



# Pensions Act 2004

## 2004 CHAPTER 35

### PART 5

#### OCCUPATIONAL AND PERSONAL PENSION SCHEMES: MISCELLANEOUS PROVISIONS

##### *Categories of pension scheme*

#### **239 Categories of pension scheme**

- (1) Section 1 of the Pension Schemes Act 1993 (c. 48) (categories of pension scheme) is amended as follows.
- (2) The provisions of the section shall become subsection (1) of the section.
- (3) In that subsection, for the definitions of “occupational pension scheme” and “personal pension scheme” substitute—

““occupational pension scheme” means a pension scheme—

(a) that—

- (i) for the purpose of providing benefits to, or in respect of, people with service in employments of a description, or
- (ii) for that purpose and also for the purpose of providing benefits to, or in respect of, other people,

is established by, or by persons who include, a person to whom subsection (2) applies when the scheme is established or (as the case may be) to whom that subsection would have applied when the scheme was established had that subsection then been in force, and

(b) that has its main administration in the United Kingdom or outside the member States,

or a pension scheme that is prescribed or is of a prescribed description;

“personal pension scheme” means a pension scheme that—

(a) is not an occupational pension scheme, and

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(b) is established by a person within any of the paragraphs of section 154(1) of the Finance Act 2004;”.

(4) After that subsection insert—

“(2) This subsection applies—

- (a) where people in employments of the description concerned are employed by someone, to a person who employs such people,
- (b) to a person in an employment of that description, and
- (c) to a person representing interests of a description framed so as to include—
  - (i) interests of persons who employ people in employments of the description mentioned in paragraph (a), or
  - (ii) interests of people in employments of that description.

(3) For the purposes of subsection (2), if a person is in an employment of the description concerned by reason of holding an office (including an elective office) and is entitled to remuneration for holding it, the person responsible for paying the remuneration shall be taken to employ the office-holder.

(4) In the definition in subsection (1) of “occupational pension scheme”, the reference to a description includes a description framed by reference to an employment being of any of two or more kinds.

(5) In subsection (1) “pension scheme” (except in the phrases “occupational pension scheme”, “personal pension scheme” and “public service pension scheme”) means a scheme or other arrangements, comprised in one or more instruments or agreements, having or capable of having effect so as to provide benefits to or in respect of people—

- (a) on retirement,
- (b) on having reached a particular age, or
- (c) on termination of service in an employment.

(6) The power of the Treasury under section 154(4) of the Finance Act 2004 (power to amend sections 154 and 155) includes power consequentially to amend—

- (a) paragraph (a) of the definition in subsection (1) of “personal pension scheme”, and
- (b) any provision in force in Northern Ireland corresponding to that paragraph.”

#### Commencement Information

- I1** S. 239 in force at 1.7.2005 for specified purposes by [S.I. 2005/1720](#), [art. 2\(7\)](#)
- I2** [S. 239](#) in force at 6.4.2006 in so far as not already in force by [S.I. 2005/1720](#), [art. 2\(7\)](#)

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PROSPECTIVE

## 240 Meaning of “employer” in Part 1 of the Pensions Act 1995

- (1) In section 125 of the Pensions Act 1995 (c. 26) (supplementary provision relating to interpretation), in subsection (3) (extension of meaning of “employer”)—
  - (a) after “include” insert “—
    - (a)”,
    - and
  - (b) after “scheme” insert “;
    - (b) such other persons as may be prescribed”.
- (2) In section 175 of that Act (parliamentary control of orders and regulations), in subsection (2) (instruments subject to affirmative resolution procedure), omit “or” at end of paragraph (c) and after that paragraph insert—

“(ca) section 125(3)(b), or”.

### *Requirements for member-nominated trustees and directors*

## 241 Requirement for member-nominated trustees

- (1) The trustees of an occupational trust scheme must secure—
  - (a) that, within a reasonable period of the commencement date, arrangements are in place which provide for at least one-third of the total number of trustees to be member-nominated trustees, and
  - (b) that those arrangements are implemented.
- (2) “Member-nominated trustees” are trustees of an occupational trust scheme who—
  - (a) are nominated as the result of a process in which at least the following are eligible to participate—
    - (i) all the active members of the scheme or an organisation which adequately represents the active members, and
    - (ii) all the pensioner members of the scheme or an organisation which adequately represents the pensioner members, and
  - (b) are selected as a result of a process which involves some or all of the members of the scheme.
- (3) The “commencement date”, in relation to a scheme, is—
  - (a) the date upon which this section first applies in relation to the scheme, or
  - (b) in the case of a scheme to which this section has ceased to apply and then reapplies, the date on which the section reapplies to it.
- (4) The arrangements may provide for a greater number of member-nominated trustees than that required to satisfy the one-third minimum mentioned in subsection (1)(a) only if the employer has approved the greater number.
- (5) The arrangements—
  - (a) must provide for the nomination and selection process to take place within a reasonable period of any requirement arising under the arrangements to appoint a member-nominated trustee,

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- (b) must provide, where a vacancy is not filled because insufficient nominations are received, for the nomination and selection process to be repeated at reasonable intervals until the vacancy is filled,
  - (c) must provide that where the employer so requires, a person who is not a member of the scheme must have the employer's approval to qualify for selection as a member-nominated trustee, and
  - (d) subject to paragraph (c), may provide that, where the number of nominations received is equal to or less than the number of appointments required, the nominees are deemed to be selected.
- (6) The arrangements must provide that the removal of a member-nominated trustee requires the agreement of all the other trustees.
- (7) Nothing in the arrangements or in the provisions of the scheme may exclude member-nominated trustees from the exercise of functions exercisable by other trustees by reason only of the fact that they are member-nominated trustees.
- (8) This section does not apply in relation to an occupational trust scheme if—
- (a) every member of the scheme is a trustee of the scheme and no other person is such a trustee,
  - (b) every trustee of the scheme is a company, or
  - (c) the scheme is of a prescribed description.
- (9) If, in the case of an occupational trust scheme, the arrangements required by subsection (1)—
- (a) are not in place as required by subsection (1)(a), or
  - (b) are not being implemented,
- section 10 of the Pensions Act 1995 (c. 26) (civil penalties) applies to any trustee who has failed to take all reasonable steps to secure compliance.

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

**C1** Ss. 241, 242 modified (6.4.2006) by [The Occupational Pension Schemes \(Member-nominated Trustees and Directors\) Regulations 2006 \(S.I. 2006/714\)](#), regs. 1(1), 5

**Commencement Information**

**I3** S. 241 in force at at 1.11.2005 for specified purposes and 6.4.2006 in so far as not already in force by [S.I. 2005/2447](#), art. 2(5), [Sch. Pt. 2](#)

**242 Requirement for member-nominated directors of corporate trustees**

- (1) Where a company is a trustee of an occupational trust scheme and every trustee of the scheme is a company, the company must secure—
- (a) that, within a reasonable period of the commencement date, arrangements are in place which provide for at least one-third of the total number of directors of the company to be member-nominated directors, and
  - (b) that those arrangements are implemented.
- (2) “Member-nominated directors” are directors of the company in question who—
- (a) are nominated as the result of a process in which at least the following are eligible to participate—

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- (i) all the active members of the occupational trust scheme or an organisation which adequately represents the active members, and
    - (ii) all the pensioner members of the occupational trust scheme or an organisation which adequately represents the pensioner members, and
  - (b) are selected as a result of a process which involves some or all of the members of that scheme.
- (3) The “commencement date”, in relation to a company, is—
- (a) the date upon which this section first applies in relation to the company, or
  - (b) in the case of a company to which this section has ceased to apply and then reapplies, the date on which the section reapplies to it.
- (4) The arrangements may provide for a greater number of member-nominated directors than that required to satisfy the one-third minimum mentioned in subsection (1)(a) only if the employer has approved the greater number.
- (5) The arrangements—
- (a) must provide for the nomination and selection process to take place within a reasonable period of any requirement arising under the arrangements to appoint a member-nominated director,
  - (b) must provide, where a vacancy is not filled because insufficient nominations are received, for the nomination and selection process to be repeated at reasonable intervals until the vacancy is filled,
  - (c) must provide that where the employer so requires, a person who is not a member of the scheme must have the employer’s approval to qualify for selection as a member-nominated director, and
  - (d) subject to paragraph (c), may provide that, where the number of nominations received is equal to or less than the number of appointments required, the nominees are deemed to be selected.
- (6) The arrangements must provide that the removal of a member-nominated director requires the agreement of all the other directors.
- (7) Nothing in the arrangements may exclude member-nominated directors from the exercise of functions exercisable by other directors by reason only of the fact that they are member-nominated directors.
- (8) Where the same company is a trustee of two or more occupational trust schemes by reference to each of which this section applies to the company, then, subject to subsection (9), the preceding provisions of this section have effect as if—
- (a) the schemes were a single scheme,
  - (b) the members of each of the schemes were members of that single scheme, and
  - (c) the references to “the employer” were references to all the employers in relation to the schemes.
- (9) Where, apart from this subsection, subsection (8) would apply in relation to a company, the company may elect that subsection (8)—
- (a) is not to apply as mentioned in that subsection, or
  - (b) is to apply but only in relation to some of the schemes to which it would otherwise apply.
- (10) This section does not apply in relation to an occupational trust scheme if the scheme is of a prescribed description.

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- (11) If, in the case of a company which is a trustee of an occupational trust scheme, the arrangements required by subsection (1)—
- (a) are not in place as required by subsection (1)(a), or
  - (b) are not being implemented,
- section 10 of the Pensions Act 1995 (c. 26) (civil penalties) applies to the company.

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

- C1** Ss. 241, 242 modified (6.4.2006) by [The Occupational Pension Schemes \(Member-nominated Trustees and Directors\) Regulations 2006 \(S.I. 2006/714\)](#), regs. 1(1), [5](#)
- C2** [S. 242](#) power to apply (with modifications) conferred (26.11.2008) by [Pensions Act 2008 \(c. 30\)](#), s. 149(2), [Sch. 1 para. 1\(6\)](#)

**Commencement Information**

- I4** [S. 242](#) in force at 1.11.2005 for specified purpose and 6.4.2006 in so far as not already in force by [S.I. 2005/2447](#), art. 2(5), [Sch. Pt. 2](#)

**243 Member-nominated trustees and directors: supplementary**

- (1) The Secretary of State may, by order, amend sections 241(1)(a) and (4) and 242(1)(a) and (4) by substituting, in each of those provisions, “one-half” for “one-third”.
- (2) Regulations may modify sections 241 and 242 (including any of the provisions mentioned in subsection (1)) in their application to prescribed cases.
- (3) In sections 241 and 242—
 

“company” means a company [<sup>F1</sup>as defined in section 1(1) of the Companies Act 2006] or a company which may be wound up under Part 5 of the Insolvency Act 1986 (c. 45) (unregistered companies);

“occupational trust scheme” means an occupational pension scheme established under a trust.

**Textual Amendments**

- F1** Words in [s. 243\(3\)](#) 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. 243\(9\)](#) (with art. 10)

**Commencement Information**

- I5** [S. 243](#) in force at 1.11.2005 by [S.I. 2005/2447](#), [art. 2\(2\)](#)

*Obligations of trustees of occupational pension schemes*

**244 Investment principles**

For section 35 of the Pensions Act 1995 (investment principles) substitute—

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### “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.”

#### Commencement Information

- I6** S. 244 in force at 4.12.2005 for specified purposes and 30.12.2005 in so far as not already in force by S.I. 2005/3331, art. 2(1), **Sch. Pt. 1**

### 245 Power to make regulations governing investment by trustees

- (1) Section 36 of the Pensions Act 1995 (c. 26) (choosing investments) is amended as follows.
- (2) For subsection (1) substitute—
  - “(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

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- (b) require diversification of investments.”
- (3) Omit subsection (2).
- (4) In subsection (3) for “the matters mentioned in subsection (2) and” substitute “ the requirements of regulations under subsection (1), so far as relating to the suitability of investments, and to ”.
- (5) For subsection (8) substitute—
- “(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.”
- (6) After subsection (8) insert—
- “(9) Regulations may exclude the application of any of the preceding provisions of this section to any scheme which is of a prescribed description.”

**Commencement Information**

**I7** S. 245 in force at 4.12.2005 for specified purposes and 30.12.2005 in so far as not already in force by S.I. 2005/3331, art. 2(1), **Sch. Pt. 1**

**246 Borrowing by trustees**

After section 36 of the Pensions Act 1995 insert—

**“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.”

**Commencement Information**

**I8** S. 246 in force at 4.12.2005 for specified purposes and 30.12.2005 in so far as not already in force by S.I. 2005/3331, art. 2(1), **Sch. Pt. 1**

**247 Requirement for knowledge and understanding: individual trustees**

- (1) This section applies to every individual who is a trustee of an occupational pension scheme.
- (2) In this section, “relevant scheme”, in relation to an individual, means any occupational pension scheme of which he is a trustee.
- (3) An individual to whom this section applies must, in relation to each relevant scheme, be conversant with—
- (a) the trust deed and rules of the scheme,



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- (b) any statement of investment principles for the time being maintained under section 35 of the Pensions Act 1995 (c. 26),
  - (c) in the case of a relevant scheme to which Part 3 (scheme funding) applies, the statement of funding principles most recently prepared or revised under section 223, and
  - (d) any other document recording policy for the time being adopted by the trustees relating to the administration of the scheme generally.
- (4) An individual to whom this section applies must have knowledge and understanding of—
- (a) the law relating to pensions and trusts,
  - (b) the principles relating to—
    - (i) the funding of occupational pension schemes, and
    - (ii) investment of the assets of such schemes, and
  - (c) such other matters as may be prescribed.
- (5) The degree of knowledge and understanding required by subsection (4) is that appropriate for the purposes of enabling the individual properly to exercise his functions as trustee of any relevant scheme.

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

- C3** S. 247(3)(4) excluded (6.4.2006) by [The Occupational Pension Schemes \(Trustees Knowledge and Understanding\) Regulations 2006 \(S.I. 2006/686\)](#), regs. 1(1), **3**
- C4** S. 247(3)(4) restricted (6.4.2006) by [The Occupational Pension Schemes \(Trustees Knowledge and Understanding\) Regulations 2006 \(S.I. 2006/686\)](#), regs. 1(1), **2(1)**

**Commencement Information**

- I9** S. 247 in force at 6.4.2006 by [S.I. 2006/560](#), art. 2(3), **Sch. Pt. 3**

**248 Requirement for knowledge and understanding: corporate trustees**

- (1) This section applies to any company which is a trustee of an occupational pension scheme.
- (2) In this section, “relevant scheme”, in relation to a company, means any occupational pension scheme of which it is a trustee.
- (3) A company to which this section applies must, in relation to each relevant scheme, secure that each individual who exercises any function which the company has as trustee of the scheme is conversant with each of the documents mentioned in subsection (4) so far as it is relevant to the exercise of the function.
- (4) Those documents are—
  - (a) the trust deed and rules of the scheme,
  - (b) any statement of investment principles for the time being maintained under section 35 of the Pensions Act 1995,
  - (c) in the case of a relevant scheme to which Part 3 (scheme funding) applies, the statement of funding principles most recently prepared or revised under section 223, and

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- (d) any other document recording policy for the time being adopted by the trustees relating to the administration of the scheme generally.
- (5) A company to which this section applies must secure that any individual who exercises any function which the company has as trustee of any relevant scheme has knowledge and understanding of—
- (a) the law relating to pensions and trusts,
  - (b) the principles relating to—
    - (i) the funding of occupational pension schemes, and
    - (ii) investment of the assets of such schemes, and
  - (c) such other matters as may be prescribed.
- (6) The degree of knowledge and understanding required by subsection (5) is that appropriate for the purposes of enabling the individual properly to exercise the function in question.
- (7) References in this section to the exercise by an individual of any function of a company are to anything done by the individual on behalf of the company which constitutes the exercise of the function by the company.
- (8) In this section “company” means a company [<sup>F2</sup>as defined in section 1(1) of the Companies Act 2006] or a company which may be wound up under Part 5 of the Insolvency Act 1986 (c. 45) (unregistered companies).

#### Textual Amendments

- F2** Words in s. 248(8) 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. 243(10)** (with art. 10)

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

- C5** S. 248 applied (with modifications) (5.7.2010) by [The Application of Pension Legislation to the National Employment Savings Trust Corporation Regulations 2010 \(S.I. 2010/8\)](#), regs. 1(3), **2**
- C6** S. 248(3)(5) excluded (6.4.2006) by [The Occupational Pension Schemes \(Trustees Knowledge and Understanding\) Regulations 2006 \(S.I. 2006/686\)](#), regs. 1(1), **4**
- C7** S. 248(3)(5) restricted (6.4.2006) by [The Occupational Pension Schemes \(Trustees Knowledge and Understanding\) Regulations 2006 \(S.I. 2006/686\)](#), regs. 1(1), **2(2)**

#### Commencement Information

- I10** S. 248 in force at 6.4.2006 by [S.I. 2006/560](#), art. 2(3), **Sch. Pt. 3**

## 249 Requirement for knowledge and understanding: supplementary

- (1) For the purposes of sections 247 and 248, a person’s functions as trustee of a relevant scheme are any functions which he has by virtue of being such a trustee and include, in particular—
- (a) any functions which he has as one of the trustees authorised under section 34(5)(a) of the Pensions Act 1995 (c. 26) (delegation of investment discretions) in the case of the scheme, and
  - (b) any functions which he otherwise has as a member of a committee of the trustees of the scheme.

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- (2) Regulations may provide for any provision in section 247 or 248—
  - (a) not to apply, or
  - (b) to apply with modifications,  
to a trustee in prescribed circumstances.
- (3) Nothing in either of those sections affects any rule of law requiring a trustee to have knowledge of, or expertise in, any matter.

#### Commencement Information

**I11** S. 249(1)(3) in force at 6.4.2006 by S.I. 2006/560, art. 2(3), **Sch. Pt. 3**

**I12** S. 249(2) in force at 9.3.2006 for specified purposes and 6.4.2006 in so far as not already in force by S.I. 2006/560, art. 2(1), **Sch. Pt. 1**

#### [<sup>F3</sup>249A. Requirement for internal controls

- (1) The trustees or managers of an occupational pension scheme must establish and operate internal controls which are adequate for the purpose of securing that the scheme is administered and managed—
  - (a) in accordance with the scheme rules, and
  - (b) in accordance with the requirements of the law.
- (2) Nothing in this section affects any other obligation of the trustees or managers of an occupational pension scheme to establish or operate internal controls, whether imposed by or by virtue of any enactment, the scheme rules or otherwise.
- (3) This section does not apply in relation to—
  - (a) a scheme which—
    - (i) is established by or under an enactment (including a local Act), and
    - (ii) is guaranteed by a public authority;
  - (b) a pay-as-you-go scheme;
  - (c) a scheme which is made under [<sup>F4</sup>paragraph 8, 12 or 16 of Schedule 6 to the Constitutional Reform and Governance Act 2010] (power to provide for pensions for Members of the House of Commons etc.) .  
[ the Scottish Parliamentary Pension Scheme as defined in section 4 of the <sup>F5</sup>(d) [Scottish Parliamentary Pensions Act 2009 \(asp 1\)](#).]
- (4) But subsection (3) does not disapply this section in relation to any scheme the trustees or managers of which are—
  - (a) authorised under section 288 (general authorisation to accept contributions from European employers), or
  - (b) approved under section 289 in relation to a European employer.
- (5) In this section—

“enactment” includes an enactment comprised in, or in an instrument made under, an Act of the Scottish Parliament;

“internal controls” means—
  - (a) arrangements and procedures to be followed in the administration and management of the scheme,

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(b) systems and arrangements for monitoring that administration and management, and

(c) arrangements and procedures to be followed for the safe custody and security of the assets of the scheme;

“local authority” means—

(a) in relation to England, a county council, a district council, a London borough council, the Greater London Authority, the Common Council of the City of London in its capacity as a local authority or the Council of the Isles of Scilly,

(b) in relation to Wales, a county council or county borough council,

(c) in relation to Scotland, a council constituted under section 2 of the Local Government etc. (Scotland) Act 1994 (c. 39) (constitution of councils),

(d) an administering authority as defined in Schedule 1 to the Local Government Pension Scheme Regulations 1997 (S.I.1997/1612) (interpretation);

“pay-as-you-go scheme” means an occupational pension scheme under which there is no requirement for assets to be set aside in advance for the purpose of providing benefits under the scheme (disregarding any requirements relating to additional voluntary contributions);

“public authority” means—

(a) a Minister of the Crown (within the meaning of the Ministers of the Crown Act 1975 (c. 26)),

(b) a government department (including any body or authority exercising statutory functions on behalf of the Crown),

(c) the Scottish Ministers,

(d) the National Assembly for Wales, or

(e) a local authority.]

#### Textual Amendments

**F3** S. 249A inserted (30.12.2005) by [The Occupational Pension Schemes \(Internal Controls\) Regulations 2005 \(S.I. 2005/3379\)](#), regs. 1(1), 2

**F4** Words in s. 249A(3)(c) substituted (24.10.2011) by [Constitutional Reform and Governance Act 2010 \(c. 25\)](#), s. 52, [Sch. 6 para. 46](#); S.I. 2011/2485, art. 2(1)(2)(c)(ii)

**F5** S. 249A(3)(d) inserted (1.9.2009) by [The Scottish Parliamentary Pensions Act 2009 \(Consequential Modifications\) Order 2009 \(S.I. 2009/1682\)](#), art. 1(1), [Sch. para. 2](#)

### *Payment of surplus to employer*

## 250 Payment of surplus to employer

For section 37 of the Pensions Act 1995 (payment of surplus to employer) substitute—

### “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

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*Status: Point in time view as at 24/10/2011. This version of this part contains provisions that are prospective.*

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- (b) the scheme is not being wound up.
- (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—
  - (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—

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- (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.”

#### Commencement Information

**I13** S. 250 in force at 9.3.2006 for specified purposes and 6.4.2006 in so far as not already in force by [S.I. 2006/560](#), art. 2(1), [Sch. Pt. 1](#)

### 251 Payment of surplus to employer: transitional power to amend scheme

- (1) This section applies to a scheme which immediately before the commencement of section 250 was one to which section 37 of the Pensions Act 1995 (c. 26) applied (see subsection (1) of that section, as it then had effect).
- (2) No payment to the employer may be made out of funds held for the purposes of the scheme except by virtue of a resolution of the trustees under this section.  
  
This applies even if the payment is one proposed to be made in fulfilment of an agreement or arrangement entered into before the commencement of this section.
- (3) Where the scheme was so expressed as (apart from section 37, as it then applied) to confer power to make payments to the employer out of funds held for the purposes of the scheme otherwise than in pursuance of proposals approved under paragraph 6(1) of Schedule 22 to the Income and Corporation Taxes Act 1988 (c. 1), the trustees may resolve that the power—
  - (a) shall become exercisable according to its terms, or
  - (b) shall become so exercisable, but only in such circumstances and subject to such conditions as may be specified in the resolution.
- (4) Where the scheme was so expressed as to confer power to make payments to the employer out of funds held for the purposes of the scheme only in pursuance of proposals approved under paragraph 6(1) of Schedule 22 to the Income and Corporation Taxes Act 1988, the trustees may resolve that the power shall instead be exercisable in such circumstances and subject to such conditions as may be specified in the resolution.
- (5) In either case the trustees must be satisfied that it is in the interests of the members of the scheme that the power is exercised in the manner proposed.
- (6) The power conferred by subsection (3) or (4)—

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- (a) may not be exercised unless notice of the proposal to exercise it has been given, in accordance with prescribed requirements, to the employer and to the members of the scheme,
  - (b) may only be exercised once, and
  - (c) ceases to be exercisable five years after the commencement of this section.
- (7) The exercise of any power to make payments to the employer by virtue of a resolution under this section is subject to section 37 of the Pensions Act 1995 (c. 26) as substituted by section 250.

#### Commencement Information

**I14** S. 251 in force at 9.3.2006 for specified purposes and 6.4.2006 in so far as not already in force by S.I. 2006/560, art. 2(1), Sch. Pt. 1

### *Restrictions on payment into occupational pension schemes*

#### **252 UK-based scheme to be trust with effective rules**

- (1) Subsections (2) and (3) apply to an occupational pension scheme that has its main administration in the United Kingdom.
- (2) If the scheme is not established under irrevocable trusts, the trustees or managers of the scheme must secure that no funding payment is accepted.
- (3) If the rules stipulating—
  - (a) the benefits under the scheme, and
  - (b) any conditions subject to which benefits under the scheme accrue,are not in force, or if those rules are not set out in writing, the trustees or managers of the scheme must secure that no funding payment is accepted.
- (4) Subsection (2) or (3) does not apply to an occupational pension scheme if it is a prescribed scheme or a scheme of a prescribed description.
- (5) Section 10 of the Pensions Act 1995 (civil penalties) applies to a trustee or manager of an occupational pension scheme that has its main administration in the United Kingdom if—
  - (a) subsection (2) or (3) requires the trustees or managers of the scheme to secure that no funding payment is accepted,
  - (b) a funding payment is accepted, and
  - (c) the trustee or manager has failed to take all reasonable steps to secure that no funding payment is accepted.
- (6) In this section “funding payment”, in relation to a scheme, means a payment made to the scheme to fund benefits for, or in respect of, any or all of the members.

#### Commencement Information

**I15** S. 252 in force at 1.7.2005 for specified purposes by S.I. 2005/1720, art. 2(14), Sch. Pt. 1

**I16** S. 252 in force at 22.9.2005 in so far as not already in force by S.I. 2005/1720, art. 2(14), Sch. Pt. 1



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### 253 Non-European scheme to be trust with UK-resident trustee

- (1) Subsections (2) and (3) apply to an occupational pension scheme that has its main administration outside [<sup>F6</sup>the EEA states].
- (2) An employer based in any part of the United Kingdom may cause a contribution to be paid to the scheme in respect of an employee (whether or not employed in the United Kingdom) only if the conditions in subsection (4) are satisfied at the time of payment.
- (3) An employer based outside the United Kingdom may cause a contribution to be paid to the scheme in respect of an employee employed in the United Kingdom only if the conditions in subsection (4) are satisfied at the time of payment.
- (4) Those conditions are—
  - (a) that the scheme is established under irrevocable trusts, and
  - (b) that a trustee of the scheme is resident in the United Kingdom.
- (5) Subsection (2) or (3) does not apply to an occupational pension scheme if it is a prescribed scheme or a scheme of a prescribed description.
- (6) Section 10 of the Pensions Act 1995 (c. 26) (civil penalties) applies to an employer who causes a contribution to be paid to an occupational pension scheme that has its main administration outside [<sup>F7</sup>the EEA states] if—
  - (a) subsection (2) or (3) applies in relation to the payment of the contribution,
  - (b) the conditions in subsection (4) are not satisfied at the time of payment, and
  - (c) the employer does not have a reasonable excuse for causing payment to occur at a time when those conditions are not satisfied.
- (7) In this section “based”—
  - (a) in relation to an employer who is a body corporate, means incorporated, and
  - (b) in relation to any other employer, means resident.

#### Textual Amendments

- F6** Words in s. 253(1) substituted (26.11.2007) by [The Occupational Pension Schemes \(EEA States\) Regulations 2007 \(S.I. 2007/3014\)](#), regs. 1, 4(a)
- F7** Words in s. 253(6) substituted (26.11.2007) by [The Occupational Pension Schemes \(EEA States\) Regulations 2007 \(S.I. 2007/3014\)](#), regs. 1, 4(a)

#### Commencement Information

- I17** S. 253 in force at 1.1.2006 for specified purposes and 6.4.2006 in so far as not already in force by [S.I. 2005/3331](#), art. 2(5), [Sch. Pt. 5](#)

### 254 Representative of non-European scheme to be treated as trustee

- (1) In the case of an occupational pension scheme that has its main administration outside [<sup>F8</sup>the EEA states], a reference in pensions legislation to the trustees, or a trustee, of the scheme includes a person who is for the time being appointed by the trustees of the scheme to be a representative of the scheme for the purposes of this section.
- (2) Subsection (1) does not apply to a prescribed reference.
- (3) In subsection (1) “pensions legislation” means any enactment contained in or made by virtue of—



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- (a) the Pension Schemes Act 1993 (c. 48),
- (b) the Pensions Act 1995,
- (c) Parts 1 to 4 of the Welfare Reform and Pensions Act 1999 (c. 30), or
- (d) this Act.

#### Textual Amendments

**F8** Words in s. 254(1) substituted (26.11.2007) by [The Occupational Pension Schemes \(EEA States\) Regulations 2007 \(S.I. 2007/3014\)](#), regs. 1, **4(b)**

#### Commencement Information

**I18** S. 254 in force at 6.4.2006 by [S.I. 2006/560](#), art. 2(3), **Sch. Pt. 3**

### *Activities of occupational pension schemes*

#### **255 Activities of occupational pension schemes**

- (1) If an occupational pension scheme has its main administration in the United Kingdom, the trustees or managers of the scheme must secure that the activities of the scheme are limited to retirement-benefit activities.
- (2) Subsection (1) does not apply to a scheme if it is a prescribed scheme or a scheme of a prescribed description.
- (3) Section 10 of the Pensions Act 1995 (civil penalties) applies to a trustee or manager of a scheme to which subsection (1) applies if—
  - (a) the scheme has activities that are not retirement-benefit activities, and
  - (b) the trustee or manager has failed to take all reasonable steps to secure that the activities of the scheme are limited to retirement-benefit activities.
- (4) In this section “retirement-benefit activities” means—
  - (a) operations related to retirement benefits, and
  - (b) activities arising from operations related to retirement benefits.
- (5) In subsection (4) “retirement benefits” means—
  - (a) benefits paid by reference to reaching, or expecting to reach, retirement, and
  - (b) benefits that are supplementary to benefits within paragraph (a) and that are provided on an ancillary basis—
    - (i) in the form of payments on death, disability or termination of employment, or
    - (ii) in the form of support payments or services in the case of sickness, poverty or need, or death.

#### Commencement Information

**I19** S. 255 in force at 1.7.2005 for specified purposes by [S.I. 2005/1720](#), art. 2(14), **Sch. Pt. 1**

**I20** S. 255 in force at 22.9.2005 in so far as not already in force by [S.I. 2005/1720](#), art. 2(14), **Sch. Pt. 1**

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*Status: Point in time view as at 24/10/2011. This version of this part contains provisions that are prospective.*  
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*No indemnification for fines or civil penalties*

**256 No indemnification for fines or civil penalties**

- (1) No amount may be paid out of the assets of an occupational or personal pension scheme for the purpose of reimbursing, or providing for the reimbursement of, any trustee or manager of the scheme in respect of—
  - (a) a fine imposed by way of penalty for an offence of which he is convicted, or
  - (b) a penalty which he is required to pay under or by virtue of section 10 of the Pensions Act 1995 (c. 26) or section 168(4) of the Pension Schemes Act 1993 (c. 48) (civil penalties).
- (2) For the purposes of subsection (1), providing for the reimbursement of a trustee or manager in respect of a fine or penalty includes (among other things) providing for the payment of premiums in respect of a policy of insurance where the risk is or includes the imposition of such a fine or the requirement to pay such a penalty.
- (3) Where any amount is paid out of the assets of an occupational or personal pension scheme in contravention of this section, section 10 of the Pensions Act 1995 (civil penalties) applies to any trustee or manager who fails to take all reasonable steps to secure compliance.
- (4) Where a trustee or manager of an occupational or personal pension scheme—
  - (a) is reimbursed, out of the assets of the scheme or in consequence of provision for his reimbursement made out of those assets, in respect of any of the matters mentioned in subsection (1)(a) or (b), and
  - (b) knows, or has reasonable grounds to believe, that he has been reimbursed as mentioned in paragraph (a),
 then, unless he has taken all reasonable steps to secure that he is not so reimbursed, he is guilty of an offence.
- (5) A person guilty of an offence under subsection (4) 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 two years, or a fine, or both.

**Commencement Information**

**I21** S. 256 in force at 30.6.2005 by [S.I. 2005/1720](#), [art. 2\(8\)](#)

*Pension protection on transfer of employment*

**257 Conditions for pension protection**

- (1) This section applies in relation to a person (“the employee”) where—
  - [<sup>F9</sup>(a) there is a relevant transfer within the meaning of the TUPE regulations,]
  - (b) by virtue of the transfer the employee ceases to be employed by the transferor and becomes employed by the transferee, and
  - (c) at the time immediately before the employee becomes employed by the transferee—

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- (i) there is an occupational pension scheme (“the scheme”) in relation to which the transferor is the employer, and
  - (ii) one of subsections (2), (3) and (4) applies.
- (2) This subsection applies where—
  - (a) the employee is an active member of the scheme, and
  - (b) if any of the benefits that may be provided under the scheme are money purchase benefits—
    - (i) the transferor is required to make contributions to the scheme in respect of the employee, or
    - (ii) the transferor is not so required but has made one or more such contributions.
- (3) This subsection applies where—
  - (a) the employee is not an active member of the scheme but is eligible to be such a member, and
  - (b) if any of the benefits that may be provided under the scheme are money purchase benefits, the transferor would have been required to make contributions to the scheme in respect of the employee if the employee had been an active member of it.
- (4) This subsection applies where—
  - (a) the employee is not an active member of the scheme, nor eligible to be such a member, but would have been an active member of the scheme or eligible to be such a member if, after the date on which he became employed by the transferor, he had been employed by the transferor for a longer period, and
  - (b) if any of the benefits that may be provided under the scheme are money purchase benefits, the transferor would have been required to make contributions to the scheme in respect of the employee if the employee had been an active member of it.
- (5) For the purposes of this section, the condition in subsection (1)(c) is to be regarded as satisfied in any case where it would have been satisfied but for any action taken by the transferor by reason of the transfer.
- <sup>F10</sup>(6) .....
- (7) In the case of a scheme which is contracted-out by virtue of section 9 of the Pension Schemes Act 1993 (c. 48), the references in subsections (2)(b), (3)(b) and (4)(b) to contributions mean contributions other than minimum payments (within the meaning of that Act).
- (8) In this section—
  - the “TUPE Regulations” means the [<sup>F11</sup>Transfer of Undertakings (Protection of Employment) Regulations 2006] ;
  - references to the transferor include any associate of the transferor, and section 435 of the Insolvency Act 1986 (c. 45) applies for the purposes of this section as it applies for the purposes of that Act.

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### Textual Amendments

- F9** S. 257(1)(a) substituted (with application in accordance with reg. 21(1) of the amending S.I.) by [The Transfer of Undertakings \(Protection of Employment\) Regulations 2006 \(S.I. 2006/246\)](#), reg. 1(2), [Sch. 2 para. 13\(2\)](#)
- F10** S. 257(6) omitted (with application in accordance with reg. 21(1) of the amending S.I.) by virtue of [The Transfer of Undertakings \(Protection of Employment\) Regulations 2006 \(S.I. 2006/246\)](#), reg. 1(2), [Sch. 2 para. 13\(3\)](#)
- F11** Words in s. 257(8) substituted (with application in accordance with reg. 21(1) of the amending S.I.) by [The Transfer of Undertakings \(Protection of Employment\) Regulations 2006 \(S.I. 2006/246\)](#), reg. 1(2), [Sch. 2 para. 13\(4\)](#)

### Modifications etc. (not altering text)

- C8** Ss. 257, 258 applied (29.9.2008 at 8.00 a.m.) by [The Bradford & Bingley plc Transfer of Securities and Property etc. Order 2008 \(S.I. 2008/2546\)](#), [art. 27](#)
- C9** Ss. 257 258 applied (29.9.2008) by [The Bradford & Bingley plc Transfer of Securities and Property etc. Order 2008 \(S.I. 2008/2546\)](#), [art. 27](#)
- C10** S. 257 applied (30.3.2009) by [The Amendments to Law \(Resolution of Dunfermline Building Society\) Order 2009 \(S.I. 2009/814\)](#), [art. 4](#)
- C11** S. 257 applied (30.3.2009 at 8.00 a.m.) by [The Amendments to Law \(Resolution of Dunfermline Building Society\) Order 2009 \(S.I. 2009/814\)](#), [art. 4](#)
- C12** S. 257 applied (1.1.2010) by [The Northern Rock plc Transfer Order 2009 \(S.I. 2009/3226\)](#), [art. 12](#)

### Commencement Information

- I22** S. 257 in force at 6.4.2005 by [S.I. 2005/275](#), [art. 2\(7\)](#), [Sch. Pt. 7](#)

## 258 Form of protection

- (1) In a case where section 257 applies, it is a condition of the employee's contract of employment with the transferee that the requirements in subsection (2) or the requirement in subsection (3) are complied with.
- (2) The requirements in this subsection are that—
- (a) the transferee secures that, as from the relevant time, the employee is, or is eligible to be, an active member of an occupational pension scheme in relation to which the transferee is the employer, and
  - (b) in a case where the scheme is a money purchase scheme, as from the relevant time—
    - (i) the transferee makes relevant contributions to the scheme in respect of the employee, or
    - (ii) if the employee is not an active member of the scheme but is eligible to be such a member, the transferee would be required to make such contributions if the employee were an active member, and
  - (c) in a case where the scheme is not a money purchase scheme, as from the relevant time the scheme—
    - (i) satisfies the statutory standard referred to in section 12A of the Pension Schemes Act 1993 (c. 48), or
    - (ii) if regulations so provide, complies with such other requirements as may be prescribed.

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- (3) The requirement in this subsection is that, as from the relevant time, the transferee makes relevant contributions to a stakeholder pension scheme of which the employee is a member.
- (4) The requirement in subsection (3) is for the purposes of this section to be regarded as complied with by the transferee during any period in relation to which the condition in subsection (5) is satisfied.
- (5) The condition in this subsection is that the transferee has offered to make relevant contributions to a stakeholder pension scheme of which the employee is eligible to be a member (and the transferee has not withdrawn the offer).
- (6) Subsection (1) does not apply in relation to a contract if or to the extent that the employee and the transferee so agree at any time after the time when the employee becomes employed by the transferee.
- (7) In this section—
  - “the relevant time” means—
    - (a) in a case where section 257 applies by virtue of the application of subsection (2) or (3) of that section, the time when the employee becomes employed by the transferee;
    - (b) in a case where that section applies by virtue of the application of subsection (4) of that section, the time at which the employee would have been a member of the scheme referred to in subsection (1)(c)(i) of that section or (if earlier) would have been eligible to be such a member;
  - “relevant contributions” means such contributions in respect of such period or periods as may be prescribed;
  - “stakeholder pension scheme” means a pension scheme which is registered under section 2 of the Welfare Reform and Pensions Act 1999 (c. 30).

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

- C8** Ss. 257, 258 applied (29.9.2008 at 8.00 a.m.) by [The Bradford & Bingley plc Transfer of Securities and Property etc. Order 2008 \(S.I. 2008/2546\)](#), **art. 27**
- C9** Ss. 257 258 applied (29.9.2008) by [The Bradford & Bingley plc Transfer of Securities and Property etc. Order 2008 \(S.I. 2008/2546\)](#), **art. 27**
- C13** S. 258 applied (30.3.2009) by [The Amendments to Law \(Resolution of Dunfermline Building Society\) Order 2009 \(S.I. 2009/814\)](#), **art. 4**
- C14** S. 258 applied (30.3.2009 at 8.00 a.m.) by [The Amendments to Law \(Resolution of Dunfermline Building Society\) Order 2009 \(S.I. 2009/814\)](#), **art. 4**
- C15** S. 258 applied (1.1.2010) by [The Northern Rock plc Transfer Order 2009 \(S.I. 2009/3226\)](#), **art. 12**

#### Commencement Information

- I23** S. 258(1)(2)(a)(b)(c)(i)(3)-(6) in force at 6.4.2005 by [S.I. 2005/275](#), **art. 2(7)**, **Sch. Pt. 7**
- I24** S. 258(2)(c)(ii) in force for the purpose only of conferring power to make regulations, orders or rules, as the case may be, 10.2.2005; and for all other purposes at 6.4.2005 in so far as not already in force by [S.I. 2005/275](#), **art. 2(3)**, **Sch. Pt. 3**
- I25** S. 258(7) in force in so far as it relates to the definition of "relevant contributions" for the purpose only of conferring power to make regulations, orders or rules, as the case may be, 10.2.2005; and for all other purposes in relation to that definition at 6.4.2005 for specified purposes by [S.I. 2005/275](#), **art. 2(3)**, **Sch. Pt. 3**
- I26** S. 258(7) in force in so far as not already in force at 6.4.2005 by [S.I. 2005/275](#), **art. 2(7)**, **Sch. Pt. 7**

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### *Consultation by employers*

#### **259 Consultation by employers: occupational pension schemes**

- (1) Regulations may require any prescribed person who is the employer in relation to an occupational pension scheme and who—
  - (a) proposes to make a prescribed decision in relation to the scheme, or
  - (b) has been notified by the trustees or managers of the scheme that they propose to make a prescribed decision in relation to the scheme,
 to consult prescribed persons in the prescribed manner before the decision is made.
- (2) Regulations may require the trustees or managers of an occupational pension scheme not to make a prescribed decision in relation to the scheme unless—
  - (a) they have notified the employer of the proposed decision, and
  - (b) they are satisfied that the employer has undertaken any consultation required by virtue of subsection (1).
- (3) The validity of any decision made in relation to an occupational pension scheme is not affected by any failure to comply with regulations under this section.
- (4) Section 261 contains further provisions about regulations under this section.

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

**C16** S. 259 modified (2.2.2006) by [The Occupational Pension Schemes \(Consultation by Employers\) \(Modification for Multi-employer Schemes\) Regulations 2006 \(S.I. 2006/16\)](#), regs. 1(2), 2

#### **Commencement Information**

**I27** S. 259 in force at 1.1.2006 for specified purposes and 6.4.2006 in so far as not already in force by [S.I. 2005/3331](#), art. 2(5), [Sch. Pt. 5](#)

#### **260 Consultation by employers: personal pension schemes**

- (1) Regulations may require any prescribed person who—
  - (a) is the employer in relation to a personal pension scheme where direct payment arrangements exist in respect of one or more members of the scheme who are his employees, and
  - (b) proposes to make a prescribed decision affecting the application of the direct payment arrangements in relation to those employees,
 to consult prescribed persons in the prescribed manner before he makes the decision.
- (2) The validity of any decision prescribed for the purposes of subsection (1)(b) is not affected by any failure to comply with regulations under this section.
- (3) Section 261 contains further provisions about regulations under this section.

#### **Commencement Information**

**I28** S. 260 in force at 1.1.2006 for specified purposes and 6.4.2006 in so far as not already in force by [S.I. 2005/3331](#), art. 2(5), [Sch. Pt. 5](#)

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*Status:* Point in time view as at 24/10/2011. This version of this part contains provisions that are prospective.  
*Changes to legislation:* Pensions Act 2004, Part 5 is up to date with all changes known to be in force on or before 14 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)

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## 261 Further provisions about regulations relating to consultation

- (1) In this section “consultation regulations” means regulations under section 259 or 260.
- (2) Consultation regulations may—
  - (a) make provision about the time to be allowed for consultation;
  - (b) prescribe the information which must be provided to the persons who are required to be consulted;
  - (c) confer a discretion on the employer in prescribed cases as to the persons who are to be consulted;
  - (d) make provision about the representatives the employees may have for the purposes of the regulations and the methods by which those representatives are to be selected;
  - (e) require or authorise the holding of ballots;
  - (f) amend, apply with or without modifications, or make provision similar to, any provision of the Employment Rights Act 1996 (c. 18) (including, in particular, Parts 5, 10 and 13), the Employment Tribunals Act 1996 (c. 17) or the Trade Union and Labour Relations (Consolidation) Act 1992 (c. 52);
  - (g) enable any requirement for consultation imposed by the regulations to be waived or relaxed by order of the Regulator;
  - (h) require the employer to communicate to the trustees and managers of the scheme any representations received by the employer in response to any consultation required by the regulations.
- (3) Persons on whom obligations are imposed by consultation regulations, either as employers or as the trustees or managers of occupational pension schemes, must, if so required by the Regulator, provide information to the Regulator about the action taken by them for the purpose of complying with the regulations.
- (4) Consultation regulations may make provision as to—
  - (a) the information to be provided under subsection (3);
  - (b) the form and manner in which the information is to be provided;
  - (c) the period within which the information is to be provided.
- (5) Nothing in consultation regulations is to be regarded as affecting any duty to consult arising otherwise than under the regulations.

### Modifications etc. (not altering text)

**C17** S. 261 modified (2.2.2006) by [The Occupational Pension Schemes \(Consultation by Employers\) \(Modification for Multi-employer Schemes\) Regulations 2006 \(S.I. 2006/16\)](#), regs. 1(2), 2

### Commencement Information

**I29** S. 261 in force at 1.1.2006 for specified purposes and 6.4.2006 in so far as not already in force by [S.I. 2005/3331](#), art. 2(5), [Sch. Pt. 5](#)

### *Modification of pension rights*

## 262 Modification of subsisting rights

For section 67 of the Pensions Act 1995 (c. 26) substitute—

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### **“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.
- (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, the consent requirements (see section 67B),
    - (ii) if it is not, 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, or
  - (b) in a prescribed manner.
- (4) References in this section and sections 67A to 67I to “the subsisting rights provisions” are to this section and those sections.
- (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.

### **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—



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“regulated modification”  
“protected modification”  
“detrimental modification”  
“affected member”  
“subsisting right”  
“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 of an occupational pension scheme which—
- (a) on taking effect would or might result in any subsisting right of—
    - (i) a member of the scheme, or
    - (ii) 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 money purchase benefits under the scheme rules,
  - (b) would or might result in a reduction in the prevailing rate of any pension in payment under the scheme rules, or
  - (c) is of a prescribed description.

For the purposes of paragraph (a), the reference in the definition of “money purchase benefits” in section 181(1) of the Pension Schemes Act 1993 to the widow or widower 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 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,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.

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- (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);
    - (ii) Chapters 2 to 5 of Part 4 of the Pension Schemes Act 1993 (certain protection for early leavers) or regulations made under any 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);
    - (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;
  - (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;

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- (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.
- (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).

### **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.
- (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

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- (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).

### **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.
- (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

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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.

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

- (1) This section applies for the purposes of section 67C.
- (2) Where—
- (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—
- (a) is prepared and from time to time revised by a prescribed body, and
  - (b) if the regulations so provide, is approved by the Secretary of State.

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- (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.

### **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).
- (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.

### **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—

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- (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.

### **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
  - (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

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be made before or after the time at which the modification or grant would, disregarding the order, have taken effect.

### **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.

### **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



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section, section 10 applies to any trustee who has failed to take all reasonable steps to secure such compliance.

- (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.”

**Commencement Information**

**I30** S. 262 in force at 6.4.2006 in so far as not already in force by S.I. 2005/2447, art. 2(5), Sch. Pt. 2

*Short service benefit*

**263 Increase in age at which short service benefit must be payable**

- (1) In section 71 of the Pension Schemes Act 1993 (c. 48) (basic principle as to short service benefit), for subsection (3) substitute—
- “(3) Subject to subsection (4), short service benefit must be made payable as from an age which is no greater than—
- (a) the age of 65, or
  - (b) if in the member’s case normal pension age is greater than 65, normal pension age.”
- (2) In section 72 of that Act (no discrimination between short service and long service beneficiaries), at the end add—
- “(4) This section is subject to subsections (3) and (6) of section 71 (age at which short service benefit is to be payable).”

**Commencement Information**

**I31** S. 263 in force at 6.4.2005 by S.I. 2005/275, art. 2(7), Sch. Pt. 7

*Early leavers*

**264 Early leavers: cash transfer sums and contribution refunds**

After section 101 of the Pension Schemes Act 1993 insert—

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### **“101AA Scope of Chapter 5**

- (1) This Chapter applies to any member of an occupational pension scheme to which Chapter 1 applies (see section 69(3)) if—
  - (a) his pensionable service terminates before he attains normal pension age, and
  - (b) on the date on which his pensionable service terminates—
    - (i) the three month condition is satisfied, but
    - (ii) he does not have relevant accrued rights to benefit under the scheme.
- (2) For the purposes of subsection (1), the three month condition is that the period of the member’s pensionable service under the scheme, taken together with—
  - (a) any previous period of his pensionable service under the scheme, and
  - (b) any period throughout which he was employed in linked qualifying service under another scheme,
 amounts to at least three months.
- (3) A period counts for the purposes of paragraph (a) or (b) of subsection (2) only so far as it counts towards qualification for long service benefit within the meaning of Chapter 1.
- (4) For the purposes of subsection (1), “relevant accrued rights to benefit under the scheme”, in relation to a member of a scheme, means rights which—
  - (a) have accrued to or in respect of him under the scheme, and
  - (b) entitle him to the relevant benefits which would have accrued to or in respect of him under the applicable rules if paragraphs (a) and (b) of section 71(1) (and the word “and” immediately preceding them) did not have effect.
- (5) References in the following provisions of this Chapter to a member, in relation to an occupational pension scheme, are to a member of the scheme to whom this Chapter applies.

### **101AB Right to cash transfer sum and contribution refund**

- (1) On the termination of his pensionable service, a member of an occupational pension scheme acquires a right to whichever one he elects of the following options—
  - (a) a cash transfer sum;
  - (b) a contribution refund.
- (2) Subsection (1) is subject to the following provisions of this Chapter.
- (3) In this Chapter “cash transfer sum” means, in relation to a member of an occupational pension scheme, the cash equivalent, at the date on which his pensionable service terminates, of the benefits mentioned in section 101AA(4)(b).
- (4) In this Chapter, “contribution refund” means, in relation to a member of an occupational pension scheme, a sum representing the aggregate of—
  - (a) the member’s employee contributions to the scheme, and

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- (b) where transfer credits have been allowed to the member under the scheme by virtue of a payment (“the transfer payment”) made by the trustees or managers of another occupational pension scheme, the member’s employee contributions to that other scheme, so far as they—
  - (i) relate to the transfer payment, and
  - (ii) do not, in aggregate, exceed the amount of the transfer payment.
- (5) In subsection (4), “employee contributions” means, in relation to a member of an occupational pension scheme, contributions made to the scheme by or on behalf of the member on his own account, but does not include—
  - (a) a transfer payment by virtue of which transfer credits have been allowed to the member under the scheme, or
  - (b) any pension credit or amount paid to the scheme which is attributable (directly or indirectly) to a pension credit.

#### **101AC Notification of right to cash transfer sum or contribution refund**

- (1) This section applies where the pensionable service of a member of an occupational pension scheme has terminated.
- (2) The trustees or managers of the scheme must—
  - (a) within a reasonable period after the termination give the member a statement in writing containing information adequate to explain—
    - (i) the nature of the right acquired by him under section 101AB, and
    - (ii) how he may exercise the right,and such other information as may be prescribed, and
  - (b) afford the member a reasonable period after giving him that statement within which to exercise the right.
- (3) The statement given under subsection (2)(a) must specify, in particular—
  - (a) in relation to the cash transfer sum to which the member acquires a right under section 101AB, its amount and the permitted ways in which the member can use it,
  - (b) the amount of the contribution refund to which the member so acquires a right, and
  - (c) the last day on which the member may, disregarding section 101AI(2), exercise the right (“the reply date”).
- (4) Information which may be prescribed under subsection (2)(a) includes, in particular—
  - (a) information about any tax liability in respect of, or deduction required or permitted to be made from, the cash transfer sum or contribution refund, and
  - (b) information about the effect on other rights of the member (whether under the applicable rules or otherwise) of exercising the right.
- (5) The trustees or managers may notify the member that, if he does not exercise the right mentioned in subsection (2)(a)(i) on or before the reply date, the trustees or managers will be entitled to pay the contribution refund to him.

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- (6) Where the trustees or managers of the scheme fail to comply with subsection (2), section 10 of the Pensions Act 1995 (civil penalties) applies to any trustee or manager who has failed to take all reasonable steps to secure compliance.

#### **101AD Exercise of right under section 101AB**

- (1) This section applies where a member of an occupational pension scheme acquires a right under section 101AB.
- (2) The member may exercise the right by giving a notice in writing to that effect to the trustees or managers stating—
- (a) which of the options under section 101AB(1) he elects, and
  - (b) if he elects for the cash transfer sum, the permitted way in which he requires that sum to be used.
- (3) The notice under subsection (2) must be given on or before—
- (a) the reply date, or
  - (b) such later date as the trustees or managers may allow in his case under section 101AI(2).

#### **101AE Permitted ways of using cash transfer sum**

- (1) This section applies in relation to a cash transfer sum to which a member of an occupational pension scheme acquires a right under section 101AB.
- (2) The ways in which the cash transfer sum may be used are—
- (a) for acquiring transfer credits allowed under the rules of another occupational pension scheme—
    - (i) whose trustees or managers are able and willing to accept the cash transfer sum, and
    - (ii) which satisfies prescribed requirements,
  - (b) for acquiring rights allowed under the rules of a personal pension scheme—
    - (i) whose trustees or managers are able and willing to accept the cash transfer sum, and
    - (ii) which satisfies prescribed requirements,
  - (c) for purchasing one or more appropriate annuities,
  - (d) in such circumstances as may be prescribed, for subscribing to other pension arrangements which satisfy prescribed requirements.
- (3) For the purposes of subsection (2), “appropriate annuity” means an annuity which satisfies prescribed requirements and is purchased from an insurer who—
- (a) falls within section 19(4)(a),
  - (b) is chosen by the member, and
  - (c) is willing to accept payment on account of the member from the trustees or managers of the scheme.

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### **101AF Calculation of cash transfer sum and contribution refund**

- (1) Cash transfer sums are to be calculated and verified in the prescribed manner.
- (2) Any calculation of a contribution refund must conform with such requirements as may be prescribed.
- (3) Regulations may provide—
  - (a) for amounts to be deducted in respect of administrative costs in calculating cash transfer sums;
  - (b) for a cash transfer sum or contribution refund to be increased or reduced in prescribed circumstances.
- (4) The circumstances that may be prescribed under subsection (3)(b) include in particular—
  - (a) a failure by the trustees or managers of the scheme to comply with section 101AG(2) or (4) in relation to the cash transfer sum or contribution refund, and
  - (b) the state of funding of the scheme.
- (5) Regulations under subsection (3)(b) may provide—
  - (a) for a cash transfer sum to be reduced so that the member has no right to have any amount paid by way of cash transfer sum in respect of him;
  - (b) for a contribution refund to be reduced so that the member has no right to receive any amount by way of contribution refund under this Chapter.

### **101AG Duties of trustees or managers following exercise of right**

- (1) This section applies where a member of an occupational pension scheme has exercised a right under section 101AB in accordance with section 101AD.
- (2) Where the member has elected for the cash transfer sum, the trustees or managers of the scheme must, within a reasonable period beginning with the date on which the right was exercised, do what is needed to carry out the requirement specified in the member's notice under section 101AD(2)(b).
- (3) When the trustees or managers have done what is needed to carry out that requirement, they are discharged from any obligation—
  - (a) in respect of any rights (including conditional rights) of, or in respect of, the member to relevant benefits under the applicable rules, and
  - (b) to make any other payment by way of refund to or in respect of the member of, or in respect of—
    - (i) the contributions, or any payment, mentioned in section 101AB(4), or
    - (ii) any other contributions made to the scheme, or any other scheme, in respect of the member (other than any pension credit or amount attributable (directly or indirectly) to a pension credit).
- (4) Where the member has elected for the contribution refund, the trustees or managers of the scheme must, within a reasonable period beginning with the

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date on which the right was exercised, do what is needed to secure that the amount of the contribution refund is paid to the member or as he directs.

- (5) When the trustees or managers have done what is needed to secure the payment of the contribution refund as mentioned in subsection (4)—
- (a) they are discharged from any obligation in respect of any rights (including conditional rights) of, or in respect of, the member to relevant benefits under the applicable rules, and
  - (b) if they are required under the applicable rules, or determine in accordance with those rules, to make any payment (“the refund payment”) by way of refund to or in respect of the member of, or in respect of—
    - (i) the contributions, or any payment, mentioned in section 101AB(4), or
    - (ii) any other contributions made to the scheme, or any other scheme, in respect of the member (other than any pension credit or amount attributable (directly or indirectly) to a pension credit),
 the amount of the contribution refund may be set off against the refund payment.
- (6) Where the trustees or managers fail to comply with subsection (2) or (4), section 10 of the Pensions Act 1995 (civil penalties) applies to any trustee or manager who has failed to take all reasonable steps to secure compliance.

#### **101AH Powers of trustees or managers where right not exercised**

- (1) This section applies where—
- (a) a member of an occupational pension scheme does not exercise a right acquired by him under section 101AB on or before the reply date or such later date as the trustees or managers of the scheme allow in his case under section 101AI(2), and
  - (b) the trustees or managers of the scheme have notified the member as mentioned in section 101AC(5).
- (2) The trustees or managers may within a reasonable period beginning with—
- (a) the reply date, or
  - (b) if a later date has been allowed as mentioned in subsection (1), that later date,
- pay the contribution refund to the member.
- (3) When the trustees or managers have paid the contribution refund to the member—
- (a) they are discharged from any obligation in respect of any rights (including conditional rights) of, or in respect of, the member to relevant benefits under the applicable rules, and
  - (b) if they are required under the applicable rules, or determine in accordance with those rules, to make any payment (“the refund payment”) by way of refund to or in respect of the member of, or in respect of—
    - (i) the contributions, or any payment, mentioned in section 101AB(4), or

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- (ii) any other contributions made to the scheme, or any other scheme, in respect of the member (other than any pension credit or amount attributable (directly or indirectly) to a pension credit),
- the amount of the contribution refund may be set off against the refund payment.

### **101AI Rights under section 101AB: further provisions**

- (1) A member of an occupational pension scheme loses any right acquired by him under section 101AB—
  - (a) if the scheme is wound up, or
  - (b) subject to subsection (2), if he fails to exercise the right on or before the reply date.
- (2) If the member has failed to exercise any such right on or before the reply date, the trustees or managers of the scheme may allow him to exercise it on or before such later date as they may determine on the application of the member.
- (3) Where the trustees or managers determine a later date under subsection (2)—
  - (a) they must give a notice in writing to that effect to the member, and
  - (b) subsection (1)(b) applies in relation to the member as if the reference to the reply date were a reference to the later date.
- (4) For the purposes of subsection (3) and sections 101AC(2) and 101AD(2), a document or notice may be given to a person—
  - (a) by delivering it to him,
  - (b) by leaving it at his proper address, or
  - (c) by sending it by post to him at that address.
- (5) For the purposes of subsection (4), and section 7 of the Interpretation Act 1978 (service of documents by post) in its application to that subsection, the proper address of a person is—
  - (a) in the case of a body corporate, the address of the registered or principal office of the body, and
  - (b) in any other case, the last known address of the person.
- (6) This Chapter is subject to any provision made by or under section 61 (deduction of contributions equivalent premium from refund of scheme contributions)—
  - (a) permitting any amount to be deducted from any payment of a contribution refund, or
  - (b) requiring the payment of a contribution refund to be delayed.
- (7) In this Chapter, except where the context otherwise requires, the following expressions have the following meanings—

“the applicable rules” 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

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- (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 this Part;  
 “member” has the meaning given in section 101AA(5);  
 “permitted way”, in relation to a cash transfer sum, means any of the ways specified in section 101AE(2) in which the sum may be used;  
 “relevant benefits” means benefits which are not attributable (directly or indirectly) to a pension credit;  
 “reply date”, in relation to a member whose pensionable service has terminated, has the meaning given in section 101AC(3)(c).
- (8) For the purposes of subsection (7)—
- (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);
  - (ii) this Chapter or Chapter 2, 3 or 4 of this Part of this Act or regulations made under this Chapter or any of those Chapters;
  - (iii) Part 4A of this Act or regulations made under that Part;
  - (iv) section 110(1) of this Act;
  - (v) Part 1 of the Pensions Act 1995 (occupational pensions) or subordinate legislation made or having effect as if made under that 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;
- (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 this Act;
  - (iii) section 117(1) of the Pensions Act 1995;
  - (iv) section 31(4) of the Welfare Reform and Pensions Act 1999;
  - (v) section 306(1) of the Pensions Act 2004.”

#### **Commencement Information**

**I32** [S. 264](#) in force at 1.1.2006 for specified purposes and 6.4.2006 in so far as not already in force by [S.I. 2005/3331, art. 2\(5\)](#), [Sch. Pt. 5](#)

#### *Safeguarding pension rights*

### **265 Paternity leave and adoption leave**

- (1) In Schedule 5 to the Social Security Act 1989 (c. 24) (employment-related schemes for pensions or other benefits: equal treatment), after paragraph 5 insert—



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### “Unfair paternity leave provisions

- 5A (1) Where an employment-related benefit scheme includes any unfair paternity leave provisions (irrespective of any differences on the basis of sex in the treatment accorded to members under those provisions), then—
- (a) the scheme shall be regarded to that extent as not complying with the principle of equal treatment; and
  - (b) subject to sub-paragraph (3), this Schedule shall apply accordingly.

- (2) In this paragraph “unfair paternity leave provisions”, in relation to an employment-related benefit scheme, means any provision—

- (a) which relates to continuing membership of, or the accrual of rights under, the scheme during any period of paid paternity leave in the case of any member who is (or who, immediately before the commencement of such a period, was) an employed earner and which treats such a member otherwise than in accordance with the normal employment requirement; or
- (b) which requires the amount of any benefit payable under the scheme to or in respect of any such member, to the extent that it falls to be determined by reference to earnings during a period which included a period of paid paternity leave, to be determined otherwise than in accordance with the normal employment requirement.

- (3) In the case of any unfair paternity leave provision—

- (a) the more favourable treatment required by paragraph 3(1) is treatment no less favourable than would be accorded to the member in accordance with the normal employment requirement; and
- (b) paragraph 3(2) does not authorise the making of any such election as is there mentioned;

but, in respect of any period of paid paternity leave, a member shall only be required to pay contributions on the amount of contractual remuneration or statutory paternity pay actually paid to or for him in respect of that period.

- (4) In this paragraph—

“period of paid paternity leave”, in the case of a member, means a period—

- (a) throughout which the member is absent from work in circumstances where sub-paragraph (5), (6) or (7) applies, and
- (b) for which the employer (or if he is no longer in his employment, his former employer) pays him any contractual remuneration or statutory paternity pay; and

“the normal employment requirement” is the requirement that any period of paid paternity leave shall be treated as if it were a period throughout which the member in question works normally and receives the remuneration likely to be paid for doing so.

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- (5) This sub-paragraph applies if—
- (a) the member’s absence from work is due to the birth or expected birth of a child, and
  - (b) the member satisfies the conditions prescribed under section 171ZA(2)(a)(i) and (ii) of the Social Security Contributions and Benefits Act 1992 in relation to that child.
- (6) This sub-paragraph applies if—
- (a) the member’s absence from work is due to the placement or expected placement of a child for adoption under the law of any part of the United Kingdom, and
  - (b) the member satisfies the conditions prescribed under section 171ZB(2)(a)(i) and (ii) of that Act in relation to that child.
- (7) This sub-paragraph applies if—
- (a) the member’s absence from work is due to the adoption or expected adoption of a child who has entered the United Kingdom in connection with or for the purposes of adoption which does not involve the placement of the child for adoption under the law of any part of the United Kingdom, and
  - (b) the member satisfies the conditions prescribed under section 171ZB(2)(a)(i) and (ii) of that Act (as applied by virtue of section 171ZK of that Act (adoption cases not involving placement under the law of the United Kingdom)) in relation to that child.

### **Unfair adoption leave provisions**

- 5B (1) Where an employment-related benefit scheme includes any unfair adoption leave provisions (irrespective of any differences on the basis of sex in the treatment accorded to members under those provisions), then—
- (a) the scheme shall be regarded to that extent as not complying with the principle of equal treatment; and
  - (b) subject to sub-paragraph (3), this Schedule shall apply accordingly.
- (2) In this paragraph “unfair adoption leave provisions”, in relation to an employment-related benefit scheme, means any provision—
- (a) which relates to continuing membership of, or the accrual of rights under, the scheme during any period of paid adoption leave in the case of any member who is (or who, immediately before the commencement of such a period, was) an employed earner and which treats such a member otherwise than in accordance with the normal employment requirement; or
  - (b) which requires the amount of any benefit payable under the scheme to or in respect of any such member, to the extent that it falls to be determined by reference to earnings during a period which included a period of paid adoption leave, to be determined otherwise than in accordance with the normal employment requirement.
- (3) In the case of any unfair adoption leave provision—

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- (a) the more favourable treatment required by paragraph 3(1) is treatment no less favourable than would be accorded to the member in accordance with the normal employment requirement; and
- (b) paragraph 3(2) does not authorise the making of any such election as is there mentioned;

but, in respect of any period of paid adoption leave, a member shall only be required to pay contributions on the amount of contractual remuneration or statutory adoption pay actually paid to or for him in respect of that period.

(4) In this paragraph—

“period of paid adoption leave”, in the case of a member, means a period—

- (a) throughout which the member is absent from work in circumstances where sub-paragraph (5) or (6) applies, and
- (b) for which the employer (or, if he is no longer in his employment, his former employer) pays him any contractual remuneration or statutory adoption pay; and

“the normal employment requirement” is the requirement that any period of paid adoption leave shall be treated as if it were a period throughout which the member in question works normally and receives the remuneration likely to be paid for doing so.

(5) This sub-paragraph applies if—

- (a) the member’s absence from work is due to the placement, or expected placement, of a child for adoption under the law of any part of the United Kingdom, and
- (b) the member is a person with whom the child is, or is expected to be, placed for such adoption.

(6) This sub-paragraph applies if—

- (a) the member’s absence from work is due to the adoption or expected adoption of a child who has entered the United Kingdom in connection with or for the purposes of adoption which does not involve the placement of the child for adoption under the law of any part of the United Kingdom, and
- (b) the member is a person by whom the child has been or is expected to be adopted.”

(2) The provision that may be made under section 142(1) of the Adoption and Children Act 2002 (c. 38) (power to make consequential etc provision to give full effect to any provision of that Act) includes provision modifying paragraph 5A or 5B of Schedule 5 to the Social Security Act 1989 (c. 24) (as inserted by subsection (1) above).

#### Commencement Information

**I33** S. 265 in force at 6.4.2005 by [S.I. 2005/275](#), art. 2(7), [Sch. Pt. 7](#) (with art. 2(12))

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## 266 Inalienability of occupational pension

- (1) Section 91 of the Pensions Act 1995 (c. 26) (inalienability of occupational pension) is amended as follows.
- (2) In subsection (5) (exceptions to the rule of inalienability) at the end insert—
  - “(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 obligation due from the person in question to the scheme arising out of a payment made in error in respect of the pension.”
- (3) In subsection (6) (limits on the charge, lien or set-off under subsection (5)(d) or (e)) for “or (e)” substitute “, (e) or (f)”.

### Commencement Information

**I34** S. 266 in force at 6.4.2005 by [S.I. 2005/275](#), art. 2(7), [Sch. Pt. 7](#)

## *Voluntary contributions*

## 267 Voluntary contributions

- (1) Omit section 111 of the Pension Schemes Act 1993 (c. 48) (requirements for schemes to provide facilities for members to pay voluntary contributions, and relating to any such contributions).
- (2) In section 132 of that Act (duty to bring schemes into conformity with indirectly-applying requirements) omit from “or the voluntary” to third “requirements”.
- (3) In section 181(1) of that Act (general interpretation) omit the definition of “voluntary contributions requirements”.

### Commencement Information

**I35** S. 267 in force at 6.4.2006 by [S.I. 2006/560](#), art. 2(3), [Sch. Pt. 3](#)

## *Payments by employers*

## 268 Payments made by employers to personal pension schemes

- (1) Section 111A of the Pension Schemes Act 1993 (c. 48) (monitoring of employers' payments to personal pension schemes) is amended as follows.
- (2) For subsections (3) to (7) substitute—
  - “(3) The trustees or managers of the scheme must monitor the payment of contributions by or on behalf of the employer under the direct payment arrangements.

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- (4) The trustees or managers may request the employer to provide them, (or arrange for them to be provided) with the payment information specified in the request.
- (5) For the purposes of subsection (4) “payment information” is information required by the trustees or managers to enable them to discharge the duty imposed by subsection (3).
- (6) The employer must comply with a request under subsection (4) within a reasonable period.
- (7) Where, as a result of the employer’s failure to so comply, the trustees or managers are unable to discharge the duty imposed by subsection (3), they must give notice to that effect to the Regulatory Authority within a reasonable period.
- (7A) Where—
  - (a) a contribution payable under the direct payment arrangements has not been paid on or before its due date, and
  - (b) the trustees or managers have reasonable cause to believe that the failure to pay the contribution is likely to be of material significance in the exercise by the Regulatory Authority of any of their functions, they must give notice to that effect to the Regulatory Authority and the employee within a reasonable period after the due date.”
- (3) In subsection (8) (employer’s liability for civil penalties) for “subsection (3) or (5)” substitute “ subsection (6) and as a result the trustees or managers of the scheme are unable to discharge the duty imposed by subsection (3) ”.
- (4) In subsection (9) (liability of trustees or managers for civil penalties) for “subsection (6) or (7)” substitute “ subsection (7) or (7A) ”.

#### **Commencement Information**

**I36** S. 268 in force at 6.4.2006 by S.I. 2006/560, art. 2(3), Sch. Pt. 3

## **269 Payments made by employers and members to occupational pension schemes**

- (1) In section 49 of the Pensions Act 1995 (c. 26) (other responsibilities of trustees, employers, etc), in subsection (9) (duty of trustee etc to report a failure by employer to pay contributions deducted from earnings on time) for paragraph (b) substitute—
  - “(b) if 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 the member within a reasonable period after the end of the prescribed period under subsection (8).”
- (2) In section 88 of that Act (schedules of payments to money purchase schemes), for subsection (1) (duty of trustees or managers to report a failure to pay amounts on time) substitute—

*Status: Point in time view as at 24/10/2011. This version of this part contains provisions that are prospective.*

*Changes to legislation: Pensions Act 2004, Part 5 is up to date with all changes known to be in force on or before 14 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)*

- “(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
  - (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.”

#### **Commencement Information**

**I37** S. 269 in force at 1.7.2005 for specified purposes and 6.4.2006 in so far as not already in force by [S.I. 2005/1720, art. 2\(15\)](#), [Sch. Pt. 2](#)

### *Winding up*

## **270 Winding up**

- (1) For section 73 of the Pensions Act 1995 (c. 26) (preferential liabilities on winding up) substitute—

### **“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

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- (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)—
- “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;

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- (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 Chapter 5 of Part 4 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);
  - “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.

### **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
  - (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.



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- (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.
- (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 (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.

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

- (1) Any action taken in contravention of section 73A(3) 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) 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;
  - (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).

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- (7) But nothing in subsection (6) prevents the winding up provisions applying in relation to a liability under Chapter 4 of Part 4 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
  - (b) subsection (10) of section 73 applies as it applies for the purposes of that section.”
- (2) In section 74 of the Pensions Act 1995 (c. 26) (discharge of liabilities by insurance, etc on winding up)—
- (a) for subsection (1) substitute—
    - “(1) This section applies where an occupational pension scheme to which section 73 applies is being wound up.”,
  - (b) in subsection (2) omit “(including increases in pensions)”,
  - (c) in subsection (3), after paragraph (d) insert—
    - “(e) by the payment of a cash sum in circumstances where prescribed requirements are met.”,
  - (d) in subsection (4)—
    - (i) for “rules of the scheme” substitute “scheme rules”, and
    - (ii) omit “(including increases in pensions)”,
  - (e) omit subsection (5)(b) and the word “or” immediately preceding it, and
  - (f) after subsection (5) insert—
    - “(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

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- (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).”

#### **Commencement Information**

**I38** S. 270 in force for the purpose only of conferring power to make regulations, orders or rules, as the case may be, 10.2.2005; and for all other purposes at 6.4.2005 in so far as not already in force by [S.I. 2005/275](#), art. 2(3), **Sch. Pt. 3** (with art. 2(8)(9))

### *Deficiency in assets of certain occupational pension schemes*

#### **271 Debt due from the employer when assets insufficient**

(1) Section 75 of the Pensions Act 1995 (c. 26) (deficiencies in the assets) is amended as follows.

(2) For subsections (1) to (4) substitute—

“(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.

(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—

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- (a) beginning with the occurrence of the last such relevant event which occurred during the period mentioned in sub-paragraph (i), and
    - (b) ending with the commencement of the winding up of the scheme,
  - 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 sub-paragraph (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,

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- (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
    - (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.”
- (3) In subsection (5) for “subsection (1)” substitute “ subsections (2) and (4) ”.
- (4) In subsection (6)—
- (a) after “scheme” insert “ rules ”, and
  - (b) at the end insert— “ In this subsection “scheme rules” has the same meaning as in the Pensions Act 2004 (“the 2004 Act”) (see section 318 of that Act). ”
- (5) After subsection (6) insert—
- “(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),

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- (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,
    - (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.

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(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
- (b) either—
  - (i) the voluntary winding up of the employer is stayed other than in prescribed circumstances, or
  - (ii) a meeting of creditors is held in relation to the employer under section 95 of that Act (creditors' meeting which has the effect of converting a members' voluntary winding up into a 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.”

(6) Omit subsection (9).

#### Commencement Information

**I39** S. 271 in force for the purpose only of conferring power to make regulations, orders or rules, as the case may be, 10.2.2005; and for all other purposes at 6.4.2005 in so far as not already in force by [S.I. 2005/275](#), art. 2(3), [Sch. Pt. 3](#) (with [art. 2\(10\)\(11\)](#))

## 272 Debt due from the employer in the case of multi-employer schemes

After section 75 of the Pensions Act 1995 (c. 26) (deficiencies in the assets) insert—

### “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;



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- (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—
  - (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

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- (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.
- (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”).”

#### **Commencement Information**

- I40** S. 272(13)(14) in force at 6.4.2005 by [S.I. 2005/275, art. 2\(7\)](#), [Sch. Pt. 7](#)
- I41** S. 272(5)-(14) in force at 15.3.2005 by [S.I. 2005/695, art. 2\(2\)](#) (with [arts. 4-6, Sch. 2, Sch. 3](#))
- I42** S. 272(1)-(4) in force for the purpose only of conferring power to make regulations, orders or rules, as the case may be, 10.2.2005; and for all other purposes at 6.4.2005 in so far as not already in force by [S.I. 2005/275, art. 2\(3\)](#), [Sch. Pt. 3](#)
- I43** S. 272 in force for the purpose only of conferring power to make regulations, orders or rules, as the case may be, 10.2.2005; and then for all other purposes at 6.4.2005 for specified purposes by [S.I. 2005/275, art. 2\(3\)](#), [Sch. Pt. 3](#)
- I44** S. 272 in force at 15.3.2005 in so far as not already in force by [S.I. 2005/695, art. 2\(2\)](#) (with [arts. 4-6, Sch. 2, Sch. 3](#))

#### *Pension disputes*

PROSPECTIVE

#### **273 Resolution of disputes**

For section 50 of the Pensions Act 1995 (c. 26) (resolution of disputes) substitute—

##### **“50 Requirement for dispute resolution arrangements**

- (1) The trustees or managers of an occupational pension scheme must secure that dispute resolution arrangements [<sup>F12</sup>complying with the requirements of this section] are made and implemented.
- (2) Dispute resolution arrangements are [<sup>F13</sup>arrangements] for the resolution of pension disputes.

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- (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),
  - (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.
- [<sup>F14</sup>(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.
- [<sup>F15</sup>(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 [<sup>F16</sup>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—

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- (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
  - (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.

### **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—
- (a) he is a member of the scheme,
  - (b) he is a widow, widower or surviving dependant of a deceased member of the scheme,
  - (c) he is a surviving non-dependant beneficiary of a deceased member of the scheme,
  - (d) he is a prospective member of the scheme,
  - (e) he has ceased to be within any of the categories of persons referred to in paragraphs (a) to (d), or
  - (f) 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—
- (a) is able, at his own option, to become a member of the scheme,
  - (b) will become so able if he continues in the same employment for a sufficiently long period,
  - (c) will be admitted to the scheme automatically unless he makes an election not to become a member, or
  - (d) may be admitted to it subject to the consent of his employer.

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

- (1) The procedure provided for by the dispute resolution arrangements [<sup>F17</sup>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,

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- (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.

[<sup>F18</sup>(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 [<sup>F19</sup>in relation to such an application] are to be reached and given.

[<sup>F20</sup>(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

**F12** Words in s. 273 inserted (26.9.2007) by Pensions Act 2007 (c. 22), ss. 16(2), 30(3)

**F13** Word in s. 273 substituted (26.9.2007) by Pensions Act 2007 (c. 22), ss. 16(3), 30(3)

**F14** Words in s. 273 inserted (26.9.2007) by Pensions Act 2007 (c. 22), ss. 16(4), 30(3)

**F15** Words in s. 273 inserted (26.9.2007) by Pensions Act 2007 (c. 22), ss. 16(5), 30(3)

**F16** Words in s. 273 inserted (26.9.2007) by Pensions Act 2007 (c. 22), ss. 16(6), 30(3)

**F17** Words in s. 273 substituted (26.9.2007) by Pensions Act 2007 (c. 22), ss. 16(7), 30(3)

**F18** Words in s. 273 substituted (26.9.2007) by Pensions Act 2007 (c. 22), ss. 16(8), 30(3)

**F19** Words in s. 273 inserted (26.9.2007) by Pensions Act 2007 (c. 22), ss. 16(9), 30(3)

**F20** Words in s. 273 inserted (26.9.2007) by Pensions Act 2007 (c. 22), ss. 16(10), 30(3)

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### *The Pensions Ombudsman*

#### **274 The Pensions Ombudsman and Deputy Pensions Ombudsmen**

- (1) In subsection (2) of section 145 of the Pension Schemes Act 1993 (c. 48) (the Pensions Ombudsman) after “hold” insert “ and vacate ”.
- (2) For subsection (3) of that section substitute—
  - “(3) The Pensions Ombudsman may resign or be removed from office in accordance with those terms and conditions.”
- (3) After that section insert—

#### **“145A Deputy Pensions Ombudsmen**

- (1) The Secretary of State may appoint one or more persons to act as a deputy to the Pensions Ombudsman (“a Deputy Pensions Ombudsman”).
  - (2) Any such appointment is to be upon such terms and conditions as the Secretary of State thinks fit.
  - (3) A Deputy Pensions Ombudsman—
    - (a) is to hold and vacate office in accordance with the terms and conditions of his appointment, and
    - (b) may resign or be removed from office in accordance with those terms and conditions.
  - (4) A Deputy Pensions Ombudsman may perform the functions of the Pensions Ombudsman—
    - (a) during any vacancy in that office,
    - (b) at any time when the Pensions Ombudsman is for any reason unable to discharge his functions, or
    - (c) at any other time, with the consent of the Secretary of State.
  - (5) References to the Pensions Ombudsman in relation to the performance of his functions are accordingly to be construed as including references to a Deputy Pensions Ombudsman in relation to the performance of those functions.
  - (6) The Secretary of State may—
    - (a) pay to or in respect of a Deputy Pensions Ombudsman such amounts—
      - (i) by way of remuneration, compensation for loss of office, pension, allowances and gratuities, or
      - (ii) by way of provision for any such benefits,
 as the Secretary of State may determine, and
    - (b) reimburse the Pensions Ombudsman in respect of any expenses incurred by a Deputy Pensions Ombudsman in the performance of any of the Pensions Ombudsman’s functions.”
- (4) In Part 3 of Schedule 1 to the House of Commons Disqualification Act 1975 (c. 24) (other disqualifying offices), after “Pensions Ombudsman” insert “ and any deputy to that Ombudsman appointed under section 145A of the Pension Schemes Act 1993 ”.

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- (5) In Part 3 of Schedule 1 to the Northern Ireland Assembly Disqualification Act 1975 (c. 25)(other disqualifying offices), at the appropriate place insert— “ Pensions Ombudsman and any deputy to that Ombudsman appointed under section 145A of the Pension Schemes Act 1993. ”
- (6) The persons to whom section 1 of the Superannuation Act 1972 (c. 11) (persons to or in respect of whom benefits may be provided by schemes under that section) applies are to include a deputy to the Pensions Ombudsman.
- (7) The Pensions Ombudsman must pay to the Minister for the Civil Service, at such times as he may direct, such sums as he may determine in respect of the increase attributable to subsection (6) in the sums payable out of money provided by Parliament under that Act.
- (8) The Pensions Ombudsman must also pay to the Minister for the Civil Service, at such times as he may direct, such sums as he may determine in respect of the amount payable out of money provided by Parliament under that Act which is attributable to the following persons being persons to whom section 1 of that Act applies—
  - (a) the Pensions Ombudsman;
  - (b) the employees of the Pensions Ombudsman.

**Commencement Information**

**145** S. 274 in force at 17.12.2004 by [S.I. 2004/3350](#), art. 2, [Sch.](#)

**275 Jurisdiction**

- (1) After section 146(4) of the Pension Schemes Act 1993 (c. 48) (power to apply Part 10 of that Act to those concerned with the administration of a scheme) insert—

“(4A) For the purposes of subsection (4) a person or body of persons is concerned with the administration of an occupational or personal pension scheme where the person or body is responsible for carrying out an act of administration concerned with the scheme.”
- (2) The amendment made by this section has effect in relation to the making of any provision under section 146(4) of the Pension Schemes Act 1993 applying Part 10 of that Act in relation to a complaint or a dispute in so far as it relates to a matter which arises on or after the day on which this section comes into force.
- (3) For the purposes of subsection (2), a question falling within section 146(1)(g) of the Pension Schemes Act 1993 is to be treated as a dispute.

**Commencement Information**

**146** S. 275 in force at 6.4.2005 by [S.I. 2005/275](#), art. 2(7), [Sch. Pt. 7](#)

**276 Investigations**

- (1) Omit section 54 of the Child Support, Pensions and Social Security Act 2000 (c. 19) (“the 2000 Act”) (which amends sections 148, 149 and 151 of the Pension Schemes

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Act 1993 and which has not been brought into force except for the purpose of making regulations and rules).

- (2) Omit the following provisions of the Pension Schemes Act 1993—
- (a) section 148(5)(ba) and (bb) as inserted by section 54(2) of the 2000 Act,
  - (b) section 149(1), (1A) and (1B) as substituted by section 54(3) of the 2000 Act,
  - (c) section 149(3)(ba) as substituted by section 54(4) of the 2000 Act,
  - (d) section 149(3)(d) and the word “and” immediately preceding it as inserted by section 54(5) of the 2000 Act,
  - (e) section 149(8) as inserted by section 54(6) of the 2000 Act,
  - (f) section 151(1)(c) and the word “and” immediately preceding it as inserted by section 54(7) of the 2000 Act,
  - (g) section 151(3)(ba) and (bb) as substituted by section 54(8) of the 2000 Act, and
  - (h) in section 151(3)(c) the words “any of paragraphs (a) to (bb)” as inserted by section 54(8) of the 2000 Act,

to the extent that those amendments made by section 54 of the 2000 Act have been brought into force for the purpose of making regulations and rules.

**Commencement Information**

**I47** S. 276 in force at 6.4.2005 by *S.I. 2005/275, art. 2(7), Sch. Pt. 7*

*Pension compensation*

**277 Amendments relating to the Pensions Compensation Board**

- (1) The Pensions Act 1995 (c. 26) is amended as follows.
- (2) In section 80 (review of decisions of the Pensions Compensation Board)—
- (a) after subsection (2) insert—
    - “(2A) The Compensation Board may also review such a determination without an application being made.”, and
  - (b) for subsections (4) and (5) substitute—
    - “(4) Regulations may make provision—
      - (a) with respect to reviews under this section (or any corresponding provision in force in Northern Ireland);
      - (b) with respect to applications under subsection (2) (or any corresponding provision in force in Northern Ireland) and the procedure to be adopted on any such application.”
- (3) In section 81 (cases where compensation provisions apply), omit subsections (1)(d), (2A) and (7).
- (4) In section 83 (amount of compensation) for subsections (3) and (4) substitute—
- “(3) The amount of the payment, or (if there is more than one) the aggregate, must not exceed the aggregate of—



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- (a) the amount (if any) by which the shortfall at the application date exceeds the recoveries of value made between the application date and the settlement date, and
- (b) interest at the prescribed rate for the prescribed period on the amount of that excess (if any).”

#### Commencement Information

**I48** S. 277 in force at 17.12.2004 by S.I. 2004/3350, art. 2, Sch. (with art. 4)

### *Annual increases in rate of pensions*

#### **278 Annual increase in rate of certain occupational pensions**

- (1) Section 51 of the Pensions Act 1995 (annual increase in rate of certain occupational pensions) is amended in accordance with subsections (2) to (6).
  - (2) In subsection (1)—
    - (a) omit “and” at the end of sub-paragraph (i) of paragraph (a),
    - (b) at the end of sub-paragraph (ii) of that paragraph insert—
      - “(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”, and
    - (c) for paragraph (b) substitute—
      - “(b) the whole, or any part of, the pension is attributable—
        - (i) to pensionable service on or after the appointed day, 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 the appointed day, 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.”
- (3) In subsection (2) after “money purchase benefits” insert “ where the pension is in payment before the commencement day ”.
  - (4) In subsection (4)(b) for “5 per cent per annum” substitute “—
    - (i) in the case of a category X pension, 5% per annum, and
    - (ii) in the case of a category Y pension, 2.5% per annum.”
  - (5) After subsection (4) insert—
    - “(4A) For the purposes of this section, a pension is a category X pension if it is—

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- (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
    - (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—
- (a) which becomes a pension in payment on or after the commencement day, and
  - (b) 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—
- (a) which becomes a pension in payment on or after the commencement day,
  - (b) part of which is attributable to pensionable service before the commencement day, and
  - (c) 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.”
- (6) In subsection (5)—
- (a) for “the provisions of subsections (2) and (3)” substitute “ any of the provisions of this section ”, and
  - (b) in paragraph (a), after “appointed day” insert “ or the commencement day ”.
- (7) After that section insert—

**“51ZA 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 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
  - (b) in the case of a category Y pension, means whichever is the lesser of—
    - (i) the revaluation percentage for the latest revaluation period specified in the order under paragraph 2 of Schedule 3 to the Pension Schemes Act 1993 which is in force at the time of the increase, and
    - (ii) 2.5%.
- (2) In this section “the revaluation percentage” and “the revaluation period” have the same meaning as in paragraph 2 of Schedule 3 to the Pension Schemes Act 1993.”

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- (8) In section 54(3) of that Act (sections 51 to 53: supplementary), at the appropriate place insert—

““the commencement day” means the day appointed for the coming into force of section 278 of the Pensions Act 2004 (amendments to section 51),”.

#### Commencement Information

**I49** S. 278 in force at 15.3.2005 for specified purposes by [S.I. 2005/695](#), [art. 2\(4\)](#) (with [arts. 4-6](#), [Sch. 2](#), [Sch. 3](#))

**I50** S. 278 in force at 6.4.2005 by [S.I. 2005/275](#), [art. 2\(7\)](#), [Sch. Pt. 7](#)

### 279 Annual increase in rate of certain personal pensions

- (1) Section 162 of the Pensions Act 1995 (c. 26) (annual increase in rate of certain personal pensions) is amended in accordance with subsection (2).

- (2) In subsection (1) omit “and” at the end of paragraph (a) and for paragraph (b) substitute—

“(b) the pension became a pension in payment before the commencement day,

(c) the whole, or any part of, the pension is attributable to contributions in respect of employment carried on on or after the appointed day, and

(d) 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 (c), 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.”

- (3) In section 163(3) of that Act (section 162: supplementary)—

(a) in the definition of “appropriate percentage”, for the words from “revaluation period” to the end substitute “ 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 (expressions used in this definition having the same meaning as in that paragraph of that Schedule) ”, and

(b) at the appropriate place insert—

““the commencement day” means the day appointed for the coming into force of section 279 of the Pensions Act 2004 (amendments to section 162),”.

#### Commencement Information

**I51** S. 279 in force at 6.4.2005 by [S.I. 2005/275](#), [art. 2\(7\)](#), [Sch. Pt. 7](#)

*Status: Point in time view as at 24/10/2011. This version of this part contains provisions that are prospective.*

*Changes to legislation: Pensions Act 2004, Part 5 is up to date with all changes known to be in force on or before 14 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)*

## 280 Power to increase pensions giving effect to pension credits etc

(1) Section 40 of the Welfare Reform and Pensions Act 1999 (c. 30) (power of the Secretary of State to increase pensions provided to give effect to certain rights) is amended as follows.

(2) In subsection (1), for “5%” substitute “ the maximum percentage ”.

(3) In subsection (2), for “This” substitute “ Subject to subsection (2A), this ”.

(4) After subsection (2) insert—

“(2A) Subsection (2) does not apply to pensions which—

- (a) are money purchase benefits, and
- (b) become pensions in payment on or after the commencement day.

(2B) For the purposes of subsection (1) the “maximum percentage” means—

- (a) 5% in a case where—
  - (i) the pension is in payment before the commencement day, or
  - (ii) the pension is not in payment before the commencement day but the entitlement to the relevant pension credit arose before that day, and
- (b) 2.5% in a case where the entitlement to the relevant pension credit arises on or after the commencement day.”

(5) In subsection (3), at the appropriate places insert—

““commencement day” means the day appointed for the coming into force of section 280 of the Pensions Act 2004 (amendments to section 40);”

““money purchase benefit” has the meaning given by section 181(1) of the Pension Schemes Act 1993;”

““relevant pension credit” means the pension credit to which the eligible pension credit rights or, as the case may be, the safeguarded rights are (directly or indirectly) attributable;”.

### Commencement Information

**I52** S. 280 in force at 15.3.2005 for specified purposes by [S.I. 2005/695](#), [art. 2\(4\)](#) (with [arts. 4-6](#), [Sch. 2](#), [Sch. 3](#))

**I53** S. 280 in force at 6.4.2005 by [S.I. 2005/275](#), [art. 2\(7\)](#), [Sch. Pt. 7](#)

## *Revaluation*

## 281 Exemption from statutory revaluation requirement

(1) Section 84 of the Pension Schemes Act 1993 (c. 48) (basis of revaluation) is amended as follows.

(2) In subsection (5), after paragraph (a) insert “or

- (b) under any arrangement which maintains the value of the pension or other benefit by reference to the rise in the retail prices index during that period.”.

*Status: Point in time view as at 24/10/2011. This version of this part contains provisions that are prospective.*

*Changes to legislation: Pensions Act 2004, Part 5 is up to date with all changes known to be in force on or before 14 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)*

(3) After that subsection add—

“(6) In subsection (5)(b), “retail prices index” means—

- (a) the general index of retail prices (for all items) published by the Office for National Statistics, or
- (b) where that index is not published for a month, any substituted index or figures published by that Office.”

#### *Contracting out*

### **282 Meaning of “working life” in Pension Schemes Act 1993**

In section 181 of the Pension Schemes Act 1993 (c. 48) (general interpretation), in subsection (1) for the definition of “working life” substitute—

““working life”, in relation to a person, means the period beginning with the tax year in which the person attains the age of 16 and ending with—

- (a) the tax year before the one in which the person attains the age of 65 in the case of a man or 60 in the case of a woman, or
- (b) if earlier, the tax year before the one in which the person dies.”

#### **Commencement Information**

**I54** S. 282 in force at 6.4.2005 by [S.I. 2005/275](#), art. 2(7), [Sch. Pt. 7](#)

### **283 Power to prescribe conditions by reference to Inland Revenue approval**

In section 9 of the Pension Schemes Act 1993 (requirements for certification of schemes: general), after subsection (5) insert—

“(5A) Regulations about pension schemes made under this Chapter may contain provisions framed by reference to whether or not a scheme—

- (a) is approved under Chapter 1 (retirement benefit schemes) of Part 14 of the Income and Corporation Taxes Act 1988, or is a relevant statutory scheme within the meaning of that Chapter, or
- (b) is approved under Chapter 4 (personal pension schemes) of that Part.”

#### **Commencement Information**

**I55** S. 283 in force at 1.7.2005 by [S.I. 2005/1720](#), art. 2(9)

### **284 Restrictions on commutation and age at which benefits may be received**

(1) For section 21(1) of the Pension Schemes Act 1993 (commutation of guaranteed minimum pensions) substitute—

“(1) A scheme may, in such circumstances and subject to such restrictions and conditions as may be prescribed, provide for the payment of a lump sum instead of a pension required to be provided by the scheme in accordance with section 13 or 17.”

*Status: Point in time view as at 24/10/2011. This version of this part contains provisions that are prospective.*

*Changes to legislation: Pensions Act 2004, Part 5 is up to date with all changes known to be in force on or before 14 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 section 17 of that Act (minimum pensions for widows and widowers), at the end insert—
- “(8) Where—
- (a) a lump sum is paid to an earner under provisions included in a scheme by virtue of section 21(1), and
- (b) those provisions are of a prescribed description,
- the earner shall be treated for the purposes of this section as having any guaranteed minimum under section 14 that he would have had but for that payment.”
- (3) In section 28 of that Act (ways of giving effect to protected rights), in subsection (4) (provision of a lump sum)—
- (a) after “provision of a lump sum” insert “, subject to such restrictions as may be prescribed,”,
- (b) omit paragraphs (a) and (b), and
- (c) at the end insert “; and
- (e) such other conditions as may be prescribed are satisfied.”
- (4) Omit subsections (4A) and (4B) of that section.
- (5) In subsections (3) and (5) of that section, for “, (4) or (4A)” substitute “ or (4) ”.
- (6) In subsection (8) of that section, in the definition of “the starting date” omit “, which must not be earlier than the member’s 60th birthday,”.
- (7) In section 29(1) of that Act (how a pension may comply with “the pension requirements” for the purposes of section 28)—
- (a) in paragraph (a), for the words from “date” to “or on” substitute “ date that is not later than the member’s 65th birthday, or on ”, and
- (b) in paragraph (aa)(ii) omit the words from “and is not” to “75th birthday,”.

#### **Commencement Information**

**I56** S. 284 in force at 1.7.2005 for specified purposes and 6.4.2006 in so far as not already in force by [S.I. 2005/1720, art. 2\(15\)](#), [Sch. Pt. 2](#)

### *Stakeholder pensions*

#### **285 Meaning of “stakeholder pension scheme”**

- (1) Section 1 of the Welfare Reform and Pensions Act 1999 (c. 30) (meaning of “stakeholder pension scheme”) is amended in accordance with subsections (2) to (4).
- (2) In subsection (1) (requirements to be met by stakeholder pension schemes), in paragraph (a) for “to (9)” substitute “ to (10) ”.
- (3) In subsection (5) (prescribed requirements relating to administrative expenses of scheme), in paragraph (a) for “by or on behalf of” substitute “ by, or on behalf or in respect of, ”.
- (4) After subsection (9) insert—

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“(10) The ninth condition is that—

- (a) if the scheme is an occupational pension scheme, it is specified in a contracting-out certificate in relation to all categories of employment to which the scheme relates, and
- (b) if the scheme is a personal pension scheme, it is an appropriate scheme within the meaning of section 7(4) of the 1993 Act.”

(5) In section 2 of that Act (registration of stakeholder pension), in subsection (2)(b)(i) for “to (9)” substitute “ to (10) ”.

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**Commencement Information**

**I57** S. 285 in force at 6.4.2005 by [S.I. 2005/275](#), art. 2(7), [Sch. Pt. 7](#)

**Status:**

Point in time view as at 24/10/2011. This version of this part contains provisions that are prospective.

**Changes to legislation:**

Pensions Act 2004, Part 5 is up to date with all changes known to be in force on or before 14 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.