), 322(1) (with s. 313); S.I. 2005/275, art. 2(3), Sch. Pt. 3 (with art. 2(8)(9)) (with savings in S.I. 2005/695, art. 6A)
- F225** Words in s. 74(2) repealed (10.2.2005 for specified purposes, 6.4.2005 in so far as not already in force) by Pensions Act 2004 (c. 35), ss. 270(2)(b), 322(1), Sch. 13 (with s. 313); S.I. 2005/275, art. 2(3), Sch. Pt. 3 (with art. 2(8)(9)) (with savings in S.I. 2005/695, art. 6A)
- F226** Words in s. 74(3)(b) inserted (1.12.2000) by Welfare Reform and Pensions Act 1999 (c. 30), s. 89(1), Sch. 12 para. 56; S.I. 2000/1047, art. 2(2)(d), Sch. Pt. IV
- F227** Word in s. 74(3)(c) substituted (1.12.2001) by The Financial Services and Markets Act 2000 (Consequential Amendments and Repeals) Order 2001 (S.I. 2001/3649), arts. 1, 144
- F228** S. 74(3)(e) inserted (10.2.2005 for specified purposes, 6.4.2005 in so far as not already in force) by Pensions Act 2004 (c. 35), ss. 270(2)(c), 322(1) (with s. 313); S.I. 2005/275, art. 2(3), Sch. Pt. 3 (with art. 2(8)(9)) (with savings in S.I. 2005/695, art. 6A)
- F229** Words in s. 74(4) substituted (10.2.2005 for specified purposes, 6.4.2005 in so far as not already in force) by Pensions Act 2004 (c. 35), ss. 270(2)(d)(i), 322(1) (with s. 313); S.I. 2005/275, art. 2(3), Sch. Pt. 3 (with art. 2(8)(9)) (with savings in S.I. 2005/695, art. 6A)
- F230** Words in s. 74(4) repealed (10.2.2005 for specified purposes, 6.4.2005 in so far as not already in force) by Pensions Act 2004 (c. 35), ss. 270(2)(d)(ii), 322(1), Sch. 13 (with s. 313); S.I. 2005/275, art. 2(3), Sch. Pt. 3 (with art. 2(8)(9)) (with savings in S.I. 2005/695, art. 6A)
- F231** S. 74(5)(b) and preceding word repealed (10.2.2005 for specified purposes, 6.4.2005 in so far as not already in force) by Pensions Act 2004 (c. 35), ss. 270(2)(e), 322(1), Sch. 13 (with s. 313); S.I. 2005/275, art. 2(3), Sch. Pt. 3 (with art. 2(8)(9)) (with savings in S.I. 2005/695, art. 6A)
- F232** S. 74(6) inserted (10.2.2005 for specified purposes, 6.4.2005 in so far as not already in force) by Pensions Act 2004 (c. 35), ss. 270(2)(f), 322(1) (with s. 313); S.I. 2005/275, art. 2(3)(a)(b), Sch. Pt. 3 (with art. 2(8)(9))

#### Modifications etc. (not altering text)

- C146** Ss. 73-74 applied (with modifications) by The Occupational Pension Schemes (Winding Up) Regulations 1996 (S.I. 1996/3126), regs. 1(1), 12 (as amended (6.4.2005) by S.I. 2005/706, reg. 1(2), Sch. paras. 6, 7)
- C157** S. 74 excluded (temp.) (6.3.1997) by The Pensions Act 1995 (Commencement No. 10) Order 1997 (S.I. 1997/664), art. 11(1)

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**C158** S. 74(2) modified (6.4.2005) by [The Occupational Pension Schemes \(Winding up etc.\) Regulations 2005 \(S.I. 2005/706\)](#), regs. 1(2), **10(3)**

**C159** S. 74(4) modified (6.4.2005) by [The Occupational Pension Schemes \(Winding up etc.\) Regulations 2005 \(S.I. 2005/706\)](#), regs. 1(2), **10(3)**

#### Commencement Information

**I55** S. 74 in force at 6.4.1997 in so far as not already in force by [S.I. 1997/664](#), art. 2(3), **Sch. Pt. 3** (with art. 11(1))

**I56** S. 74(1) in force at 16.10.1996 for specified purposes by [S.I. 1996/2637](#), art. 3

**I57** S. 74(2)(3) in force at 6.4.1996 for specified purposes by [S.I. 1996/778](#), art. 2(5)(a), **Sch. Pt. V**

**I58** S. 74(5)(a) in force at 16.10.1996 for specified purposes by [S.I. 1996/2637](#), art. 3

**I59** S. 74(5)(b) in force at 6.4.1996 for specified purposes by [S.I. 1996/778](#), art. 2(5)(a), **Sch. Pt. V**

## 75 Deficiencies in the assets.

[<sup>F233</sup>(1) This section applies in relation to an occupational pension scheme other than a scheme which is—

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

[ Where a pension scheme is divided into sections, each section that is a collective <sup>F234</sup>(1A) money purchase scheme for the purposes of Part 1 of the Pension Schemes Act 2021 (see section 1(2)(b) of that Act) is to be treated for the purposes of this section as a separate occupational pension scheme which is a money purchase scheme.]

(2) If—

- (a) at any time which falls—
  - (i) when a scheme is being wound up, but
  - (ii) before any relevant event in relation to the employer which occurs while the scheme is being wound up,
 

the value of the assets of the scheme is less than the amount at that time of the liabilities of the scheme, and
- (b) the trustees or managers of the scheme designate that time for the purposes of this subsection (before the occurrence of an event within paragraph (a)(ii)),
 

an amount equal to the difference shall be treated as a debt due from the employer to the trustees or managers of the scheme.

This is subject to subsection (3).

(3) Subsection (2) applies only if—

- (a) either—
  - (i) no relevant event within subsection (6A)(a) or (b) occurred in relation to the employer during the period beginning with the appointed day and ending with the commencement of the winding up of the scheme, or
  - (ii) during the period—
    - (a) beginning with the occurrence of the last such relevant event which occurred during the period mentioned in subparagraph (i), and
    - (b) ending with the commencement of the winding up of the scheme,



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- a cessation notice was issued in relation to the scheme and became binding, and
- (b) no relevant event within subsection (6A)(c) has occurred in relation to the employer during the period mentioned in paragraph (a)(i).
- (4) Where—
- (a) immediately before a relevant event (“the current event”) occurs in relation to the employer the value of the assets of the scheme is less than the amount at that time of the liabilities of the scheme,
- (b) the current event—
- (i) occurred on or after the appointed day, and
- (ii) did not occur in prescribed circumstances,
- (c) if the scheme was being wound up immediately before that event, subsection (2) has not applied in relation to the scheme to treat an amount as a debt due from the employer to the trustees or managers of the scheme,
- (d) if the current event is within subsection (6A)(a) or (b), either—
- (i) no relevant event within subsection (6A)(a) or (b) occurred in relation to the employer during the period beginning with the appointed day and ending immediately before the current event, or
- (ii) a cessation event has occurred in relation to the scheme in respect of a cessation notice issued during the period—
- (a) beginning with the occurrence of the last such relevant event which occurred during the period mentioned in subparagraph (i), and
- (b) ending immediately before the current event, and
- (e) no relevant event within subsection (6A)(c) has occurred in relation to the employer during the period mentioned in paragraph (d)(i),
- an amount equal to the difference shall be treated as a debt due from the employer to the trustees or managers of the scheme.
- (4A) Where the current event is within subsection (6A)(a) or (b), the debt under subsection (4) is to be taken, for the purposes of the law relating to insolvency as it applies to the employer, to arise immediately before the occurrence of the current event.
- (4B) Subsection (4C) applies if, in a case within subsection (4)—
- (a) the current event is within subsection (6A)(a) or (b), and
- (b) the scheme was not being wound up immediately before that event.
- (4C) Where this subsection applies, the debt due from the employer under subsection (4) is contingent upon—
- (a) a scheme failure notice being issued in relation to the scheme after the current event and the following conditions being satisfied—
- (i) the scheme failure notice is binding,
- (ii) no relevant event within subsection (6A)(c) has occurred in relation to the employer before the scheme failure notice became binding, and
- (iii) a cessation event has not occurred in relation to the scheme in respect of a cessation notice issued during the period—
- (a) beginning with the occurrence of the current event, and

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- (b) ending immediately before the issuing of the scheme failure notice,  
and the occurrence of such a cessation event in respect of a cessation notice issued during that period is not a possibility, or
- (b) the commencement of the winding up of the scheme before—
- (i) any scheme failure notice or cessation notice issued in relation to the scheme becomes binding, or
  - (ii) any relevant event within subsection (6A)(c) occurs in relation to the employer.]
- (5) For the purposes of [F<sup>235</sup>subsections (2) and (4)], the liabilities and assets to be taken into account, and their amount or value, must be determined, calculated and verified by a prescribed person and in the prescribed manner.
- (6) In calculating the value of any liabilities for those purposes, a provision of the scheme [F<sup>236</sup>rules] which limits the amount of its liabilities by reference to the amount of its assets is to be disregarded.
- [F<sup>237</sup>In this subsection “scheme rules” has the same meaning as in the Pensions Act 2004 (“the 2004 Act”) (see section 318 of that Act).]
- [F<sup>238</sup>(6A) For the purposes of this section, a relevant event occurs in relation to the employer in relation to an occupational pension scheme if and when—
- (a) an insolvency event occurs in relation to the employer,
  - (b) the trustees or managers of the scheme make an application under subsection (1) of section 129 of the 2004 Act or receive a notice from the Board of the Pension Protection Fund under subsection (5)(a) of that section, or
  - (c) a resolution is passed for a voluntary winding up of the employer in a case where a declaration of solvency has been made under section 89 of the Insolvency Act 1986 (members' voluntary winding up).
- (6B) For the purposes of this section—
- (a) a “cessation notice”, in the case of a relevant event within subsection (6A) (a), means—
    - (i) a withdrawal notice issued under section 122(2)(b) of the 2004 Act (scheme rescue has occurred),
    - (ii) a withdrawal notice issued under section 148 of that Act (no insolvency event has occurred or is likely to occur),
    - (iii) a notice issued under section 122(4) of that Act (inability to confirm status of scheme) in a case where the notice has become binding and section 148 of that Act does not apply,
  - (b) a “cessation notice” in the case of a relevant event within subsection (6A) (b), means a withdrawal notice issued under section 130(3) of the 2004 Act (scheme rescue has occurred),
  - (c) a cessation event occurs in relation to a scheme when a cessation notice in relation to the scheme becomes binding,
  - (d) the occurrence of a cessation event in relation to a scheme in respect of a cessation notice issued during a particular period (“the specified period”) is a possibility until each of the following are no longer reviewable—
    - (i) any cessation notice which has been issued in relation to the scheme during the specified period,

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- (ii) any failure to issue such a cessation notice during the specified period,
  - (iii) any notice which has been issued by the Board under Chapter 2 or 3 of Part 2 of the 2004 Act which is relevant to the issue of a cessation notice in relation to the scheme during the specified period or to such a cessation notice which has been issued during that period becoming binding,
  - (iv) any failure to issue such a notice as is mentioned in subparagraph (iii),
  - (e) the issue or failure to issue a notice is to be regarded as reviewable—
    - (i) during the period within which it may be reviewed by virtue of Chapter 6 of Part 2 of the 2004 Act, and
    - (ii) if the matter is so reviewed, until—
      - (a) the review and any reconsideration,
      - (b) any reference to the Ombudsman for the Board of the Pension Protection Fund in respect of the matter, and
      - (c) any appeal against his determination or directions,has been finally disposed of, and
  - (f) a “scheme failure notice” means a scheme failure notice issued under section 122(2)(a) or 130(2) of the 2004 Act (scheme rescue not possible).
- (6C) For the purposes of this section—
- (a) section 121 of the 2004 Act applies for the purposes of determining if and when an insolvency event has occurred in relation to the employer,
  - (b) “appointed day” means the day appointed under section 126(2) of the 2004 Act (no pension protection under Chapter 3 of Part 2 of that Act if the scheme begins winding up before the day appointed by the Secretary of State),
  - (c) references to a relevant event in relation to an employer do not include a relevant event which occurred in relation to him before he became the employer in relation to the scheme,
  - (d) references to a cessation notice becoming binding are to the notice in question mentioned in subsection (6B)(a) or (b) and issued under Part 2 of the 2004 Act becoming binding within the meaning given by that Part of that Act, and
  - (e) references to a scheme failure notice becoming binding are to the notice in question mentioned in subsection (6B)(f) and issued under Part 2 of the 2004 Act becoming binding within the meaning given by that Part of that Act.
- (6D) Where—
- (a) a resolution is passed for a voluntary winding up of the employer in a case where a declaration of solvency has been made under section 89 of the Insolvency Act 1986 (members' voluntary winding up), and
  - [<sup>F239</sup>(b) the voluntary winding up of the employer—
    - (i) is stayed other than in prescribed circumstances, or
    - (ii) becomes a creditors' voluntary winding up under section 96 of that Act (conversion to creditors' voluntary winding up),]this section has effect as if that resolution had never been passed and any debt which arose under this section by virtue of the passing of that resolution shall be treated as if it had never arisen.]
- (7) This section does not prejudice any other right or remedy which the trustees or managers may have in respect of a deficiency in the scheme's assets.

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- (8) A debt due by virtue only of this section shall not be regarded—
- (a) as a preferential debt for the purposes of the <sup>M12</sup>Insolvency Act 1986, or
  - (b) as a preferred debt for the purposes of the <sup>M13</sup>Bankruptcy (Scotland) Act <sup>F240</sup>2016].

<sup>F241</sup>(9) .....

- (10) Regulations may modify this section as it applies in prescribed circumstances.

#### Textual Amendments

- F233** S. 75(1)-(4C) substituted for s. 75(1)-(4) (10.2.2005 for specified purposes, 6.4.2005 in so far as not already in force) by Pensions Act 2004 (c. 35), **ss. 271(2), 322(1)** (with s. 313); S.I. 2005/275, art. 2(3)(a)(b), Sch. Pt. 3 (with art. 2(10)(11))
- F234** S. 75(1A) inserted (11.2.2021 for specified purposes, 1.8.2022 in so far as not already in force) by Pension Schemes Act 2021 (c. 1), s. 131(1)(3)(a), **Sch. 3 para. 8**; S.I. 2022/721, regs. 1(2), 3(a)
- F235** Words in s. 75(5) substituted (10.2.2005 for specified purposes, 6.4.2005 in so far as not already in force) by Pensions Act 2004 (c. 35), **ss. 271(3), 322(1)** (with s. 313); S.I. 2005/275, art. 2(3)(a)(b), Sch. Pt. 3 (with art. 2(10)(11))
- F236** Word in s. 75(6) inserted (10.2.2005 for specified purposes, 6.4.2005 in so far as not already in force) by Pensions Act 2004 (c. 35), **ss. 271(4)(a), 322(1)** (with s. 313); S.I. 2005/275, art. 2(3)(a)(b), Sch. Pt. 3 (with art. 2(10)(11))
- F237** Words in s. 75(6) inserted (10.2.2005 for specified purposes, 6.4.2005 in so far as not already in force) by Pensions Act 2004 (c. 35), **ss. 271(4)(b), 322(1)** (with s. 313); S.I. 2005/275, art. 2(3)(a)(b), Sch. Pt. 3 (with art. 2(10)(11))
- F238** S. 75(6A)-(6D) inserted (10.2.2005 for specified purposes, 6.4.2005 in so far as not already in force) by Pensions Act 2004 (c. 35), **ss. 271(5), 322(1)** (with s. 313); S.I. 2005/275, art. 2(3)(a)(b), Sch. Pt. 3 (with art. 2(10)(11))
- F239** S. 75(6D)(b) substituted (6.4.2017) by The Deregulation Act 2015 and Small Business, Enterprise and Employment Act 2015 (Consequential Amendments) (Savings) Regulations 2017 (S.I. 2017/540), reg. 1, **Sch. 1 para. 3(2)** (with reg. 4)
- F240** Word in s. 75(8)(b) substituted (30.11.2016) by The Bankruptcy (Scotland) Act 2016 (Consequential Provisions and Modifications) Order 2016 (S.I. 2016/1034), art. 1, **Sch. 1 para. 13(3)**
- F241** S. 75(9) repealed (10.2.2005 for specified purposes, 6.4.2005 in so far as not already in force) by Pensions Act 2004 (c. 35), ss. 271(6), 322(1), **Sch. 13** (with s. 313); S.I. 2005/275, art. 2(3)(a)(b), Sch. Pt. 3 (with art. 2(10)(11))

#### Modifications etc. (not altering text)

- C160** S. 75 modified (1.4.1997) by The Occupational and Personal Pension Schemes (Levy) Regulations 1997 (S.I. 1997/666), regs. 1(1), **11**
- C161** S. 75 modified (6.4.1997) by The Occupational Pension Schemes (Deficiency on Winding Up etc.) Regulations 1996 (S.I. 1996/3128), regs. 1, **4** (as amended by S.I. 1997/786, reg. 1, Sch. 1 para. 19(3))
- C162** S. 75 modified (6.4.1997) by The Occupational Pension Schemes (Deficiency on Winding Up etc.) Regulations 1996 (S.I. 1996/3128), regs. 1, **7-9**
- C163** S. 75 modified (6.4.1997) by The Occupational Pension Schemes (Deficiency on Winding Up etc.) Regulations 1996 (S.I. 1996/3128), regs. 1, 11, **Sch. 2** (as amended by S.I. 1997/786, reg. 1, Sch. 1 para. 19(4), Sch. 2)
- C164** S. 75 excluded (31.12.2000) by The Occupational Pension Schemes (Republic of Ireland Schemes Exemption) Regulations 2000 (S.I. 2000/3198), regs. 1(1), 2, **Sch.**
- C165** S. 75 modified (6.4.2005) by The Occupational Pension Schemes (Employer Debt) Regulations 2005 (S.I. 2005/678), regs. 1(2), **6-15** (with reg. 1(3)) (as amended by S.I. 2005/2224, reg. 2(3)(4); S.I. 2008/731, regs. 6-11)

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- C166** S. 75 excluded (6.4.2005) by The Occupational Pension Schemes (Employer Debt) Regulations 2005 (S.I. 2005/678), regs. 1(2), **4** (with reg. 1(3)) (as amended by S.I. 2005/2224, reg. 4(1))
- C167** S. 75 excluded (29.9.2008) by The Bradford & Bingley plc Transfer of Securities and Property etc. Order 2008 (S.I. 2008/2546), Sch. 3 paras. 6(b), **11(b)(i)**
- C168** S. 75 excluded (24.7.2014) by The Pensions Act 2011 (Transitional, Consequential and Supplementary Provisions) Regulations 2014 (S.I. 2014/1711), regs. 1(1), **20**
- C169** S. 75 applied (24.7.2014) by The Pensions Act 2011 (Transitional, Consequential and Supplementary Provisions) Regulations 2014 (S.I. 2014/1711), regs. 1(1), **21(4)**
- C170** S. 75 applied (24.7.2014) by The Pensions Act 2011 (Transitional, Consequential and Supplementary Provisions) Regulations 2014 (S.I. 2014/1711), regs. 1(1), **22(3)**
- C171** S. 75 applied (24.7.2014) by The Pensions Act 2011 (Transitional, Consequential and Supplementary Provisions) Regulations 2014 (S.I. 2014/1711), regs. 1(1), **24(2)**
- C172** S. 75 excluded (6.4.1997) by The Occupational Pension Schemes (Deficiency on Winding Up etc.) Regulations 1996 (S.I. 1996/3128), regs. 1(3), **10** (as amended (6.4.2016) by S.I. 2016/200, arts. 1(2), 10)
- C173** S. 75(2)(4) modified (6.4.2005) by Pensions Act 2004 (c. 35), **ss. 49(10)**, 322(1) (with s. 313); S.I. 2005/275, art. 2(7), Sch. Pt. 7; S.I. 2005/275, art. 2(7), Sch. Pt. 7
- C174** S. 75(2)(4) modified (6.4.2005) by Pensions Act 2004 (c. 35), **ss. 40(10)**, 322(1) (with s. 313); S.I. 2005/275, art. 2(7), Sch. Pt. 7; S.I. 2005/275, art. 2(7), Sch. Pt. 7

#### Commencement Information

- I60** S. 75 in force at 6.4.1996 for specified purposes by S.I. 1996/778, art. 2(5)(a), **Sch. Pt. V**
- I61** S. 75 in force at 6.4.1997 in so far as not already in force by S.I. 1997/664, art. 2(3), **Sch. Pt. 3**

#### Marginal Citations

- M12** 1986 c. 45.
- M13** 1985 c. 66.

### [<sup>F242</sup>75A Deficiencies in the assets: multi-employer schemes

- (1) Regulations may modify section 75 (deficiencies in the assets) as it applies in relation to multi-employer schemes.
- (2) The regulations may in particular provide for the circumstances in which a debt is to be treated as due under section 75 from an employer in relation to a multi-employer scheme (a “multi-employer debt”).
- (3) Those circumstances may include circumstances other than those in which the scheme is being wound up or a relevant event occurs (within the meaning of section 75).
- (4) For the purposes of regulations under this section, regulations under section 75(5) may prescribe alternative manners for determining, calculating and verifying—
  - (a) the liabilities and assets of the scheme to be taken into account, and
  - (b) their amount or value.
- (5) The regulations under this section may in particular—
  - (a) provide for the application of each of the prescribed alternative manners under section 75(5) to depend upon whether prescribed requirements are met;
  - (b) provide that, where in a particular case a prescribed alternative manner under section 75(5) is applied, the Authority may in prescribed circumstances issue a direction—

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- (i) that any resulting multi-employer debt is to be unenforceable for such a period as the Authority may specify, and
  - (ii) that the amount of the debt is to be re-calculated applying a different prescribed manner under section 75(5) if prescribed requirements are met within that period.
- (6) The prescribed requirements mentioned in subsection (5) may include a requirement that a prescribed arrangement, the details of which are approved in a notice issued by the Authority, is in place.
- (7) The regulations may provide that the Authority may not approve the details of such an arrangement unless prescribed conditions are met.
- (8) Those prescribed conditions may include a requirement that—
  - (a) the arrangement identifies one or more persons to whom the Authority may issue a contribution notice under the regulations, and
  - (b) the Authority are satisfied of prescribed matters in respect of each of those persons.
- (9) For the purposes of subsection (8) a “contribution notice” is a notice stating that the person to whom it is issued is under a liability to pay the sum specified in the notice—
  - (a) to the trustees of the multi-employer scheme in question, or
  - (b) where the Board of the Pension Protection Fund has assumed responsibility for the scheme in accordance with Chapter 3 of Part 2 of the Pensions Act 2004 (pension protection), to the Board.
- (10) The regulations may provide for the Authority to have power to issue a contribution notice to a person identified in an arrangement as mentioned in subsection (8) if—
  - (a) the arrangement ceases to be in place or the Authority consider that the arrangement is no longer appropriate, and
  - (b) the Authority are of the opinion that it is reasonable to impose liability on the person to pay the sum specified in the notice.
- (11) Where a contribution notice is issued to a person under the regulations as mentioned in subsection (8), the sum specified in the notice is to be treated as a debt due from that person to the person to whom it is to be paid as specified in the notice.
- (12) Where the regulations provide for the issuing of a contribution notice by the Authority as mentioned in subsection (8)—
  - (a) the regulations must—
    - (i) provide for how the sum specified by the Authority in a contribution notice is to be determined,
    - (ii) provide for the circumstances (if any) in which a person to whom a contribution notice is issued is jointly and severally liable for the debt,
    - (iii) provide for the matters which the notice must contain, and
    - (iv) provide for who may exercise the powers to recover the debt due by virtue of the contribution notice, and
  - (b) the regulations may apply with or without modifications some or all of the provisions of sections 47 to 51 of the Pensions Act 2004 (contribution notices where non-compliance with financial support direction) in relation to contribution notices issued under the regulations.

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- (13) In this section “multi-employer scheme” means a trust scheme which applies to earners in employments under different employers.
- (14) This section is without prejudice to the powers conferred by—
- section 75(5) (power to prescribe the manner of determining, calculating and verifying assets and liabilities etc),
  - section 75(10) (power to modify section 75 as it applies in prescribed circumstances),
  - section 118(1)(a) (power to modify any provisions of this Part in their application to multi-employer trust schemes), and
  - section 125(3) (power to extend for the purposes of this Part the meaning of “employer”).]

#### Textual Amendments

**F242** S. 75A inserted (10.2.2005 for specified purposes, 15.3.2005 in so far as not already in force) by Pensions Act 2004 (c. 35), ss. 272, 322(1) (with s. 313); S.I. 2005/275, art. 2(3)(a), Sch. Pt. 3; S.I. 2005/695, art. 2(2)

## 76 Excess assets on winding up.

- (1) This section applies to a trust scheme in any circumstances if—
- [<sup>F243</sup>(a) it is a registered pension scheme under section 153 of the Finance Act 2004,]
  - (b) the scheme is being wound up, and
  - (c) in those circumstances power is conferred on the employer or the trustees to distribute assets to the employer on a winding up.
- (2) The power referred to in subsection (1)(c) cannot be exercised unless the requirements of subsections (3) and (in prescribed circumstances) (4), and any prescribed requirements, are satisfied.
- (3) The requirements of this subsection are that—
- (a) the liabilities of the scheme have been fully discharged,
  - (b) where there is any power under the scheme, after the discharge of those liabilities, to distribute assets to any person other than the employer, the power has been exercised or a decision has been made not to exercise it,
  - (c) <sup>F244</sup>... and
  - (d) notice has been given in accordance with prescribed requirements to the members of the scheme of the proposal to exercise the power.
- (4) The requirements of this subsection are that the Authority are of the opinion that—
- (a) any requirements prescribed by virtue of subsection (2) are satisfied, and
  - (b) the requirements of subsection (3) are satisfied.
- <sup>F245</sup>(5) .....
- (6) If, where this section applies to any trust scheme, the trustees purport to exercise the power referred to in subsection (1)(c) without complying with the requirements of this section, [<sup>F246</sup>section 10 applies] to any of them who have failed to take all such steps as are reasonable to secure compliance.

*Status: Point in time view as at 31/05/2021.*

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- (7) If, where this section applies to any trust scheme, any person other than the trustees purports to exercise the power referred to in subsection (1)(c) without complying with the requirements of this section, section 10 applies to him.
- (8) Regulations may provide that, in prescribed circumstances, this section does not apply to schemes falling within a prescribed class or description, or applies to them with prescribed modifications.

#### Textual Amendments

- F243** S. 76(1)(a) substituted (6.4.2006) by [The Taxation of Pension Schemes \(Consequential Amendments\) Order 2006 \(S.I. 2006/745\)](#), arts. 1, **10(5)**
- F244** S. 76(3)(c) repealed (6.4.2006) by [Pensions Act 2004 \(c. 35\)](#), s. 322(1), Sch. 12 para. 62(a), **Sch. 13**; [S.I. 2006/560](#), art. 2(3), Sch. Pt. 3
- F245** S. 76(5) repealed (6.4.2006) by [Pensions Act 2004 \(c. 35\)](#), s. 322(1), Sch. 12 para. 62(b), **Sch. 13**; [S.I. 2006/560](#), art. 2(3), Sch. Pt. 3
- F246** Words in s. 76(6) substituted (6.4.2006) by [Pensions Act 2004 \(c. 35\)](#), s. 322(1), **Sch. 12 para. 62(c)**; [S.I. 2005/3331](#), art. 2(6), Sch. Pt. 6

#### Modifications etc. (not altering text)

- C175** S. 76 excluded (31.12.2000) by [The Occupational Pension Schemes \(Republic of Ireland Schemes Exemption\) Regulations 2000 \(S.I. 2000/3198\)](#), regs. 1(1), 2, **Sch.**
- C176** S. 76 excluded (6.4.2006) by [The Occupational Pension Schemes \(Payments to Employer\) Regulations 2006 \(S.I. 2006/802\)](#), regs. 1, **12(1)**
- C177** S. 76 modified (6.4.2006) by [The Occupational Pension Schemes \(Payments to Employer\) Regulations 2006 \(S.I. 2006/802\)](#), regs. 1, **18(6)**
- C178** S. 76 excluded (24.7.2014) by [The Pensions Act 2011 \(Transitional, Consequential and Supplementary Provisions\) Regulations 2014 \(S.I. 2014/1711\)](#), regs. 1(1), **37(1)(b)**

#### Commencement Information

- I62** S. 76 in force at 6.4.1996 for specified purposes by [S.I. 1996/778](#), art. 2(5)(a), **Sch. Pt. V**
- I63** S. 76 in force at 6.4.1997 in so far as not already in force by [S.I. 1997/664](#), art. 2(3), **Sch. Pt. 3**

**F247** **77 Excess assets remaining after winding up: power to distribute.**

.....

#### Textual Amendments

- F247** S. 77 repealed (6.4.2006) by [The Taxation of Pension Schemes \(Consequential Amendments\) Order 2006 \(S.I. 2006/745\)](#), arts. 1, **10(6)**

*The Pensions Compensation Board*

**F248** **78 The Compensation Board.**

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**Textual Amendments**

**F248** Ss. 78-86 repealed (1.9.2005) by [Pensions Act 2004 \(c. 35\)](#), s. 322(1), **Sch. 13**; S.I. 2005/1720, art. 2(16), **Sch. Pt. 3** (with arts. 4, 5) (as amended (26.6.2009) by S.I. 2009/1583, art. 2)

**F248** **79 Reports to Secretary of State.**

.....

**Textual Amendments**

**F248** Ss. 78-86 repealed (1.9.2005) by [Pensions Act 2004 \(c. 35\)](#), s. 322(1), **Sch. 13**; S.I. 2005/1720, art. 2(16), **Sch. Pt. 3** (with arts. 4, 5) (as amended (26.6.2009) by S.I. 2009/1583, art. 2)

**F248** **80 Review of decisions.**

.....

**Textual Amendments**

**F248** Ss. 78-86 repealed (1.9.2005) by [Pensions Act 2004 \(c. 35\)](#), s. 322(1), **Sch. 13**; S.I. 2005/1720, art. 2(16), **Sch. Pt. 3** (with arts. 4, 5) (as amended (26.6.2009) by S.I. 2009/1583, art. 2)

*The compensation provisions*

**F248** **81 Cases where compensation provisions apply.**

.....

**Textual Amendments**

**F248** Ss. 78-86 repealed (1.9.2005) by [Pensions Act 2004 \(c. 35\)](#), s. 322(1), **Sch. 13**; S.I. 2005/1720, art. 2(16), **Sch. Pt. 3** (with arts. 4, 5) (as amended (26.6.2009) by S.I. 2009/1583, art. 2)

**F248** **82 Applications for payments.**

.....

**Textual Amendments**

**F248** Ss. 78-86 repealed (1.9.2005) by [Pensions Act 2004 \(c. 35\)](#), s. 322(1), **Sch. 13**; S.I. 2005/1720, art. 2(16), **Sch. Pt. 3** (with arts. 4, 5) (as amended (26.6.2009) by S.I. 2009/1583, art. 2)

**F248** **83 Amount of compensation.**

.....

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#### Textual Amendments

**F248** Ss. 78-86 repealed (1.9.2005) by [Pensions Act 2004 \(c. 35\)](#), s. 322(1), **Sch. 13**; S.I. 2005/1720, art. 2(16), **Sch. Pt. 3** (with arts. 4, 5) (as amended (26.6.2009) by S.I. 2009/1583, art. 2)

### <sup>F248</sup>**84** Payments made in anticipation.

.....

#### Textual Amendments

**F248** Ss. 78-86 repealed (1.9.2005) by [Pensions Act 2004 \(c. 35\)](#), s. 322(1), **Sch. 13**; S.I. 2005/1720, art. 2(16), **Sch. Pt. 3** (with arts. 4, 5) (as amended (26.6.2009) by S.I. 2009/1583, art. 2)

### <sup>F248</sup>**85** Surplus funds.

.....

#### Textual Amendments

**F248** Ss. 78-86 repealed (1.9.2005) by [Pensions Act 2004 \(c. 35\)](#), s. 322(1), **Sch. 13**; S.I. 2005/1720, art. 2(16), **Sch. Pt. 3** (with arts. 4, 5) (as amended (26.6.2009) by S.I. 2009/1583, art. 2)

### <sup>F248</sup>**86** Modification of compensation provisions.

.....

#### Textual Amendments

**F248** Ss. 78-86 repealed (1.9.2005) by [Pensions Act 2004 \(c. 35\)](#), s. 322(1), **Sch. 13**; S.I. 2005/1720, art. 2(16), **Sch. Pt. 3** (with arts. 4, 5) (as amended (26.6.2009) by S.I. 2009/1583, art. 2)

### *Money purchase schemes*

### **87** Schedules of payments to money purchase schemes.

(1) This section applies to an occupational pension scheme which is a money purchase scheme, other than one falling within a prescribed class or description.

[<sup>F249</sup>(1A) Where a pension scheme is divided into sections, each section that is a collective money purchase scheme for the purposes of Part 1 of the Pension Schemes Act 2021 (see section 1(2)(b) of that Act) is to be treated for the purposes of this section and section 88 as an occupational pension scheme which is a money purchase scheme.]

(2) The trustees or managers of every occupational pension scheme to which this section applies must secure that there is prepared, maintained and from time to time revised a schedule (referred to in this section and section 88 as a “payment schedule”) showing—

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- (a) the rates of contributions payable towards the scheme by or on behalf of the employer and the active members of the scheme,
  - (b) such other amounts payable towards the scheme as may be prescribed, and
  - (c) the dates on or before which payments of such contributions or other amounts are to be made (referred to in those sections as “due dates”).
- (3) The payment schedule for a scheme must satisfy prescribed requirements.
- (4) The matters shown in the payment schedule for a scheme—
- (a) to the extent that the scheme makes provision for their determination, must be so determined, and
  - (b) otherwise,
    - (i) must be matters previously agreed between the employer and the trustees or managers of the scheme, or
    - (ii) if no such agreement has been made as to all matters shown in the schedule (other than those for whose determination the scheme makes provision), must be matters determined by the trustees or managers of the scheme.
- (5) Where in the case of a scheme this section is not complied with—
- <sup>F250</sup>(a) .....
  - (b) section 10 applies to any trustee or manager who has failed to take all such steps.

#### Textual Amendments

**F249** S. 87(1A) inserted (11.2.2021 for specified purposes) by Pension Schemes Act 2021 (c. 1), s. 131(1)(3) (a), **Sch. 3 para. 9**

**F250** S. 87(5)(a) repealed (6.4.2006) by Pensions Act 2004 (c. 35), s. 322(1), Sch. 12 para. 64, **Sch. 13**; S.I. 2006/560, art. 2(3), Sch. Pt. 3

#### Modifications etc. (not altering text)

**C179** S. 87 excluded (temp.) (6.3.1997) by The Pensions Act 1995 (Commencement No. 10) Order 1997 (S.I. 1997/664), **art. 12(1)**

**C180** S. 87 excluded (31.12.2000) by The Occupational Pension Schemes (Republic of Ireland Schemes Exemption) Regulations 2000 (S.I. 2000/3198), regs. 1(1), 2, **Sch.**

**C181** S. 87 applied (24.7.2014) by The Pensions Act 2011 (Transitional, Consequential and Supplementary Provisions) Regulations 2014 (S.I. 2014/1711), regs. 1(1), **68**

#### Commencement Information

**I64** S. 87 in force at 6.4.1996 for specified purposes by S.I. 1996/778, art. 2(5)(a), **Sch. Pt. V**

**I65** S. 87 in force at 6.4.1997 in so far as not already in force by S.I. 1997/664, art. 2(3), **Sch. Pt. 3** (with art. 12)

**I66** S. 87(1) in force at 6.3.1997 for specified purposes by S.I. 1997/664, **art. 2(1)**

## 88 Schedules of payments to money purchase schemes: supplementary.

- [<sup>F251</sup>(1) Where, in the case of an occupational pension scheme to which section 87 applies—
- (a) there is a failure to pay on or before the due date any amounts payable in accordance with the payment schedule, and

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- (b) the trustees or managers have reasonable cause to believe that the failure is likely to be of material significance in the exercise by the Authority of any of their functions,
- they must, except in prescribed circumstances, give notice of the failure to the Authority and to the members of the scheme within a reasonable period after the due date.]
- (2) Any such amounts which for the time being remain unpaid after that date (whether payable by the employer or not) shall, if not a debt due from the employer to the trustees or managers apart from this subsection, be treated as such a debt.
- (3) Where any amounts payable in accordance with the payment schedule by or on behalf of the employer [<sup>F252</sup>on the employer's own account] have not been paid on or before the due date, section 10 applies to the employer.
- (4) If, in the case of an occupational pension scheme to which section 87 applies, subsection (1) is not complied with—
- <sup>F253</sup>(a) . . . . .
- (b) section 10 applies to any trustee or manager who has failed to take all such steps.

#### Textual Amendments

- F251** S. 88(1) substituted (1.7.2005 for specified purposes, 6.4.2006 in so far as not already in force) by [Pensions Act 2004 \(c. 35\)](#), **ss. 269(2)**, [322\(1\)](#) (with s. 313); S.I. 2005/1720, art. 2(15)(a)(b), **Sch. Pt. 2**
- F252** Words in s. 88(3) inserted (11.11.1999 for specified purposes, 3.4.2000 in so far as not already in force) by [Welfare Reform and Pensions Act 1999 \(c. 30\)](#), **ss. 10(2)**, [89\(5\)\(a\)](#); S.I. 2000/629, art. 2
- F253** S. 88(4)(a) repealed (6.4.2006) by [Pensions Act 2004 \(c. 35\)](#), s. 322(1), **Sch. 12 para. 65**, **Sch. 13**; S.I. 2006/560, art. 2(3), **Sch. Pt. 3**

#### Modifications etc. (not altering text)

- C182** S. 88 applied (24.7.2014) by [The Pensions Act 2011 \(Transitional, Consequential and Supplementary Provisions\) Regulations 2014 \(S.I. 2014/1711\)](#), regs. 1(1), **68**

#### Commencement Information

- I67** S. 88 in force at 6.4.1996 for specified purposes by S.I. 1996/778, art. 2(5)(a), **Sch. Pt. V**
- I68** S. 88 in force at 6.4.1997 in so far as not already in force by S.I. 1997/664, art. 2(3), **Sch. Pt. 3**

## 89 Application of further provisions to money purchase schemes.

- (1) In the case of money purchase schemes falling within a prescribed class or description, regulations may—
- (a) provide for any of the provisions of [<sup>F254</sup>Part 3 of the Pensions Act 2004] to apply, or apply with prescribed modifications (in spite of anything in [<sup>F255</sup>that Part]), and
- (b) provide for any of the provisions of sections 87 and 88 to apply with prescribed modifications or not to apply,
- to such extent as may be prescribed.
- (2) Regulations may provide for any of the provisions of section 75 to apply, or apply with prescribed modifications, to money purchase schemes to such extent as may be prescribed (in spite of anything in that section), and the power conferred by this

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subsection includes power to apply section 75 in circumstances other than those in which the scheme is being wound up or a relevant <sup>F256</sup>... event occurs (within the meaning of that section).

[<sup>F257</sup>(3) Where a pension scheme is divided into sections, each section that is a collective money purchase scheme for the purposes of Part 1 of the Pension Schemes Act 2021 (see section 1(2)(b) of that Act) is to be treated for the purposes of this section as a separate money purchase scheme.]

#### Textual Amendments

- F254** Words in s. 89(1)(a) substituted (6.4.2005) by Pensions Act 2004 (c. 35), s. 322(1), **Sch. 12 para. 66(a)(i)**; S.I. 2005/695, art. 2(7), Sch. 1
- F255** Words in s. 89(1)(a) substituted (6.4.2005) by Pensions Act 2004 (c. 35), s. 322(1), **Sch. 12 para. 66(a)(ii)**; S.I. 2005/695, art. 2(7), Sch. 1
- F256** Word in s. 89(2) repealed (6.4.2005) by Pensions Act 2004 (c. 35), s. 322(1), Sch. 12 para. 66(b), **Sch. 13**; S.I. 2005/695, art. 2(7), Sch. 1
- F257** S. 89(3) inserted (11.2.2021 for specified purposes) by Pension Schemes Act 2021 (c. 1), s. 131(1)(3) (a), **Sch. 3 para. 10**

#### Modifications etc. (not altering text)

- C183** S. 89 applied (24.7.2014) by The Pensions Act 2011 (Transitional, Consequential and Supplementary Provisions) Regulations 2014 (S.I. 2014/1711), regs. 1(1), **68**

#### Commencement Information

- I69** S. 89 in force at 6.4.1996 for specified purposes by S.I. 1996/778, art. 2(5)(a), **Sch. Pt. V**
- I70** S. 89 in force at 6.4.1997 in so far as not already in force by S.I. 1997/664, art. 2(3), **Sch. Pt. 3**

## 90 Unpaid contributions in cases of insolvency.

In section 124 of the <sup>M14</sup>Pension Schemes Act 1993 (duty of Secretary of State to pay unpaid contributions to schemes), after subsection (3) there is inserted—

“(3A) Where the scheme in question is a money purchase scheme, the sum payable under this section by virtue of subsection (3) shall be the lesser of the amounts mentioned in paragraphs (a) and (c) of that subsection”, and, accordingly, at the beginning of subsection (3) there is inserted “Subject to subsection (3A),”.

#### Marginal Citations

- M14** 1993 c. 48.

*Assignment, forfeiture, bankruptcy etc.*

## 91 Inalienability of occupational pension.

- (1) Subject to subsection (5), where a person is entitled [<sup>F258</sup>to a pension under an occupational pension scheme or has a right to a future pension under such a scheme]—
- (a) the entitlement or right cannot be assigned, commuted or surrendered,

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- (b) the entitlement or right cannot be charged or a lien exercised in respect of it, and
  - (c) no set-off can be exercised in respect of it,
- and an agreement to effect any of those things is unenforceable.
- (2) Where by virtue of this section a person's entitlement [<sup>F259</sup>to a pension under an occupational pension scheme, or right to a future pension under such a scheme,] cannot, apart from subsection (5), be assigned, no order can be made by any court the effect of which would be that he would be restrained from receiving that pension.
- <sup>F260</sup>(3) .....
- (4) Subsection (2) does not prevent the making of—
- (a) an attachment of earnings order under the <sup>M15</sup>Attachment of Earnings Act 1971, or
  - (b) an income payments order under the <sup>M16</sup>Insolvency Act 1986.
- (5) In the case of a person (“the person in question”) who is entitled [<sup>F261</sup>to a pension under an occupational pension scheme, or has a right to a future pension under such a scheme], subsection (1) does not apply to any of the following, or any agreement to effect any of the following—
- (a) an assignment in favour of the person in question's widow, widower [<sup>F262</sup>, surviving civil partner] or dependant,
  - (b) a surrender, at the option of the person in question, for the purpose of—
    - (i) providing benefits for that person's widow, widower [<sup>F262</sup>, surviving civil partner] or dependant, or
    - (ii) acquiring for the person in question entitlement to further benefits under the scheme,
  - (c) a commutation—
    - (i) of the person in question's benefit on or after retirement or in exceptional circumstances of serious ill health,
    - (ii) in prescribed circumstances, of any benefit for that person's widow, widower [<sup>F262</sup>, surviving civil partner] or dependant, or
    - (iii) in other prescribed circumstances,
  - (d) subject to subsection (6), a charge or lien on, or set-off against, the person in question's entitlement, or [<sup>F263</sup>right,] (except to the extent that it includes transfer credits other than prescribed transfer credits) for the purpose of enabling the employer to obtain the discharge by him of some monetary obligation due to the employer and arising out of a criminal, negligent or fraudulent act or omission by him,
  - (e) subject to subsection (6), except in prescribed circumstances a charge or lien on, or set-off against, the person in question's entitlement, or [<sup>F264</sup>right], for the purpose of discharging some monetary obligation due from the person in question to the scheme and—
    - (i) arising out of a criminal, negligent or fraudulent act or omission by him, or
    - (ii) in the case of a trust scheme of which the person in question is a trustee, arising out of a breach of trust by him,
  - <sup>F265</sup>(f) subject to subsection (6), a charge or lien on, or set-off against, the person in question's entitlement, or right, for the purpose of discharging some monetary

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obligation due from the person in question to the scheme arising out of a payment made in error in respect of the pension.]

- (6) Where a charge, lien or set-off is exercisable by virtue of subsection (5)(d) [<sup>F266</sup>, (e) or (f)] —
- (a) its amount must not exceed the amount of the monetary obligation in question, or (if less) the value (determined in the prescribed manner) of the person in question's entitlement or accrued right, and
- (b) the person in question must be given a certificate showing the amount of the charge, lien or set-off and its effect on his benefits under the scheme, and where there is a dispute as to its amount, the charge, lien or set-off must not be exercised unless the obligation in question has become enforceable under an order of a competent court or in consequence of an award of an arbitrator or, in Scotland, an arbiter to be appointed (failing agreement between the parties) by the sheriff.
- (7) This section is subject to section 159 of the <sup>M17</sup>Pension Schemes Act 1993 (inalienability of guaranteed minimum pension <sup>F267</sup> ...).

#### Textual Amendments

- F258** Words in s. 91(1) substituted (1.12.2000) by Welfare Reform and Pensions Act 1999 (c. 30), s. 89(1), **Sch. 12 para. 57(2)**; S.I. 2000/1047, art. 2(2)(d), Sch. Pt. IV
- F259** Words in s. 91(2) substituted (1.12.2000) by Welfare Reform and Pensions Act 1999 (c. 30), s. 89(1), **Sch. 12 para. 57(3)**; S.I. 2000/1047, art. 2(2)(d), Sch. Pt. IV
- F260** S. 91(3) repealed (6.4.2002) by Welfare Reform and Pensions Act 1999 (c. 30), s. 89(1), **Sch. 13 Pt. I**; S.I. 2002/153, art. 2(1)(ii)
- F261** Words in s. 91(5) substituted (1.12.2000) by Welfare Reform and Pensions Act 1999 (c. 30), s. 89(1), **Sch. 12 para. 57(4)(a)**; S.I. 2000/1047, art. 2(2)(d), Sch. Pt. IV
- F262** Words in s. 91(5)(a)(b)(c) inserted (5.12.2005) by The Civil Partnership (Pensions and Benefit Payments) (Consequential, etc. Provisions) Order 2005 (S.I. 2005/2053), art. 1(3), **Sch. para. 23**
- F263** Words in s. 91(5)(d) substituted (1.12.2000) by Welfare Reform and Pensions Act 1999 (c. 30), s. 89(1), **Sch. 12 para. 57(4)(b)**; S.I. 2000/1047, art. 2(2)(d), Sch. Pt. IV
- F264** Words in s. 91(5)(e) substituted (1.12.2000) by Welfare Reform and Pensions Act 1999 (c. 30), s. 89(1), **Sch. 12 para. 57(4)(c)**; S.I. 2000/1047, art. 2(2)(d), Sch. Pt. IV
- F265** S. 91(5)(f) inserted (6.4.2005) by Pensions Act 2004 (c. 35), **ss. 266(2)**, 322(1) (with s. 313); S.I. 2005/275, art. 2(7), Sch. Pt. 7
- F266** Words in s. 91(6) substituted (6.4.2005) by Pensions Act 2004 (c. 35), **ss. 266(3)**, 322(1) (with s. 313); S.I. 2005/275, art. 2(7), Sch. Pt. 7
- F267** Words in s. 91(7) omitted (6.4.2012) by The Pensions Act 2008 (Abolition of Protected Rights) (Consequential Amendments) (No. 2) Order 2011 (S.I. 2011/1730), arts. 1(2)(a), **6(2A)** (as inserted by S.I. 2012/709, arts. 1(2), 2(8))

#### Modifications etc. (not altering text)

- C184** Ss. 91-94 modified (30.12.2005) by The Occupational Pension Schemes (Cross-border Activities) Regulations 2005 (S.I. 2005/3381), regs. 1, 14, **Sch. 2 para. 3**
- C185** S. 91 excluded in part by The Occupational Pension Schemes (Assignment, Forfeiture, Bankruptcy etc) Regulations 1997 (S.I. 1997/785), **reg. 8** (as amended (9.8.1999) by S.I. 1999/1849, regs. 1(a), 3(2)(a); (6.4.2006) by S.I. 2006/744, arts. 1, 14(4); (11.8.2011) by S.I. 2011/1801, regs. 1, 2)
- C186** S. 91 excluded (11.11.1999 for specified purposes, 1.12.2000 in so far as not already in force) by Welfare Reform and Pensions Act 1999 (c. 30), **ss. 44(1)(b)**, 89(5)(a); S.I. 2000/1047, art. 2(2)(d), Sch. Pt. IV

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- C187** S. 91 excluded by [Insolvency Act 1986 \(c. 45\), s. 342C\(2\)](#) (as substituted (E.W.) (11.11.1999 for specified purposes, 6.4.2002 in so far as not already in force) by [Welfare Reform and Pensions Act 1999 \(c. 30\), ss. 15, 89\(5\)\(a\); S.I. 2002/153, art. 2\(e\)](#))
- C188** S. 91 modified in part (11.11.1999 for specified purposes, 1.10.2000 in so far as not already in force) by [Welfare Reform and Pensions Act 1999 \(c. 30\), s. 89\(5\)\(a\), Sch. 1 para. 1\(1\)\(2\)\(b\)\(x\); S.I. 2000/1047, art. 2\(2\)\(c\), Sch. Pt. III](#)
- C189** S. 91 excluded by [Insolvency Act 1986 \(c. 45\), s. 342F\(5\)\(a\)](#) (as inserted (E.W.) (26.3.2002 for specified purposes, 6.4.2002 in so far as not already in force) by [Welfare Reform and Pensions Act 1999 \(c. 30\), s. 89\(1\), Sch. 12 para. 71; S.I. 2002/818, art. 3\(b\)](#))
- C190** S. 91 excluded (24.2.2003) by [Proceeds of Crime Act 2002 \(c. 29\), ss. 273\(5\)\(a\), 458\(2\)](#) (with s. 277(8)); [S.I. 2003/120, art. 2, Sch. \(with arts. 3, 4\)](#) (as amended (20.2.2003) by [S.I. 2003/333, art. 14](#))
- C191** S. 91 excluded (1.1.2006) by [The Proceeds of Crime Act 2002 \(External Requests and Orders\) Order 2005 \(S.I. 2005/3181\), arts. 1, 184\(5\)\(a\)](#)
- C192** S. 91 applied (1.4.2015) by [The Teachers' Pension Scheme Regulations 2014 \(S.I. 2014/512\), regs. 1\(2\), 180\(2\)](#) (with reg. 183)
- C193** S. 91 excluded (30.11.2016) by [Bankruptcy \(Scotland\) Act 2016 \(asp 21\), ss. 103\(2\)\(a\), 237\(2\)](#) (with ss. 232, 234(3), 235, 236); [S.S.I. 2016/294, reg. 2](#)
- C194** S. 91 excluded (30.11.2016) by [Bankruptcy \(Scotland\) Act 2016 \(asp 21\), ss. 106\(3\)\(a\), 237\(2\)](#) (with ss. 232, 234(3), 235, 236); [S.S.I. 2016/294, reg. 2](#)
- C195** S. 91(5)(a)-(c) excluded (1.9.2009) by [Scottish Parliamentary Pensions Act 2009 \(asp 1\), s. 5\(3\), sch. 1 para. 106](#)
- C196** S. 91(5)(d) modified (6.4.1997) by [The Occupational Pension Schemes \(Assignment, Forfeiture, Bankruptcy etc.\) Regulations 1997 \(S.I. 1997/785\), regs. 1\(1\), 7](#)

#### Commencement Information

- I71** S. 91 in force at 6.4.1996 for specified purposes by [S.I. 1996/778, art. 2\(5\)\(a\), Sch. Pt. V](#)
- I72** S. 91(1)(2) in force at 6.4.1997 in so far as not already in force by [S.I. 1997/664, art. 2\(3\), Sch. Pt. 3](#)
- I73** S. 91(4)-(7) in force at 6.4.1997 in so far as not already in force by [S.I. 1997/664, art. 2\(3\), Sch. Pt. 3](#)

#### Marginal Citations

- M15** 1971 c. 32.
- M16** 1986 c. 45.
- M17** 1993 c. 48.

## 92 Forfeiture, etc.

- (1) Subject to the provisions of this section and section 93, an entitlement [<sup>F268</sup>to a pension under an occupational pension scheme or a right to a future pension under such a scheme] cannot be forfeited.
- (2) Subsection (1) does not prevent forfeiture by reference to—
- (a) a transaction or purported transaction which under section 91 is of no effect,  
F269 ...
- F269(b) .....  
 whether or not that event occurred before or after the pension became payable.
- (3) Where such forfeiture as is mentioned in subsection (2) occurs, any pension which was, or would but for the forfeiture have become, payable may, if the trustees or managers of the scheme so determine, be paid to all or any of the following—
- (a) the member of the scheme to or in respect of whom the pension was, or would have become, payable,



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- [<sup>F270</sup>(b) the spouse, civil partner, widow, widower or surviving civil partner of the member,]
  - (c) any dependant of the member, and
  - (d) any other person falling within a prescribed class.
- (4) Subsection (1) does not prevent forfeiture by reference to the [<sup>F271</sup>pensioner, or prospective pensioner], having been convicted of one or more offences—
- (a) which are committed before the pension becomes payable, and
  - (b) which are—
    - (i) offences of treason,
    - (ii) offences under the Official Secrets Acts 1911 to 1989 for which the person has been sentenced on the same occasion to a term of imprisonment of, or to two or more consecutive terms amounting in the aggregate to, at least 10 years, or
    - (iii) prescribed offences.
- (5) Subsection (1) does not prevent forfeiture by reference to a failure by any person to make a claim for pension—
- (a) where the forfeiture is in reliance on any enactment relating to the limitation of actions, or
  - (b) where the claim is not made within six years of the date on which the pension becomes due.
- (6) Subsection (1) does not prevent forfeiture in prescribed circumstances.
- (7) In this section and section 93, references to forfeiture include any manner of deprivation or suspension.

#### Textual Amendments

- F268** Words in s. 92(1) substituted (1.12.2000) by [Welfare Reform and Pensions Act 1999 \(c. 30\), s. 89\(1\), Sch. 12 para. 58\(2\)](#); S.I. 2000/1047, art. 2(2)(d), Sch. Pt. IV
- F269** S. 92(2)(b) and preceding word repealed (11.11.1999 for specified purposes, 6.4.2002 in so far as not already in force) by [Welfare Reform and Pensions Act 1999 \(c. 30\), ss. 14\(3\), 89\(5\)\(a\), Sch. 13 Pt. I](#); S.I. 2002/153, art. 2(d)(l)(iii)
- F270** S. 92(3)(b) substituted (5.12.2005) by [The Civil Partnership \(Pensions and Benefit Payments\) \(Consequential, etc. Provisions\) Order 2005 \(S.I. 2005/2053\), art. 1\(3\), Sch. para. 24](#)
- F271** Words in s. 92(4) substituted (1.12.2000) by [Welfare Reform and Pensions Act 1999 \(c. 30\), s. 89\(1\), Sch. 12 para. 58\(3\)](#); S.I. 2000/1047, art. 2(2)(d), Sch. Pt. IV

#### Modifications etc. (not altering text)

- C184** Ss. 91-94 modified (30.12.2005) by [The Occupational Pension Schemes \(Cross-border Activities\) Regulations 2005 \(S.I. 2005/3381\), regs. 1, 14, Sch. 2 para. 3](#)
- C197** S. 92 modified (11.11.1999 for specified purposes, 1.10.2000 in so far as not already in force) by [Welfare Reform and Pensions Act 1999 \(c. 30\), s. 89\(5\)\(a\), Sch. 1 para. 1\(1\)\(2\)\(b\)\(x\)](#); S.I. 2000/1047, art. 2(2)(c), Sch. Pt. III
- C198** S. 92(1) modified (6.4.2016) by [The Occupational Pension Schemes \(Schemes that were Contracted-out\) \(No.2\) Regulations 2015 \(S.I. 2015/1677\), regs. 1\(2\)\(b\), 19](#)
- C199** S. 92(4)(a) excluded (6.4.1997) by [The Occupational Pension Schemes \(Assignment, Forfeiture, Bankruptcy etc.\) Regulations 1997 \(S.I. 1997/785\), regs. 1\(1\), 8\(5\)](#)

*Status: Point in time view as at 31/05/2021.*

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#### Commencement Information

**I74** S. 92 in force at 6.4.1996 for specified purposes by [S.I. 1996/778](#), art. 2(5)(a), **Sch. Pt. V**

**I75** S. 92 in force at 6.4.1997 in so far as not already in force by [S.I. 1997/664](#), art. 2(3), **Sch. Pt. 3**

### 93 Forfeiture by reference to obligation to employer.

- (1) Subject to subsection (2), section 92(1) does not prevent forfeiture of a person's entitlement [<sup>F272</sup>to a pension under an occupational pension scheme or right to a future pension under such a scheme] by reference to the person having incurred some monetary obligation due to the employer and arising out of a criminal, negligent or fraudulent act or omission by the person.
- (2) A person's entitlement or [<sup>F273</sup>right] may be forfeited by reason of subsection (1) to the extent only that it does not exceed the amount of the monetary obligation in question, or (if less) the value (determined in the prescribed manner) of the person's entitlement or [<sup>F274</sup>right].
- (3) Such forfeiture as is mentioned in subsection (1) must not take effect where there is a dispute as to the amount of the monetary obligation in question, unless the obligation has become enforceable under an order of a competent court or in consequence of an award of an arbitrator or, in Scotland, an arbiter to be appointed (failing agreement between the parties) by the sheriff.
- (4) Where a person's entitlement or [<sup>F275</sup>right] is forfeited by reason of subsection (1), the person must be given a certificate showing the amount forfeited and the effect of the forfeiture on his benefits under the scheme.
- (5) Where such forfeiture as is mentioned in subsection (1) occurs, an amount not exceeding the amount forfeited may, if the trustees or managers of the scheme so determine, be paid to the employer.

#### Textual Amendments

**F272** Words in s. 93(1) substituted (1.12.2000) by [Welfare Reform and Pensions Act 1999 \(c. 30\)](#), s. 89(1), **Sch. 12 para. 59(2)**; [S.I. 2000/1047](#), art. 2(2)(d) Sch. Pt. 4

**F273** Word in s. 93(2) substituted (1.12.2000) by [Welfare Reform and Pensions Act 1999 \(c. 30\)](#), s. 89(1), **Sch. 12 para. 59(3)(a)**; [S.I. 2000/1047](#), art. 2(2)(d) Sch. Pt. 4

**F274** Word in s. 93(2) substituted (1.12.2000) by [Welfare Reform and Pensions Act 1999 \(c. 30\)](#), s. 89(1), **Sch. 12 para. 59(3)(b)**; [S.I. 2000/1047](#), art. 2(2)(d) Sch. Pt. 4

**F275** Word in s. 93(4) substituted (1.12.2000) by [Welfare Reform and Pensions Act 1999 \(c. 30\)](#), s. 89(1), **Sch. 12 para. 59(4)**; [S.I. 2000/1047](#), art. 2(2)(d) Sch. Pt. 4

#### Modifications etc. (not altering text)

**C184** [Ss. 91-94](#) modified (30.12.2005) by [The Occupational Pension Schemes \(Cross-border Activities\) Regulations 2005 \(S.I. 2005/3381\)](#), regs. 1, 14, **Sch. 2 para. 3**

#### Commencement Information

**I76** S. 93 in force at 6.4.1996 for specified purposes by [S.I. 1996/778](#), art. 2(5)(a), **Sch. Pt. V**

**I77** S. 93 in force at 6.4.1997 in so far as not already in force by [S.I. 1997/664](#), art. 2(3), **Sch. Pt. 3**

*Status: Point in time view as at 31/05/2021.*

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## 94 Sections 91 to 93: supplementary.

- (1) Regulations may—
- (a) modify sections 91 to 93 in their application to public service pension schemes or to other schemes falling within a prescribed class or description, or
  - (b) provide that those sections do not apply in relation to schemes falling within a prescribed class or description.
- (2) In those sections, “pension” in relation to an occupational pension scheme, includes any benefit under the scheme and any part of a pension and any payment by way of pension.
- (3) In the application of sections 91 and 92 to Scotland—
- (a) references to a charge are to be read as references to a right in security or a diligence and “charged” is to be interpreted accordingly,
  - (b) references to assignment are to be read as references to assignation and “assign” is to be interpreted accordingly,
  - <sup>F276</sup>(c) .....
  - (d) the reference to an income payments order under the <sup>M18</sup>Insolvency Act 1986 is to be read as a reference to an order under section [<sup>F277</sup>90 or 95 of the Bankruptcy (Scotland) Act 2016], <sup>F278</sup>...
  - <sup>F278</sup>(e) .....
  - [<sup>F279</sup>(f) after subsection 91(4) there is inserted—

“Subject to section 73(3)(d) of the Debtors (Scotland) Act 1987, nothing in this section prevents any diligence mentioned in section 46 of that Act being done against a pension under an occupational pension scheme.”]

### Textual Amendments

- F276** S. 94(3)(c) repealed (6.4.2002) by Welfare Reform and Pensions Act 1999 (c. 30), s. 89(1), **Sch. 13 Pt. I**; S.I. 2002/153, art. 2(1)(iii)
- F277** Words in s. 94(3)(d) substituted (30.11.2016) by The Bankruptcy (Scotland) Act 2016 (Consequential Provisions and Modifications) Order 2016 (S.I. 2016/1034), art. 1, **Sch. 1 para. 13(4)**
- F278** S. 94(3)(e) and preceding word repealed (6.4.2002) by Welfare Reform and Pensions Act 1999 (c. 30), s. 89(1), **Sch. 13 Pt. I**; S.I. 2002/153, art. 2(1)(iii)
- F279** S. 94(3)(f) inserted (11.11.1999 for specified purposes, 25.4.2000 in so far as not already in force) by Welfare Reform and Pensions Act 1999 (c. 30), s. 89(5)(a), **Sch. 2 para. 17**; S.I. 2000/1047, art. 2(2)(b), Sch. Pt. II

### Modifications etc. (not altering text)

- C184** Ss. 91-94 modified (30.12.2005) by The Occupational Pension Schemes (Cross-border Activities) Regulations 2005 (S.I. 2005/3381), regs. 1, 14, **Sch. 2 para. 3**
- C200** S. 94 modified (11.11.1999 for specified purposes, 1.10.2000 in so far as not already in force) by Welfare Reform and Pensions Act 1999 (c. 30), s. 89(5)(a), **Sch. 1 para. 1(1)(2)(b)(x)**; S.I. 2000/1047, art. 2(2)(c), Sch. Pt. III

### Commencement Information

- I78** S. 94 in force at 6.4.1996 for specified purposes by S.I. 1996/778, art. 2(5)(a), **Sch. Pt. V**
- I79** S. 94 in force at 6.4.1997 in so far as not already in force by S.I. 1997/664, art. 2(3), **Sch. Pt. 3**

*Status: Point in time view as at 31/05/2021.*

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**Marginal Citations**

**M18** 1986 c. 45.

**F280 95 Pension rights of individuals adjudged bankrupt etc.**

.....

**Textual Amendments**

**F280** S. 95 repealed (6.4.2002) by Welfare Reform and Pensions Act 1999 (c. 30), s. 89(1), **Sch. 13 Pt. I**; S.I. 2002/153, art. 2(1)(iv)

*Questioning the decisions of the Authority*

**F281 96 Review of decisions.**

.....

**Textual Amendments**

**F281** Ss. 96-114 repealed (6.4.2005) by Pensions Act 2004 (c. 35), s. 322(1), **Sch. 13**; S.I. 2005/695, art. 2(7), **Sch. 1** (with arts.4-6, Schs. 2, 3)

**F281 97 References and appeals from the Authority.**

.....

**Textual Amendments**

**F281** Ss. 96-114 repealed (6.4.2005) by Pensions Act 2004 (c. 35), s. 322(1), **Sch. 13**; S.I. 2005/695, art. 2(7), **Sch. 1** (with arts.4-6, Schs. 2, 3)

*Gathering information: the Authority*

**F281 98 Provision of information.**

.....

**Textual Amendments**

**F281** Ss. 96-114 repealed (6.4.2005) by Pensions Act 2004 (c. 35), s. 322(1), **Sch. 13**; S.I. 2005/695, art. 2(7), **Sch. 1** (with arts.4-6, Schs. 2, 3)

**F281 99 Inspection of premises.**

.....

*Status: Point in time view as at 31/05/2021.*

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**Textual Amendments**

**F281** Ss. 96-114 repealed (6.4.2005) by Pensions Act 2004 (c. 35), s. 322(1), **Sch. 13**; S.I. 2005/695, art. 2(7), **Sch. 1** (with arts.4-6, Schs. 2, 3)

**F281** **100 Warrants.**

.....

**Textual Amendments**

**F281** Ss. 96-114 repealed (6.4.2005) by Pensions Act 2004 (c. 35), s. 322(1), **Sch. 13**; S.I. 2005/695, art. 2(7), **Sch. 1** (with arts.4-6, Schs. 2, 3)

**F281** **101 Information and inspection: penalties.**

.....

**Textual Amendments**

**F281** Ss. 96-114 repealed (6.4.2005) by Pensions Act 2004 (c. 35), s. 322(1), **Sch. 13**; S.I. 2005/695, art. 2(7), **Sch. 1** (with arts.4-6, Schs. 2, 3)

**F281** **102 Savings for certain privileges etc.**

.....

**Textual Amendments**

**F281** Ss. 96-114 repealed (6.4.2005) by Pensions Act 2004 (c. 35), s. 322(1), **Sch. 13**; S.I. 2005/695, art. 2(7), **Sch. 1** (with arts.4-6, Schs. 2, 3)

**F281** **103 Publishing reports.**

.....

**Textual Amendments**

**F281** Ss. 96-114 repealed (6.4.2005) by Pensions Act 2004 (c. 35), s. 322(1), **Sch. 13**; S.I. 2005/695, art. 2(7), **Sch. 1** (with arts.4-6, Schs. 2, 3)

*Disclosure of information: the Authority*

**F281** **104 Restricted information.**

.....

*Status: Point in time view as at 31/05/2021.*

*Changes to legislation: Pensions Act 1995, Part I is up to date with all changes known to be in force on or before 23 June 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

**Textual Amendments**

**F281** Ss. 96-114 repealed (6.4.2005) by [Pensions Act 2004 \(c. 35\)](#), s. 322(1), [Sch. 13](#); S.I. 2005/695, art. 2(7), [Sch. 1](#) (with [arts.4-6](#), [Schs. 2, 3](#))

**F281 105 Information supplied to the Authority by corresponding overseas authorities.**

.....

**Textual Amendments**

**F281** Ss. 96-114 repealed (6.4.2005) by [Pensions Act 2004 \(c. 35\)](#), s. 322(1), [Sch. 13](#); S.I. 2005/695, art. 2(7), [Sch. 1](#) (with [arts.4-6](#), [Schs. 2, 3](#))

**F281 106 Disclosure for facilitating discharge of functions by the Authority.**

.....

**Textual Amendments**

**F281** Ss. 96-114 repealed (6.4.2005) by [Pensions Act 2004 \(c. 35\)](#), s. 322(1), [Sch. 13](#); S.I. 2005/695, art. 2(7), [Sch. 1](#) (with [arts.4-6](#), [Schs. 2, 3](#))

**F281 107 Disclosure for facilitating discharge of functions by other supervisory authorities.**

.....

**Textual Amendments**

**F281** Ss. 96-114 repealed (6.4.2005) by [Pensions Act 2004 \(c. 35\)](#), s. 322(1), [Sch. 13](#); S.I. 2005/695, art. 2(7), [Sch. 1](#) (with [arts.4-6](#), [Schs. 2, 3](#))

**F281 108 Other permitted disclosures.**

.....

**Textual Amendments**

**F281** Ss. 96-114 repealed (6.4.2005) by [Pensions Act 2004 \(c. 35\)](#), s. 322(1), [Sch. 13](#); S.I. 2005/695, art. 2(7), [Sch. 1](#) (with [arts.4-6](#), [Schs. 2, 3](#))

**F281 109 Disclosure of information by the Inland Revenue.**

.....

*Status: Point in time view as at 31/05/2021.*

*Changes to legislation: Pensions Act 1995, Part I is up to date with all changes known to be in force on or before 23 June 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

**Textual Amendments**

**F281** Ss. 96-114 repealed (6.4.2005) by [Pensions Act 2004 \(c. 35\)](#), s. 322(1), [Sch. 13](#); S.I. 2005/695, art. 2(7), [Sch. 1](#) (with [arts.4-6](#), [Schs. 2, 3](#))

*Gathering information: the Compensation Board*

**F281 110 Provision of information.**

.....

**Textual Amendments**

**F281** Ss. 96-114 repealed (6.4.2005) by [Pensions Act 2004 \(c. 35\)](#), s. 322(1), [Sch. 13](#); S.I. 2005/695, art. 2(7), [Sch. 1](#) (with [arts.4-6](#), [Schs. 2, 3](#))

**F281 111 Information: penalties.**

.....

**Textual Amendments**

**F281** Ss. 96-114 repealed (6.4.2005) by [Pensions Act 2004 \(c. 35\)](#), s. 322(1), [Sch. 13](#); S.I. 2005/695, art. 2(7), [Sch. 1](#) (with [arts.4-6](#), [Schs. 2, 3](#))

**F281 112 Savings for certain privileges.**

.....

**Textual Amendments**

**F281** Ss. 96-114 repealed (6.4.2005) by [Pensions Act 2004 \(c. 35\)](#), s. 322(1), [Sch. 13](#); S.I. 2005/695, art. 2(7), [Sch. 1](#) (with [arts.4-6](#), [Schs. 2, 3](#))

**F281 113 Publishing reports.**

.....

**Textual Amendments**

**F281** Ss. 96-114 repealed (6.4.2005) by [Pensions Act 2004 \(c. 35\)](#), s. 322(1), [Sch. 13](#); S.I. 2005/695, art. 2(7), [Sch. 1](#) (with [arts.4-6](#), [Schs. 2, 3](#))

**F281 114 Disclosure of information.**

.....

*Status: Point in time view as at 31/05/2021.*

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### Textual Amendments

**F281** Ss. 96-114 repealed (6.4.2005) by [Pensions Act 2004 \(c. 35\)](#), s. 322(1), [Sch. 13](#); [S.I. 2005/695](#), art. 2(7), [Sch. 1](#) (with [arts.4-6](#), [Schs. 2, 3](#))

### General

## 115 Offences by bodies corporate and partnerships.

- (1) Where an offence under this Part committed by a body corporate is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, a director, manager, secretary or other similar officer of the body, or a person purporting to act in any such capacity, he as well as the body corporate is guilty of the offence and liable to be proceeded against and punished accordingly.
- (2) Where the affairs of a body corporate are managed by its members, subsection (1) applies in relation to the acts and defaults of a member in connection with his functions of management as to a director of a body corporate.
- (3) Where an offence under this Part committed by a Scottish partnership is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, a partner, he as well as the partnership is guilty of the offence and liable to be proceeded against and punished accordingly.

### Modifications etc. (not altering text)

**C201** S. 115 applied (11.11.1999 for specified purposes, 1.10.2000 in so far as not already in force) by [Welfare Reform and Pensions Act 1999 \(c. 30\)](#), [ss. 2\(6\)](#), [89\(5\)\(a\)](#) (with [s. 8\(6\)](#)); [S.I. 2000/1047](#), art. 2(2)(c), [Sch. Pt. 3](#)

### Commencement Information

**I80** S. 115 in force at 6.4.1997 by [S.I. 1997/664](#), art. 2(3), [Sch. Pt. 3](#)

## 116 Breach of regulations.

- (1) Regulations made by virtue of any provision of this Part may provide for the contravention of any provision contained in any such regulations to be an offence under this Part and for the recovery on summary conviction for any such offence of a fine not exceeding level 5 on the standard scale.
- (2) An offence under any provision of the regulations may be charged by reference to any day or longer period of time; and a person may be convicted of a second or subsequent offence under such a provision by reference to any period of time following the preceding conviction of the offence.
- (3) Where by reason of the contravention of any provision contained in regulations made by virtue of this Part—
  - (a) a person is convicted of an offence under this Part, or
  - (b) a person pays a penalty under section 10 [<sup>F282</sup> or under provision contained in regulations made by virtue of section 41C],



*Status: Point in time view as at 31/05/2021.*

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then, in respect of that contravention, he shall not, in a case within paragraph (a), be liable to pay such a penalty or, in a case within paragraph (b), be convicted of such an offence.

**Textual Amendments**

**F282** Words in s. 116(3)(b) inserted (31.5.2021) by Pension Schemes Act 2021 (c. 1), ss. 124(3), 131(1); S.I. 2021/620, reg. 2(2)(b)

**Modifications etc. (not altering text)**

**C202** S. 116 applied (1.9.2005) by Pensions Act 2004 (c. 35), ss. 314(b), 322(1) (with s. 313); S.I. 2005/2447, art. 2(4), Sch. Pt. 1

**Commencement Information**

**I81** S. 116(1) in force at 16.7.1996 by S.I. 1996/1853, reg. 2

**I82** S. 116(2)(3) in force at 6.4.1997 in so far as not already in force by S.I. 1997/664, art. 2(3), Sch. Pt. 3

**117 Overriding requirements.**

- (1) Where any provision mentioned in subsection (2) conflicts with the provisions of an occupational pension scheme—
  - (a) the provision mentioned in subsection (2), to the extent that it conflicts, overrides the provisions of the scheme, and
  - (b) the scheme has effect with such modifications as may be required in consequence of paragraph (a).
- (2) The provisions referred to in subsection (1) are those of—
  - (a) this Part,
  - (b) any subordinate legislation made or having effect as if made under this Part,  
F283 ...
  - F284 (c) .....

**Textual Amendments**

**F283** Word in s. 117(2)(b) repealed (6.4.2006) by Pensions Act 2004 (c. 35), s. 322(1), Sch. 13; S.I. 2005/3331, art. 2(6), Sch. Pt. 6

**F284** S. 117(2)(c) repealed (6.4.2006) by Pensions Act 2004 (c. 35), s. 322(1), Sch. 13; S.I. 2005/3331, art. 2(6), Sch. Pt. 6

**Modifications etc. (not altering text)**

**C203** S. 117 modified (11.11.1999 for specified purposes, 1.10.2000 in so far as not already in force) by Welfare Reform and Pensions Act 1999 (c. 30), s. 89(5)(a), Sch. 1 para. 1(1)(2)(b)(xiv); S.I. 2000/1047, art. 2(2)(c), Sch. Pt. III

**Commencement Information**

**I83** S. 117 in force at 4.12.1995 for specified purposes and 1.1.1996 for specified purposes by S.I. 1995/3104, art. 2(1)(2)

**I84** S. 117 in force at 6.10.1996 for specified purposes by S.I. 1996/778, art. 2(5)(c)

**I85** S. 117 in force at 6.4.1997 in so far as not already in force by S.I. 1997/664, art. 2(3), Sch. Pt. 3

*Status: Point in time view as at 31/05/2021.*

*Changes to legislation: Pensions Act 1995, Part I is up to date with all changes known to be in force on or before 23 June 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

## 118 Powers to modify this Part.

- (1) Regulations may modify any provisions of this Part, in their application—
- (a) to a trust scheme which applies to earners in employments under different employers,
  - (b) to a trust scheme of which there are no members who are in pensionable service under the scheme, or
  - (c) to any case where a partnership is the employer, or one of the employers, in relation to a trust scheme.
- (2) Regulations may provide for [<sup>F285</sup>some or all of the provisions of sections 22 [<sup>F286</sup>to 26]], and section 117 (so far as it applies to those sections), not to apply in relation to a trust scheme falling within a prescribed class or description.

<sup>F287</sup>(3) .....

### Textual Amendments

- F285** Words in s. 118(2) substituted (1.3.2002 for specified purposes, 1.4.2002 in so far as not already in force) by [Child Support, Pensions and Social Security Act 2000 \(c. 19\)](#), [ss. 47\(3\)](#), [86\(1\)\(b\)\(2\)](#) (with s. [83\(6\)](#)); [S.I. 2002/437](#), [art. 3\(1\)\(a\)\(2\)](#)
- F286** Words in s. 118(2) substituted (6.4.2005) by [Pensions Act 2004 \(c. 35\)](#), s. [322\(1\)](#), [Sch. 12 para. 67\(a\)](#); [S.I. 2005/1108](#), [art. 2\(2\)](#), [Sch.](#)
- F287** [S. 118\(3\)](#) repealed (6.4.2005) by [Pensions Act 2004 \(c. 35\)](#), s. [322\(1\)](#), [Sch. 12 para. 67\(b\)](#), [Sch. 13](#); [S.I. 2005/1108](#), [art. 2\(2\)](#), [Sch.](#)

### Commencement Information

- I86** S. 118 in force at 6.4.1996 for specified purposes by [S.I. 1996/778](#), [art. 2\(5\)\(b\)](#)
- I87** S. 118 in force at 16.10.1996 in so far as not already in force by [S.I. 1996/2637](#), [art. 2](#)

## 119 Calculations etc. under regulations: sub-delegation.

Regulations made by virtue of section <sup>F288</sup>... [<sup>F289</sup>73B(4)(a)] or 75 may provide for the values of the assets and the amounts of the liabilities there mentioned to be calculated and verified in accordance with guidance [<sup>F290</sup>prepared and from time to time revised by a prescribed body].

### Textual Amendments

- F288** Word in s. 119 repealed (6.4.2006) by [Pensions Act 2004 \(c. 35\)](#), s. [322\(1\)](#), [Sch. 13](#); [S.I. 2006/560](#), [art. 2\(3\)](#), [Sch. Pt. 3](#)
- F289** Word in s. 119 substituted (6.4.2005) by [Pensions Act 2004 \(c. 35\)](#), s. [322\(1\)](#), [Sch. 12 para. 68](#); [S.I. 2005/695](#), [art. 2\(7\)](#), [Sch. 1](#)
- F290** Words in s. 119 substituted (1.11.2007) by [Pensions Act 2007 \(c. 22\)](#), s. [30\(2\)](#), [Sch. 5 para. 8](#); [S.I. 2007/3063](#), [art. 2\(b\)](#)

### Commencement Information

- I88** S. 119 in force at 6.4.1996 by [S.I. 1996/778](#), [art. 2\(4\)](#), [Sch. Pt. IV](#)

*Status: Point in time view as at 31/05/2021.*

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## 120 Consultations about regulations.

- (1) Before the Secretary of State makes any regulations by virtue of this Part, he must consult such persons as he considers appropriate.
- (2) Subsection (1) does not apply—
  - (a) to regulations made for the purpose only of consolidating other regulations revoked by them,
  - (b) to regulations in the case of which the Secretary of State considers consultation inexpedient because of urgency,
  - (c) to regulations made before the end of the period of six months beginning with the coming into force of the provision of this Part by virtue of which the regulations are made, or
  - (d) to regulations which—
    - (i) state that they are consequential upon a specified enactment, and
    - (ii) are made before the end of the period of six months beginning with the coming into force of that enactment.

### Commencement Information

**189** S. 120 in force at 4.12.1995 for specified purposes and 1.1.1996 for specified purposes by [S.I. 1995/3104](#), [art. 2\(2\)](#)

**190** S. 120 in force at 6.4.1996 in so far as not already in force by [S.I. 1996/778](#), [art. 2\(4\)](#), [Sch. Pt. IV](#)

## 121 Crown application.

- (1) This Part applies to an occupational pension scheme managed by or on behalf of the Crown as it applies to other occupational pension schemes; and, accordingly, references in this Part to a person in his capacity as a trustee or manager of an occupational pension scheme include the Crown, or a person acting on behalf of the Crown, in that capacity.
- (2) References in this Part to a person in his capacity as employer in relation to an occupational pension scheme include the Crown, or a person acting on behalf of the Crown, in that capacity.
- (3) This section does not apply to any provision made by or under this Part under which a person may be prosecuted for an offence; but such a provision applies to persons in the public service of the Crown as it applies to other persons.
- (4) This section does not apply to sections 42 to 46.
- (5) Nothing in this Part applies to Her Majesty in Her private capacity (within the meaning of the <sup>M19</sup>Crown Proceedings Act 1947).

### Commencement Information

**191** S. 121 in force at 4.12.1995 for specified purposes and 1.1.1996 for specified purposes by [S.I. 1995/3104](#), [art. 2\(1\)\(2\)](#)

**192** S. 121 in force at 6.4.1996 in so far as not already in force by [S.I. 1996/778](#), [art. 2\(4\)](#), [Sch. Pt. IV](#)

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### Marginal Citations

**M19** 1947 c. 44.

## 122 Consequential amendments.

Schedule 3 (amendments consequential on this Part) shall have effect.

### Commencement Information

**I93** S. 122 in force at 1.1.1996 for specified purposes by [S.I. 1995/3104, art. 2\(3\)](#)

**I94** S. 122 in force at 16.10.1996 for specified purposes by [S.I. 1996/2637, art. 3](#)

**I95** S. 122 in force at 1.4.1997 for specified purposes by [S.I. 1997/664, art. 2\(2\), Sch. Pt. I](#)

**I96** S. 122 in force at 6.4.1997 in so far as not already in force by [S.I. 1997/664, art. 2\(3\), Sch. Pt. 3](#)

## 123 “Connected” and “associated” persons.

(1) Sections 249 and 435 of the <sup>M20</sup>Insolvency Act 1986 (connected and associated persons) shall apply for the purposes of the provisions of this Act listed in subsection (3) as they apply for the purposes of that Act.

(2) Section [<sup>F291</sup>229 of the Bankruptcy (Scotland) Act 2016 (meaning of “associate”)] shall apply for the purposes of the provisions so listed as it applies for the purposes of that Act.

(3) The provisions referred to in subsections (1) and (2) are—

- (a) section 23(3)(b),
- (b) sections 27 and 28,
- (c) section 40,

but in the case of section 40 the provisions mentioned in subsections (1) and (2) shall apply for those purposes with any prescribed modifications.

### Textual Amendments

**F291** Words in [s. 123\(2\)](#) substituted (30.11.2016) by [The Bankruptcy \(Scotland\) Act 2016 \(Consequential Provisions and Modifications\) Order 2016 \(S.I. 2016/1034\), art. 1, Sch. 1 para. 13\(5\)](#)

### Commencement Information

**I97** S. 123(1)(2) in force at 6.4.1997 in so far as not already in force by [S.I. 1997/664, art. 2\(3\), Sch. Pt. 3](#)

**I98** S. 123(3) in force at 6.4.1996 by [S.I. 1996/778, art. 2\(4\), Sch. Pt. IV](#)

### Marginal Citations

**M20** 1986 c. 45.

## 124 Interpretation of Part I.

(1) In this Part—

“active member”, in relation to an occupational pension scheme, means a person who is in pensionable service under the scheme,

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“the actuary” and “the auditor”, in relation to an occupational pension scheme, have the meanings given by section 47,

[<sup>F292</sup>“the Authority” means the Pensions Regulator,]

<sup>F293</sup>

“the Compensation Board” has the meaning given by section 78(1),

“the compensation provisions” has the meaning given by section 81(3),

“contravention” includes failure to comply,

“deferred member”, in relation to an occupational pension scheme, means a person (other than an active or pensioner member) who has accrued rights under the scheme,

“employer”, in relation to an occupational pension scheme, means the employer of persons in the description [<sup>F294</sup>or category] of employment to which the scheme in question relates (but see section 125(3)),

“equal treatment rule” has the meaning given by section 62,

“firm” means a body corporate or a partnership,

“fund manager”, in relation to an occupational pension scheme, means a person who manages the investments held for the purposes of the scheme,

“independent trustee” has the meaning given by section 23(3),

“managers”, in relation to an occupational pension scheme other than a trust scheme, means the persons responsible for the management of the scheme,

“member”, in relation to an occupational pension scheme, means any active, deferred [<sup>F295</sup>, pensioner or pension credit] member (but see section 125(4)),

<sup>F294</sup>

<sup>F294</sup>

<sup>F294</sup>

“normal pension age” has the meaning given by section 180 of the <sup>M21</sup>Pension Schemes Act 1993,

“payment schedule” has the meaning given by section 87(2),

[<sup>F296</sup>“pension credit” means a credit under section 29(1)(b) of the Welfare Reform and Pensions Act 1999, or under corresponding Northern Ireland legislation,]

[<sup>F296</sup>“pension credit member”, in relation to an occupational pension scheme, means a person who has rights under the scheme which are attributable (directly or indirectly) to a pension credit,]

[<sup>F296</sup>“pension credit rights”, in relation to an occupational pension scheme, means rights to future benefits under the scheme which are attributable (directly or indirectly) to a pension credit,]

“pensionable service”, in relation to a member of an occupational pension scheme, means service in any description [<sup>F294</sup>or category] of employment to which the scheme relates which qualifies the member (on the assumption that it continues for the appropriate period) for pension or other benefits under the scheme,

“pensioner member”, in relation to an occupational pension scheme, means a person who in respect of his pensionable service under the scheme or by reason of transfer credits, is entitled to the present payment of pension or other benefits <sup>F297</sup> ... ,

“prescribed” means prescribed by regulations,

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“professional adviser”, in relation to a scheme, has the meaning given by section 47,

“public service pension scheme” has the meaning given by section 1 of the Pension Schemes Act 1993,

“regulations” means regulations made by the Secretary of State,

“resources”, in relation to an occupational pension scheme, means the funds out of which the benefits provided by the scheme are payable from time to time, including the proceeds of any policy of insurance taken out, or annuity contract entered into, for the purposes of the scheme,

“Scottish partnership” means a partnership constituted under the law of Scotland,

“the Taxes Act 1988” means the <sup>M22</sup>Income and Corporation Taxes Act 1988,

“transfer credits” means rights allowed to a member under the rules of an occupational pension scheme by reference to <sup>F298</sup>—

- (a) a transfer to the scheme of, or transfer payment to the trustees or managers of the scheme in respect of, any of his rights (including transfer credits allowed) under another occupational pension scheme or a personal pension scheme, other than pension credit rights, or
- (b) a cash transfer sum paid under <sup>F299</sup>Chapter 2 of Part 4ZA of the Pension Schemes Act 1993 (transfers and contribution refunds)] in respect of him, to the trustees or managers of the scheme,]

“trustees or managers”, in relation to an occupational pension scheme, means—

- (a) in the case of a trust scheme, the trustees of the scheme, and
- (b) in any other case, the managers of the scheme,

“trust scheme” means an occupational pension scheme established under a trust.

(2) For the purposes of this Part—

- (a) the accrued rights of a member of an occupational pension scheme at any time are the rights which have accrued to or in respect of him at that time to future benefits under the scheme, and
- (b) at any time when the pensionable service of a member of an occupational pension scheme is continuing, his accrued rights are to be determined as if he had opted, immediately before that time, to terminate that service;

and references to accrued pension or accrued benefits are to be interpreted accordingly.

<sup>F300</sup>(2A) In subsection (2)(a), the reference to rights which have accrued to or in respect of the member does not include any rights which are pension credit rights.]

(3) In determining what is “pensionable service” for the purposes of this Part—

- (a) service notionally attributable for any purpose of the scheme is to be disregarded, and
- (b) no account is to be taken of any rules of the scheme by which a period of service can be treated for any purpose as being longer or shorter than it actually is <sup>F301</sup>but, in its application for the purposes of section 51, paragraph (b) does not affect the operation of any rules of the scheme by virtue of which a period of service is to be rounded up or down by a period of less than a month.]

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- [<sup>F302</sup>(3A) In a case of the winding-up of an occupational pension scheme in pursuance of an order of the Authority under section 11 or of an order of a court, the winding-up shall (subject to subsection (3E) [<sup>F303</sup>and to sections 28, 154 and 219 of the Pensions Act 2004]) be taken for the purposes of this Part to begin—
- (a) if the order provides for a time to be the time when the winding-up begins, at that time; and
  - (b) in any other case, at the time when the order comes into force.
- (3B) In a case of the winding-up of an occupational pension scheme in accordance with a requirement or power contained in the rules of the scheme, the winding-up shall (subject to subsections (3C) to (3E) [<sup>F304</sup>and to sections 154 and 219 of the Pensions Act 2004]) be taken for the purposes of this Part to begin—
- (a) at the time (if any) which under those rules is the time when the winding-up begins; and
  - (b) if paragraph (a) does not apply, at the earliest time which is a time fixed by the trustees or managers as the time from which steps for the purposes of the winding-up are to be taken.
- (3C) Subsection (3B) shall not require a winding-up of a scheme to be treated as having begun at any time before the end of any period during which effect is being given—
- (a) to a determination under section 38 that the scheme is not for the time being to be wound up; or
  - (b) to a determination in accordance with the rules of the scheme to postpone the commencement of a winding-up.
- (3D) In subsection (3B)(b) the reference to the trustees or managers of the scheme shall have effect in relation to any scheme the rules of which provide for a determination that the scheme is to be wound up to be made by persons other than the trustees or managers as including a reference to those other persons.
- (3E) Subsections (3A) to (3D) above do not apply for such purposes as may be prescribed.]
- (4) In the application of this Part to Scotland, in relation to conviction on indictment, references to imprisonment are to be read as references to imprisonment for a term not exceeding two years.
- (5) Subject to the provisions of this Act, expressions used in this Act and in the <sup>M23</sup>Pension Schemes Act 1993 have the same meaning in this Act as in that.

#### Textual Amendments

- F292** Words in s. 124(1) substituted (6.4.2005) by Pensions Act 2004 (c. 35), ss. 7(2)(b), 322(1) (with s. 313); S.I. 2005/275, art. 2(7), Sch. Pt. 7 (with S.I. 2005/695, arts. 5(3), 6, Schs. 2, 3)
- F293** Words in s. 124(1) omitted (E.W.) (13.3.2014) by virtue of The Marriage (Same Sex Couples) Act 2013 (Consequential and Contrary Provisions and Scotland) Order 2014 (S.I. 2014/560), art. 1(2), Sch. 1 para. 27; and omitted (S.) (16.12.2014) by virtue of The Marriage and Civil Partnership (Scotland) Act 2014 and Civil Partnership Act 2004 (Consequential Provisions and Modifications) Order 2014 (S.I. 2014/3229), art. 1(2), Sch. 5 para. 13
- F294** Words in s. 124(1) repealed (6.4.2006 for specified purposes, 6.4.2007 for specified purposes) by Pensions Act 2004 (c. 35), s. 322(1), Sch. 13; S.I. 2006/560, art. 2(3), Sch. Pt. 3; S.I. 2006/2272, art. 2(7), Sch. Pt. 2 (with art. 3)
- F295** Words in s. 124(1) substituted (1.12.2000) by Welfare Reform and Pensions Act 1999 (c. 30), s. 89(1), Sch. 12 para. 61(2); S.I. 2000/1047, art. 2(2)(d), Sch. Pt. IV

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- F296** Words in s. 124(1) inserted (1.12.2000) by Welfare Reform and Pensions Act 1999 (c. 30), s. 89(1), **Sch. 12 para. 61(3)**; S.I. 2000/1047, art. 2(2)(d), Sch. Pt. IV
- F297** Words in s. 124(1) omitted (6.4.2006) by virtue of The Taxation of Pension Schemes (Consequential Amendments) Order 2006 (S.I. 2006/745), arts. 1, **10(7)**
- F298** Words in s. 124(1) substituted (6.4.2006) by Pensions Act 2004 (c. 35), s. 322(1), **Sch. 12 para. 69(2)**; S.I. 2005/3331, art. 2(6), Sch. Pt. 6 (with savings in S.I. 2005/695, art. 6, Sch. 3)
- F299** Words in s. 124(1) substituted (6.4.2015) by Pension Schemes Act 2015 (c. 8), s. 89(3)(b), **Sch. 4 para. 32** (with s. 87)
- F300** S. 124(2A) inserted (1.12.2000) by Welfare Reform and Pensions Act 1999 (c. 30), s. 89(1), **Sch. 12 para. 61(4)**; S.I. 2000/1047, art. 2(2)(d), Sch. Pt. IV
- F301** Words in s. 124(3) inserted (11.11.1999 for specified purposes, 25.4.2000 in so far as not already in force) by Welfare Reform and Pensions Act 1999 (c. 30), s. 89(5)(a), **Sch. 2 para. 18**; S.I. 2000/1047, art. 2(2)(b), Sch. Pt. II
- F302** S. 124(3A)-(3E) inserted (1.3.2002 for specified purposes, 1.4.2002 in so far as not already in force) by Child Support, Pensions and Social Security Act 2000 (c. 19), **ss. 49(2)**, 86(1)(b)(2) (with s. 83(6)); S.I. 2002/437, art. 3(1)(e)(2)
- F303** Words in s. 124(3A) inserted (6.4.2006) by Pensions Act 2004 (c. 35), s. 322(1), **Sch. 12 para. 69(3)**; S.I. 2005/3331, art. 2(6), Sch. Pt. 6
- F304** Words in s. 124(3B) inserted (6.4.2006) by Pensions Act 2004 (c. 35), s. 322(1), **Sch. 12 para. 69(4)**; S.I. 2005/3331, art. 2(6), Sch. Pt. 6

#### Modifications etc. (not altering text)

- C204** S. 124 modified (11.11.1999 for specified purposes, 1.10.2000 in so far as not already in force) by Welfare Reform and Pensions Act 1999 (c. 30), s. 89(5)(a), **Sch. 1 para. 1(1)(2)(b)(xv)(5)**; S.I. 2000/1047, art. 2(2)(c), Sch. Pt. III
- C205** S. 124(3A)-(3D) excluded (1.4.2002) by The Occupational Pension Schemes (Winding Up Notices and Reports etc.) Regulations 2002 (S.I. 2002/459), regs. 1(1), **12** (with S.I. 2005/706, reg. 12)

#### Commencement Information

- I99** S. 124 in force at 4.12.1995 for specified purposes and 1.1.1996 for specified purposes by S.I. 1995/3104, **art. 2(1)(2)**
- I100** S. 124 in force at 6.4.1996 in so far as not already in force by S.I. 1996/778, art. 2(4), **Sch. Pt. IV**

#### Marginal Citations

- M21** 1993 c. 48.
- M22** 1993 c. 48.
- M23** 1993 c. 48.

## 125 Section 124: supplementary.

- (1) For the purposes of this Part, an occupational pension scheme is salary related if—
- the scheme is not a money purchase scheme, and
  - the scheme does not fall within a prescribed class or description,
- and “salary related trust scheme” is to be read accordingly.
- (2) Regulations may apply this Part with prescribed modifications to occupational pension schemes—
- which are not money purchase schemes, but
  - where some of the benefits that may be provided are money purchase benefits.



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- (3) Regulations may, in relation to occupational pension schemes, extend for the purposes of this Part the meaning of “employer” to include persons who have been the employer in relation to the scheme.
- (4) For any of the purposes of this Part, regulations may in relation to occupational pension schemes—
- (a) extend or restrict the meaning of “member”,
  - (b) determine who is to be treated as a prospective member, and
  - (c) determine the times at which a person is to be treated as becoming, or as ceasing to be, a member or prospective member.

**Modifications etc. (not altering text)**

**C206** S. 125 modified (11.11.1999 for specified purposes, 1.10.2000 in so far as not already in force) by Welfare Reform and Pensions Act 1999 (c. 30), s. 89(5)(a), **Sch. 1 para. 1(1)(2)(b)(xv)**; S.I. 2000/1047, art. 2(2)(c), Sch. Pt. III

**Commencement Information**

**I101** S. 125 in force at 6.4.1996 for specified purposes by S.I. 1996/778, **art. 2(5)(b)**

**I102** S. 125(1) in force at 6.4.1997 in so far as not already in force by S.I. 1997/664, art. 2(3), **Sch. Pt. 3**

**I103** S. 125(2)-(4) in force at 16.10.1996 in so far as not already in force by S.I. 1996/2637, **art. 2**

**Status:**

Point in time view as at 31/05/2021.

**Changes to legislation:**

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