



# Pensions Act 2004

## 2004 CHAPTER 35

### PART 9

#### MISCELLANEOUS AND SUPPLEMENTARY

##### *Dissolution of existing bodies*

#### **300 Dissolution of OPRA**

- (1) The Occupational Pensions Regulatory Authority (“OPRA”) is hereby dissolved.
- (2) An order under section 322 which appoints the day on which subsection (1) comes into force may provide—
  - (a) for all property, rights and liabilities to which OPRA is entitled or subject immediately before that day to become the property, rights and liabilities of the Regulator or the Secretary of State, and
  - (b) for any function of OPRA falling to be exercised on or after that day, or which fell to be exercised before that day but has not been exercised, to be exercised by the Regulator, the Secretary of State or the Department for Social Development in Northern Ireland.
- (3) Subject to subsection (4), information obtained by the Regulator by virtue of subsection (2) is to be treated for the purposes of sections 82 to 87 (disclosure of information) as having been obtained by the Regulator in the exercise of its functions from the person from whom OPRA obtained it.
- (4) Information obtained by the Regulator by virtue of subsection (2) which was supplied to OPRA for the purposes of its functions by an authority exercising functions corresponding to the functions of OPRA in a country or territory outside the United Kingdom (the “overseas authority”) is to be treated for the purposes mentioned in subsection (3) as having been supplied to the Regulator for the purposes of its functions by the overseas authority.
- (5) Where tax information disclosed to OPRA is obtained by the Regulator by virtue of subsection (2), subsection (3) does not apply and subsections (3) and (4) of

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section 88 apply as if that information had been disclosed to the Regulator by virtue of subsection (2) of that section.

For this purpose “tax information” has the same meaning as in that section.

#### Commencement Information

- I1** S. 300(1) in force at 6.4.2005 by [S.I. 2005/695](#), [art. 2\(3\)](#) (with [arts. 4-6](#), [Sch. 2](#), [Sch. 3](#))
- I2** S. 300(2) in force at 10.2.2005 for specified purposes and 8.3.2005 in so far as not already in force by [S.I. 2005/275](#), [art. 2\(1\)](#), [Sch. Pt. 1](#)
- I3** S. 300(3)-(5) in force at 6.4.2005 by [S.I. 2005/275](#), [art. 2\(7\)](#), [Sch. Pt. 7](#)

### 301 Transfer of employees from OPRA to the Regulator

- (1) For the purposes of the Transfer of Undertakings (Protection of Employment) Regulations 1981 (S.I. 1981/1794) (“TUPE”), the transfer of functions from OPRA to the Regulator (“the transfer”) is to be treated as a transfer of an undertaking.
- (2) The provisions of Regulation 7 of TUPE (exclusion of occupational pension schemes) shall not apply in relation to the transfer.

#### Commencement Information

- I4** S. 301 in force at 6.4.2005 by [S.I. 2005/275](#), [art. 2\(7\)](#), [Sch. Pt. 7](#)

### 302 Dissolution of the Pensions Compensation Board

- (1) The Pensions Compensation Board is hereby dissolved.
- (2) An order under section 322 appointing the day on which subsection (1) is to come into force may provide—
  - (a) for all property, rights and liabilities to which the Pensions Compensation Board is entitled or subject immediately before that day to become property, rights and liabilities of the Board, and
  - (b) for any function of the Pensions Compensation Board falling to be exercised on or after that day, or which fell to be exercised before that day but has not been exercised, to be exercised by the Board.
- (3) Information obtained by the Board by virtue of subsection (2) is to be treated for the purposes of sections 197 to 201 and 203 (disclosure of information) as having been obtained by the Board in the exercise of its functions from the person from whom the Pensions Compensation Board obtained it.
- (4) Where tax information disclosed to the Pensions Compensation Board is obtained by the Board by virtue of subsection (2), subsection (3) does not apply, and subsections (3) and (4) of section 202 apply as if that information had been disclosed to the Board by virtue of subsection (2) of that section.

For this purpose “tax information” has the same meaning as in that section.

- (5) Where the Pensions Compensation Board’s disclosure under section 114(3) of the Pensions Act 1995 (c. 26) of information to which subsection (3) applies was subject

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to any express restriction, the Board's powers of disclosure under sections 198 to 201 and 203, in relation to that information, are subject to the same restriction.

#### Commencement Information

- I5** S. 302(1) in force at 1.9.2005 by S.I. 2005/1720, art. 2(10)  
**I6** S. 302(2) in force at 27.5.2005 by S.I. 2005/1436, art. 2(6)  
**I7** S. 302(3)-(5) in force at 1.9.2005 by S.I. 2005/2447, art. 2(4), Sch. Pt. 1

### *Service of notifications etc and electronic working*

## **303 Service of notifications and other documents**

- (1) This section applies where provision made (in whatever terms) by or under this Act authorises or requires—
- a notification to be given to a person, or
  - a document of any other description (including a copy of a document) to be sent to a person.
- (2) The notification or document may be given to the person in question—
- by delivering it to him,
  - by leaving it at his proper address, or
  - by sending it by post to him at that address.
- (3) The notification or document may be given or sent to a body corporate by being given or sent to the secretary or clerk of that body.
- (4) The notification or document may be given or sent to a firm by being given or sent to—
- a partner in the firm, or
  - a person having the control or management of the partnership business.
- (5) The notification or document may be given or sent to an unincorporated body or association by being given or sent to a member of the governing body of the body or association.
- (6) For the purposes of this section and section 7 of the Interpretation Act 1978 (c. 30) (service of documents by post) in its application to this section, the proper address of a person is—
- in the case of a body corporate, the address of the registered or principal office of the body,
  - in the case of a firm, or an unincorporated body or association, the address of the principal office of the firm, body or association,
  - in the case of any person to whom the notification or other document is given or sent in reliance on any of subsections (3) to (5), the proper address of the body corporate, firm or (as the case may be) other body or association in question, and
  - in any other case, the last known address of the person in question.
- (7) In the case of—
- a company registered outside the United Kingdom,
  - a firm carrying on business outside the United Kingdom, or

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- (c) an unincorporated body or association with offices outside the United Kingdom,  
the references in subsection (6) to its principal office include references to its principal office within the United Kingdom (if any).
- (8) In this section “notification” includes notice; and references in this section to sending a document to a person include references to making an application to him.
- (9) This section has effect subject to section 304.

### **304 Notification and documents in electronic form**

- (1) This section applies where—
  - (a) section 303 authorises the giving or sending of a notification or other document by its delivery to a particular person (“the recipient”), and
  - (b) the notification or other document is transmitted to the recipient—
    - (i) by means of an electronic communications network, or
    - (ii) by other means but in a form that nevertheless requires the use of apparatus by the recipient to render it intelligible.
- (2) The transmission has effect for the purposes of this Act as a delivery of the notification or other document to the recipient, but only if the requirements imposed by or under this section are complied with.
- (3) Where the recipient is a relevant authority—
  - (a) it must have indicated its willingness to receive the notification or other document in a manner mentioned in subsection (1)(b),
  - (b) the transmission must be made in such manner, and satisfy such other conditions, as it may require, and
  - (c) the notification or other document must take such form as it may require.
- (4) Where the person making the transmission is a relevant authority, it may (subject to subsection (5)) determine—
  - (a) the manner in which the transmission is made, and
  - (b) the form in which the notification or other document is transmitted.
- (5) Where the recipient is a person other than a relevant authority—
  - (a) the recipient, or
  - (b) the person on whose behalf the recipient receives the notification or other document,

must have indicated to the person making the transmission the recipient’s willingness to receive notifications or documents transmitted in the form and manner used.
- (6) An indication given to any person for the purposes of subsection (5)—
  - (a) must be given to that person in such manner as he may require,
  - (b) may be a general indication or one that is limited to notifications or documents of a particular description,
  - (c) must state the address to be used and must be accompanied by such other information as that person requires for the making of the transmission, and
  - (d) may be modified or withdrawn at any time by a notice given to that person in such manner as he may require.

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- (7) An indication, requirement or determination given, imposed or made by a relevant authority for the purposes of this section is to be given, imposed or made by being published in such manner as it considers appropriate for bringing it to the attention of the persons who, in its opinion, are likely to be affected by it.
- (8) Where both the recipient and the person making the transmission are relevant authorities—
  - (a) subsections (3) and (4) do not apply, and
  - (b) the recipient must have indicated to the person making the transmission the recipient’s willingness to receive notifications or documents transmitted in the form and manner used.
- (9) Subsection (8) of section 303 applies for the purposes of this section as it applies for the purposes of that section.
- (10) In this section, “relevant authority” means the Regulator, the Board or the Secretary of State and in the application of this section to Northern Ireland by virtue of section 323(2)(g)(ii) also includes the Department for Social Development in Northern Ireland.
- (11) In this section and section 305, “electronic communications network” has the same meaning as in the Communications Act 2003 (c. 21).

### **305 Timing and location of things done electronically**

- (1) The Secretary of State may by order make provision specifying, for the purposes of any enactment contained in, or made under, this Act, the manner of determining—
  - (a) the times at which things done under that enactment by means of electronic communications networks are done, and
  - (b) the places at which such things are so done, and at which things transmitted by means of such networks are received.
- (2) The provision made under subsection (1) may include provision as to the country or territory in which an electronic address is to be treated as located.
- (3) An order made by the Secretary of State may also make provision about the manner of proving in any legal proceedings—
  - (a) that something done by means of an electronic communications network satisfies the requirements of an enactment contained in, or made under, this Act for the doing of that thing, and
  - (b) the matters mentioned in subsection (1)(a) and (b).
- (4) An order under this section may provide for such presumptions to apply (whether conclusive or not) as the Secretary of State considers appropriate.

### *General*

### **306 Overriding requirements**

- (1) Where any provision mentioned in subsection (2) conflicts with the provisions of an occupational or personal pension scheme—

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- (a) the provision mentioned in subsection (2), to the extent that it conflicts, overrides the provisions of the scheme, and
  - (b) the scheme has effect with such modifications as may be required in consequence of paragraph (a).
- (2) The provisions referred to in subsection (1) are those of—
- (a) any order made by the Regulator under Part 1;
  - (b) any regulations made under section 19(7);
  - (c) any regulations made under section 21(4);
  - (d) any regulations made under section 24(7);
  - (e) any direction issued by the Regulator under section 41(4);
  - (f) any direction issued by the Regulator under section 50(4);
  - (g) Part 2 (other than Chapter 1), any subordinate legislation made under that Part and any direction given under section 134 or 154;
  - (h) Part 3 and any subordinate legislation made under that Part;
  - (i) any regulations under section 237;
  - (j) sections 241 and 242, any regulations made under sections 241 to 243 and any arrangements under sections 241 and 242;
  - (k) sections 247 and 248 and any regulations under sections 247 to 249;
  - (l) sections 256 and 258;
  - (m) any ring-fencing notice issued by the Regulator under section 292;
  - (n) any regulations under section 286, 307, 308, 315(6) or 318(4) or (5) and any order under section 322(5).
- (3) Subsection (1) is without prejudice to section 32(1) (overriding effect of freezing orders made by the Regulator) and section 154(12) (overriding effect of requirement to wind up pension scheme under Part 2).
- (4) In the case of a company to which section 242 (requirement for member-nominated directors of corporate trustees) applies, where any provision mentioned in subsection (5) conflicts with the provisions of the company's memorandum or articles of association—
- (a) the provision mentioned in subsection (5), to the extent that it conflicts, overrides the provisions of the memorandum or articles, and
  - (b) the memorandum or articles have effect with such modifications as may be required in consequence of paragraph (a).
- (5) The provisions referred to in subsection (4) are those of—
- (a) section 242;
  - (b) any regulations made under section 242 or 243;
  - (c) any arrangements under section 242.

#### Commencement Information

**I8** S. 306(1)(2)(a)-(g)(l)(n)(3) in force at 1.9.2005 by [S.I. 2005/2447](#), art. 2(4), [Sch. Pt. 1](#)

**I9** S. 306(2)(h)(m) in force at 4.12.2005 for specified purposes by [S.I. 2005/3331](#), art. 2(1), [Sch. Pt. 1](#)

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### 307 Modification of this Act in relation to certain categories of schemes

- (1) Regulations may modify any of the provisions mentioned in subsection (2) as it applies in relation to—
- (a) hybrid schemes;
  - (b) multi-employer schemes;
  - (c) any case where a partnership is the employer, or one of the employers, in relation to an occupational pension scheme.
- (2) The provisions referred to in subsection (1) are those of—
- (a) Part 1 (the Pensions Regulator),
  - (b) Part 2 (the Board of the Pension Protection Fund), other than Chapter 1,
  - (c) sections 257 and 258 (pension protection),
  - (d) sections 259 and 261 (consultation by employers),
  - (e) section 286 (financial assistance scheme for members of certain pension schemes), and
  - (f) Part 7 (cross-border activities within European Union).
- (3) Regulations may also modify any of the provisions of Part 2 as it applies in relation to an eligible scheme in respect of which a relevant public authority has—
- (a) given a guarantee in relation to any part of the scheme, any benefits payable under the scheme rules or any member of the scheme, or
  - (b) made any other arrangements for the purposes of securing that the assets of the scheme are sufficient to meet any part of its liabilities.
- (4) In this section—
- “eligible scheme” has the meaning given by section 126;
  - “hybrid scheme” means an occupational pension scheme—
    - (a) which is not a money purchase scheme, but
    - (b) where some of the benefits that may be provided are—
      - (i) money purchase benefits attributable to voluntary contributions of the members, or
      - (ii) other money purchase benefits;
  - “multi-employer scheme” means an occupational pension scheme in relation to which there is more than one employer;
  - “relevant 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), or
    - (c) the Scottish Ministers.

#### Commencement Information

- I10** S. 307(1)(a)(c) 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](#)
- I11** S. 307(1)(b)(3) in force at 10.2.2005 for specified purposes and 8.3.2005 in so far as not already in force by [S.I. 2005/275, art. 2\(1\)](#), [Sch. Pt. 1](#)
- I12** S. 307(2)(4) in force at 8.3.2005 by [S.I. 2005/275, art. 2\(5\)](#), [Sch. Pt. 5](#)

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## PROSPECTIVE

**308 Modification of pensions legislation that refers to employers**

- (1) Regulations may modify any provision of pensions legislation for the purpose of ensuring that it, or another provision of pensions legislation, does not purport to refer to the employer of a self-employed person.
- (2) Where a provision of pensions legislation contains a reference to an employer in connection with an occupational pension scheme, regulations may modify the provision, or another provision of pensions legislation, for the purpose of excluding from the reference an employer who is a person—
  - (a) who does not participate in the scheme as regards people employed by him, or
  - (b) who, as regards people employed by him, participates in the scheme only to a limited extent.
- (3) For the purposes of this section—
  - (a) “pensions legislation” means any enactment contained in or made by virtue of—
    - (i) the Pension Schemes Act 1993 (c. 48),
    - (ii) Part 1 of the Pensions Act 1995 (c. 26), other than sections 62 to 66A of that Act (equal treatment),
    - (iii) Part 1 of the Welfare Reform and Pensions Act 1999 (c. 30), or
    - (iv) this Act;
  - (b) a person is “self-employed” if he is in an employment but is not employed in it by someone else;
  - (c) a person who holds an office (including an elective office), and is entitled to remuneration for holding it, shall be taken to be employed by the person responsible for paying the remuneration.
- (4) In subsection (3)(b) “employment” includes any trade, business, profession, office or vocation.

**309 Offences by bodies corporate and partnerships**

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



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- (4) In this section “Scottish partnership” means a partnership constituted under the law of Scotland.

#### Commencement Information

**I13** S. 309 in force at 1.9.2005 by S.I. 2005/2447, art. 2(4), Sch. Pt. 1

### 310 Admissibility of statements

- (1) A statement made by a person in compliance with an information requirement is admissible in evidence in any proceedings, so long as it also complies with any requirements governing the admissibility of evidence in the circumstances in question.
- (2) But in proceedings to which this subsection applies—
- (a) no evidence relating to the statement may be adduced, and
  - (b) no question relating to it may be asked,
- by or on behalf of the prosecution or (as the case may be) the Regulator, unless evidence relating to it is adduced, or a question relating to it is asked, in the proceedings by or on behalf of that person.
- (3) Subsection (2) applies to—
- (a) criminal proceedings in which that person is charged with a relevant offence, or
  - (b) proceedings as a result of which that person may be required to pay a financial penalty under or by virtue of—
    - (i) section 168 of the Pension Schemes Act 1993 (c. 48) (breach of regulations) or section 10 of the Pensions Act 1995 (c. 26) (civil penalties), or
    - (ii) any provision in force in Northern Ireland corresponding to a provision mentioned in sub-paragraph (i).
- (4) In this section—
- “information requirement” means any statement made in compliance with any duty imposed by or by virtue of—
- (a) section 64 (duties of trustees or managers to provide scheme return);
  - (b) section 70 (duty to report breaches of the law);
  - (c) section 72 (requirement to provide information to the Regulator);
  - (d) section 75 (inspection of premises: powers of inspectors to examine etc);
  - (e) section 78(2)(d) (power of inspector entering under warrant to require a person to provide an explanation of a document);
  - (f) section 190 (information to be provided to the Board);
  - (g) section 191 (notices requiring provision of information to the Board etc);
  - (h) section 192 (entry of premises: powers of appointed persons to examine etc);
  - (i) section 194(2)(d) (power of inspector entering under warrant to require a person to provide an explanation of a document);
  - (j) section 209 (power to make order enabling PPF Ombudsman to obtain information, documents etc);

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- (k) section 213 or 214 (disclosure of information on references made to PPF Ombudsman);
- (l) section 228 (failure to make payments in accordance with schedule of contributions);
- (m) paragraph 19 of Schedule 1 (power to make regulations enabling Regulator to summon persons to give evidence before it);
- (n) paragraph 11 of Schedule 4 (the Pensions Regulator Tribunal: evidence);  
“relevant offence” means any offence other than one under—
  - (a) section 77 (neglect or refusal to provide information etc to the Regulator);
  - (b) section 80 (providing false or misleading information to the Regulator);
  - (c) section 193 (neglect or refusal to provide information etc to the Board);
  - (d) section 195 (providing false or misleading information to the Board);
  - (e) any provision in force in Northern Ireland corresponding to a provision mentioned in paragraphs (a) to (d);
  - (f) section 5 of the Perjury Act 1911 (c. 6) (false statements made otherwise than on oath);
  - (g) section 44(2) of the Criminal Law (Consolidation) (Scotland) Act 1995 (c. 39) (false statements made otherwise than on oath);
  - (h) Article 10 of the Perjury (Northern Ireland) Order 1979 (S.I. 1979/1714 (N.I. 19)).

#### Commencement Information

**I14** S. 310 in force at 1.9.2005 by S.I. 2005/2447, art. 2(4), Sch. Pt. 1

### 311 Protected items

- (1) A person may not be required under or by virtue of this Act to produce, disclose or permit the inspection of protected items.
- (2) For this purpose “protected items” means—
  - (a) communications between a professional legal adviser and his client or any person representing his client which fall within subsection (3);
  - (b) communications between a professional legal adviser, his client or any person representing his client and any other person which fall within subsection (3) (as a result of paragraph (b) of that subsection);
  - (c) items which—
    - (i) are enclosed with, or referred to in, such communications,
    - (ii) fall within subsection (3), and
    - (iii) are in the possession of a person entitled to possession of them.
- (3) A communication or item falls within this subsection if it is made—
  - (a) in connection with the giving of legal advice to the client, or
  - (b) in connection with, or in contemplation of, legal proceedings and for the purpose of those proceedings.
- (4) A communication or item is not a protected item if it is held with the intention of furthering a criminal purpose.

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#### Commencement Information

**I15** S. 311 in force at 1.9.2005 by S.I. 2005/2447, art. 2(4), Sch. Pt. 1

### 312 Liens

If a person claims a lien on a document, its production under any provision made by or by virtue of this Act does not affect the lien.

#### Commencement Information

**I16** S. 312 in force at 1.9.2005 by S.I. 2005/2447, art. 2(4), Sch. Pt. 1

### 313 Crown application

- (1) In this section “the relevant provisions” means—
  - (a) Parts 1 to 5,
  - (b) sections 306, 307, 310, 311, 312, 314, 315, 318(4) and (5) and 322(5).
- (2) The relevant provisions apply to a pension scheme managed by or on behalf of the Crown as they apply to other pension schemes; and, accordingly, references in those provisions to a person in his capacity as a trustee or manager of, or person prescribed in relation to, a pension scheme include the Crown, or a person acting on behalf of the Crown, in that capacity.
- (3) The relevant provisions apply to persons employed by or under the Crown in like manner as if such persons were employed by a private person; and references in those provisions to a person in his capacity as an employer include the Crown, or a person acting on behalf of the Crown in that capacity.
- (4) This section does not apply to any of the relevant provisions under or by virtue of which a person may be prosecuted for an offence; but such a provision applies to persons in the public service of the Crown as it applies to other persons.
- (5) Nothing in the relevant provisions applies to Her Majesty in Her private capacity (within the meaning of the Crown Proceedings Act 1947 (c. 44)).

#### *Regulations and orders*

### 314 Breach of regulations

The following provisions of the Pensions Act 1995 (c. 26) apply to regulations under this Act as if they were regulations made by virtue of Part 1 of that Act—

- (a) section 10(3) to (9) (power to impose civil penalties for contravention of regulations under Part 1 of that Act);
- (b) section 116 (power to provide for contravention of regulations under that Part to be criminal offence).

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#### Commencement Information

**I17** S. 314 in force at 1.9.2005 by S.I. 2005/2447, art. 2(4), Sch. Pt. 1

### 315 Subordinate legislation (general provisions)

- (1) Any power conferred by this Act to make subordinate legislation is exercisable by statutory instrument, except any order-making power conferred on the Regulator.
- (2) Any power conferred by this Act to make subordinate legislation may be exercised—
  - (a) either in relation to all cases to which the power extends, or in relation to those cases subject to specified exceptions, or in relation to any specified cases or descriptions of case;
  - (b) so as to make, as respects the cases in relation to which it is exercised—
    - (i) the full provision to which the power extends or any lesser provision (whether by way of exceptions or otherwise),
    - (ii) the same provision for all cases in relation to which the power is exercised, or different provision for different cases or different descriptions of case or different provision as respects the same case or description of case for different purposes of this Act, or
    - (iii) any such provision either unconditionally or subject to any specified condition.
- (3) Any power conferred by this Act to make subordinate legislation—
  - (a) if it is expressed to be exercisable for alternative purposes, may be exercised in relation to the same case for any or all of those purposes, and
  - (b) if it is conferred for the purposes of any one provision of this Act, is without prejudice to any power to make subordinate legislation for the purposes of any other provision.
- (4) A power conferred by this Act to make subordinate legislation includes power to provide for a person to exercise a discretion in dealing with any matter.
- (5) Any power conferred by this Act to make subordinate legislation also includes power to make such incidental, supplementary, consequential or transitional provision as appears to the authority making the subordinate legislation to be expedient.
- (6) Regulations may, for the purposes of or in connection with the coming into force of any provisions of this Act, make any such provision as could be made by virtue of section 322(5) by an order bringing those provisions into force.

#### Commencement Information

**I18** S. 315 partly in force; s. 315(1)-(5) in force at Royal Assent see s. 322

**I19** S. 315(6) in force at 4.12.2005 for specified purposes by S.I. 2005/3331, art. 2(1), Sch. Pt. 1

### 316 Parliamentary control of subordinate legislation

- (1) Subject to subsections (2) and (3), a statutory instrument containing regulations or an order or rules under this Act is subject to annulment in pursuance of a resolution of either House of Parliament.

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- (2) A statutory instrument which contains—
- (a) regulations under section 117(1) or (3) (administration levy in respect of expenditure relating to the Board of the Pension Protection Fund);
  - (b) regulations under section 167 (modification of Chapter 3 of Part 2 where liabilities discharged during the assessment period);
  - (c) regulations under section 174 (the initial levy);
  - (d) regulations under section 175 (pension protection levies);
  - (e) an order under section 177(6) (orders relating to amounts to be raised by pension protection levies);
  - (f) an order under section 178(1) (the levy ceiling);
  - (g) an order or regulations under section 209 (the PPF Ombudsman);
  - (h) regulations under section 213 (reference of reviewable matter to the PPF Ombudsman);
  - (i) regulations under section 214 (investigation by PPF Ombudsman of complaints of maladministration);
  - (j) regulations under section 237 (combined pension forecasts);
  - (k) regulations under section 238 (information and advice to employees);
  - (l) an order under section 243(1) (power to provide for minimum fraction of member-nominated trustees or directors to be one-half);
  - (m) regulations which make provision by virtue of section 261(2)(f) (power to make amendments etc to certain Acts);
  - (n) regulations under section 286 (financial assistance scheme for members of certain pension schemes);
  - (o) regulations which make provision by virtue of section 314(b) (power to provide for contravention of regulations to be criminal offence);
  - (p) regulations under section 318(4)(b) (power to extend meaning of employer);
  - (q) an order under section 319(2)(a) (power to make consequential amendments to Acts);
  - (r) an order under paragraph 24(8) of Schedule 7 (power to vary percentage of periodic compensation that can be commuted);
  - (s) an order under paragraph 26(7) of that Schedule (orders specifying the compensation cap in respect of payments from the Pension Protection Fund);  
or
  - (t) an order under paragraph 30(1) of that Schedule (power to vary percentage paid as compensation from the Pension Protection Fund);
- must not be made unless a draft of the instrument has been laid before and approved by a resolution of each House of Parliament.
- (3) Subsection (1) does not apply to—
- (a) an order under section 91(9) (commencement of code of practice);
  - (b) an order under section 126(2) (schemes winding up before day appointed by order not eligible schemes for purposes of Part 2);
  - (c) an order under section 182(10) (order appointing day after which losses of non-trust schemes are relevant for fraud compensation purposes);
  - (d) an order under section 322 (commencement).

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### 317 Consultations about regulations

- (1) Before the Secretary of State makes any regulations by virtue of this Act (other than Part 8), he must consult such persons as he considers appropriate.
- (2) Subsection (1) does not apply—
  - (a) to regulations contained in a statutory instrument made for the purpose only of consolidating other instruments revoked by it,
  - (b) in a case where it appears to the Secretary of State that by reason of urgency consultation is inexpedient,
  - (c) to regulations contained in a statutory instrument made before the end of the period of six months beginning with the coming into force of the provision of this Act by virtue of which the regulations are made, or
  - (d) to regulations contained in a statutory instrument which—
    - (i) states that it contains only regulations which are consequential upon a specified enactment, and
    - (ii) is made before the end of the period of six months beginning with the coming into force of that enactment.

#### *Interpretation*

### 318 General interpretation

- (1) In this Act, unless the context otherwise requires—
  - “active member” has the meaning given by section 124(1) of the Pensions Act 1995 (c. 26);
  - “the Board” has the meaning given by section 107;
  - “contravention” includes failure to comply;
  - “direct payment arrangements”, in relation to a personal pension scheme, has the same meaning as in section 111A of the Pension Schemes Act 1993 (c. 48);
  - “earnings” has the meaning given by section 181(1) of the Pension Schemes Act 1993;
  - “employee” has the meaning given by section 181(1) of the Pension Schemes Act 1993;
  - “employer”—
    - (a) in relation to an occupational pension scheme, means the employer of persons in the description of employment to which the scheme in question relates (but see subsection (4)), and
    - (b) in relation to a personal pension scheme, where direct payment arrangements exist in respect of one or more members of the scheme who are employees, means an employer with whom those arrangements exist;
  - “enactment” includes an enactment comprised in subordinate legislation (within the meaning of the Interpretation Act 1978 (c. 30));
  - “managers”, in relation to an occupational or personal pension scheme (other than a scheme established under a trust), means the persons responsible for the management of the scheme;
  - “member”, in relation to an occupational pension scheme, means any active, deferred, pensioner or pension credit member within the meaning of section 124(1) of the Pensions Act 1995 (c. 26) (but see subsection (5));

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“modifications” includes additions, omissions and amendments, and related expressions are to be construed accordingly;

“money purchase benefit” has the meaning given by section 181(1) of the Pension Schemes Act 1993 (c. 48);

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

“occupational pension scheme” has the meaning given by section 1 of the Pension Schemes Act 1993;

“pension credit” has the meaning given by section 124(1) of the Pensions Act 1995;

“personal pension scheme” has the meaning given by section 1 of the Pension Schemes Act 1993;

“the PPF Ombudsman” has the meaning given by section 209(1);

“prescribed” means prescribed by regulations;

“professional adviser”, in relation to an occupational pension scheme, has the meaning given by section 47 of the Pensions Act 1995;

“the register” has the meaning given by section 59(1);

“regulations” means regulations made by the Secretary of State;

“the Regulator” has the meaning given by section 1;

“the Tribunal” has the meaning given by section 102(1).

(2) In this Act, unless the context otherwise requires, references to the scheme rules, in relation to an occupational pension scheme, are references to—

- (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).

(3) For the purposes of subsection (2)—

- (a) “relevant legislative provision” means any provision contained in any of the following provisions—
  - (i) Schedule 5 to the Social Security Act 1989 (c. 24) (equal treatment for men and women);
  - (ii) Chapters 2 to 5 of Part 4 of the Pension Schemes Act 1993 (c. 48) (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) Part 1 of the Pensions Act 1995 (c. 26) (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 (c. 30) (pension debits: reduction of benefit);

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- (vii) any provision mentioned in section 306(2) of this Act;
- (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 (c. 24);
  - (ii) section 129(1) of the Pension Schemes Act 1993;
  - (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 this Act.
- (4) Regulations may, in relation to occupational pension schemes, extend for the purposes of Parts 1, 2 and 4 to 7 and this Part the meaning of “employer” to include—
  - (a) persons who have been the employer in relation to the scheme;
  - (b) such other persons as may be prescribed.
- (5) Regulations may for any purpose of any provision of this Act—
  - (a) prescribe the persons who are to be regarded as members or prospective members of an occupational or personal pension scheme, and
  - (b) make provision as to the times at which and circumstances in which a person is to be treated as becoming, or as ceasing to be, such a member or prospective member.

#### Commencement Information

- I20** S. 318 partly in force; s. 318(1)-(5) in force at Royal Assent see s. 322
- I21** S. 318(4)(a) 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](#)
- I22** S. 318(5) in force at 1.6.2005 by [S.I. 2005/1436](#), [art. 2\(5\)](#)

### Miscellaneous and supplementary

#### 319 Minor and consequential amendments

- (1) Schedule 12 (which makes minor and consequential amendments) has effect.
- (2) The Secretary of State may by order make provision consequential on this Act amending, repealing or revoking (with or without savings) any provision of—
  - (a) an Act passed before or in the same session as this Act, or
  - (b) an instrument made under an Act before the passing of this Act.

#### Commencement Information

- I23** S. 319(1) in force at 10.2.2005 for specified purposes by [S.I. 2005/275](#), [art. 2\(4\)](#), [Sch. Pt. 4](#) and at 1.4.2005 for specified purposes by [S.I. 2005/275](#), [art. 2\(2\)](#), [Sch. Pt. 2](#) (with transitional provisions and savings in [S.I. 2005/695](#), [arts. 5\(8\)](#), [6](#), [Schs. 2](#), [3](#) (as amended by [S.I. 2005/1108](#), [art. 3\(b\)](#)))
- I24** S. 319(1) in force at 6.4.2005 for specified purposes by [S.I. 2005/695](#), [art. 2\(7\)](#), [Sch. 1](#) (with [arts. 4-6](#), [Sch. 2](#), [Sch. 3](#))
- I25** S. 319(1) in force at 6.4.2005 for specified purposes by [S.I. 2005/1108](#), [art. 2\(2\)](#), [Sch.](#)
- I26** S. 319(1) in force at 6.4.2005 for specified purposes by [S.I. 2005/275](#), [art. 2\(7\)](#), [Sch. Pt. 7](#)



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- I27 S. 319(1) in force at 30.6.2005 for specified purposes in so far as it relates to Sch. 12 para. 76(3) by S.I. 2005/1720, **art. 2(12)**
- I28 S. 319(1) in force at 1.9.2005 for specified purposes by S.I. 2005/1720, **art. 2(3)(b)**
- I29 S. 319(1) in force at 1.9.2005 for specified purposes by S.I. 2005/2447, **art. 2(4), Sch. Pt. 1**
- I30 S. 319(1) in force at 1.9.2005 for specified purposes by S.I. 2005/1720, **art. 2(16), Sch. Pt. 3**
- I31 S. 319(1) in force at 22.9.2005 for specified purposes by S.I. 2005/1720, **art. 2(11)**
- I32 S. 319(1) in force at 22.9.2005 for specified purposes by S.I. 2005/2447, **art. 2(3)(a)**
- I33 S. 319(1) in force at 4.12.2005 for specified purposes by S.I. 2005/3331, **art. 2(1), Sch. Pt. 1**
- I34 S. 319(1) in force at 9.12.2005 for specified purposes by S.I. 2005/3331, **art. 2(2), Sch. Pt. 2**
- I35 S. 319(2)(a) in force at 1.9.2005 by S.I. 2005/2447, **art. 2(4), Sch. Pt. 1**
- I36 S. 319(2)(b) in force at 9.12.2005 by S.I. 2005/3331, **art. 2(2), Sch. Pt. 2**

## 320 Repeals and revocations

The enactments mentioned in Schedule 13 are repealed or revoked to the extent specified.

### Commencement Information

- I37 S. 320 in force at 10.2.2005 for specified purposes and at 1.4.2005 for specified purposes by S.I. 2005/275, **art. 2(2), Sch. Pt. 2** (with transitional provisions and savings in S.I. 2005/695, arts. 5(8), 6, Schs. 2, 3 (as amended by S.I. 2005/1108, art. 3(b))
- I38 S. 320 in force at 1.4.2005 for specified purposes by S.I. 2005/695, **art. 2(6)** (with arts. 4-6, Sch. 2, Sch. 3)
- I39 S. 320 in force at 6.4.2005 for specified purposes by S.I. 2005/1108, **art. 2(2), Sch.**
- I40 S. 320 in force at 6.4.2005 for specified purposes by S.I. 2005/695, **art. 2(7), Sch. 1** (with arts. 4-6, Sch. 2, Sch. 3)
- I41 S. 320 in force at 6.4.2005 for specified purposes by S.I. 2005/275, **art. 2(7), Sch. Pt. 7**
- I42 S. 320 in force at 1.9.2005 for specified purposes by S.I. 2005/2447, **art. 2(4), Sch. Pt. 1**
- I43 S. 320 in force at 1.9.2005 for specified purposes by S.I. 2005/1720, **art. 2(16), Sch. Pt. 3** (with arts. 4, 5) (as amended (26.6.2009) by S.I. 2009/1583, art. 2)
- I44 S. 320 in force at 22.9.2005 for specified purposes by S.I. 2005/2447, **art. 2(3)(b)**
- I45 S. 320 in force at 4.12.2005 for specified purposes by S.I. 2005/3331, **art. 2(1), Sch. Pt. 1**
- I46 S. 320 in force at 9.12.2005 for specified purposes by S.I. 2005/3331, **art. 2(2), Sch. Pt. 2**

VALID FROM 06/04/2006

## 321 Pre-consolidation amendments

- (1) The Secretary of State may by order make such modifications of—
- (a) this Act,
  - (b) the Pension Schemes Act 1993 (c. 48),
  - (c) the Pensions Act 1995 (c. 26),
  - (d) Parts 1 to 4 of the Welfare Reform and Pensions Act 1999 (c. 30), and
  - (e) Chapter 2 of Part 2 of the Child Support, Pensions and Social Security Act 2000 (c. 19),
- as in his opinion facilitate, or are otherwise desirable in connection with, the consolidation of those enactments or any of them.

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- (2) No order is to be made under this section unless a Bill for repealing and re-enacting—
  - (a) the enactments modified by the order, or
  - (b) enactments relating to matters connected with the matters to which enactments modified by the order relate,
 has been presented to either House of Parliament.
- (3) An order under this section is not to come into force until immediately before the commencement of the Act resulting from that Bill.

### 322 Commencement

- (1) Subject to subsections (2) to (4), the provisions of this Act come into force in accordance with provision made by the Secretary of State by order.
- (2) The following provisions come into force on the day this Act is passed—
  - (a) in Part 4, sections 234, 235 and 236 and Schedule 10 (provisions relating to retirement planning);
  - (b) in Part 5, section 281 (exemption from statutory revaluation requirement);
  - (c) in Part 8—
    - (i) section 296 (entitlement to more than one state pension),
    - (ii) section 297(3) (commencement of amendments of state pension deferment provisions made by Pensions Act 1995),
    - (iii) section 298 (disclosure of state pension information), except subsections (4) and (5)(b), and
    - (iv) section 299 (claims for certain benefits following termination of reciprocal agreement with Australia);
  - (d) in this Part (miscellaneous and general)—
    - (i) sections 303 to 305 (service of notifications etc and electronic working), and
    - (ii) this section and sections 313, 315 (other than subsection (6)), 316, 317, 318 (other than subsections (4) and (5)) and 323 to 325;
  - (e) the repeal by this Act of section 50(2) of the Welfare Reform and Pensions Act 1999.
- (3) Section 297 (and Schedule 11) (deferral of retirement pensions and shared additional pensions), other than the provisions coming into force in accordance with subsection (2)—
  - (a) come into force on the day this Act is passed so far as is necessary for enabling the making of any regulations for which they provide, and
  - (b) otherwise, come into force on 6th April 2005.
- (4) The repeals by this Act of section 134(3) of, and paragraph 21(14) of Schedule 4 to, the Pensions Act 1995 (c. 26) come into force on 6th April 2005.
- (5) Without prejudice to section 315(5), the power to make an order under this section includes power—
  - (a) to make transitional adaptations or modifications—
    - (i) of the provisions brought into force by the order, or
    - (ii) in connection with those provisions, of any provisions of Parts 1 to 7 of this Act or of the Pension Schemes Act 1993 (c. 48), the Pensions

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Act 1995, Parts 1, 2 or 4 of the Welfare Reform and Pensions Act 1999 (c. 30) or Chapter 2 of Part 2 of the Child Support, Pensions and Social Security Act 2000 (c. 19), or

- (b) to save the effect of any of the repealed provisions of those Acts, or those provisions as adapted or modified by the order,
- as it appears to the Secretary of State expedient, including different adaptations or modifications for different periods.

### 323 Extent

- (1) Subject to the following provisions, this Act extends to England, Wales and Scotland.
- (2) The following provisions of this Act also extend to Northern Ireland—
- (a) in Part 1 (the Regulator)—
- (i) sections 1, 2, 4 (other than subsection (2)(b)), 8, 9, 11, 59, 102 and 106,
  - (ii) in Schedule 1, paragraphs 1 to 19, 20(1) to (3) and (7), 21 (other than paragraph (b)), 22 to 25 and 27 to 35, and section 3 so far as it relates to those provisions, and
  - (iii) Schedule 4,
- (b) in Part 2 (the Board)—
- (i) sections 107, 108, 109, 110(1) and (3), 112, 113, 114, 115, 118, 119, 161(2)(a), (3) and (5) to (8), 173, 188, 209 (other than paragraphs (b) to (d), (f) and (g) of subsection (4), subsection (6) so far as relating to any of those paragraphs and subsections (7) and (8)), 210, 211(3) and (4), 212 and 220,
  - (ii) section 111 so far as that provision has effect in relation to functions of the Board conferred by any provision of, or made under, this Act which extends to Northern Ireland,
  - (iii) Schedule 5 (other than paragraph 18), and
  - (iv) Schedule 6 (other than paragraph 7),
- (c) in Part 4 (retirement planning), sections 234 and 235 and paragraph 2 of Schedule 10 (and section 236 so far as it relates to that paragraph),
- (d) in Part 5 (personal and occupational pension schemes: miscellaneous provisions), sections 274 and 277(2)(b),
- (e) Part 6 (financial assistance scheme for members of certain pension schemes),
- (f) in Part 8 (state pensions), section 299, and
- (g) in this Part—
- (i) sections 300(1) and (2), 301, 302(1) and (2), 307, 308 and 310,
  - (ii) sections 303 to 306, 309, 313, 315, 316 and 318 so far as those provisions have effect for the purposes of provisions which themselves extend to Northern Ireland, and
  - (iii) this section and sections 319(2), 321, 322, 324 and 325.
- (3) Section 106 (legal assistance scheme) does not extend to Scotland.
- (4) An amendment or repeal contained in this Act has the same extent as the enactment to which it relates and sections 236 (except so far as it relates to paragraph 2 of Schedule 10), 319(1) and 320 have effect accordingly.

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### **324 Northern Ireland**

- (1) An Order in Council under paragraph 1(1) of the Schedule to the Northern Ireland Act 2000 (c. 1) (legislation for Northern Ireland during suspension of devolved government) which contains a statement that it is made only for purposes corresponding to those of this Act—
  - (a) is not subject to paragraph 2 of that Schedule (affirmative resolution of both Houses of Parliament), but
  - (b) is subject to annulment in pursuance of a resolution of either House of Parliament.
- (2) Where an Order in Council to which subsection (1) applies makes provision (“the NI provisions”) which corresponds to the GB transfer provisions, regulations may make provision to secure that any transfer of property, rights and liabilities, or modification of a term of a contract of insurance, by virtue of the NI provisions is recognised for the purposes of the law of England and Wales and the law of Scotland.
- (3) In subsection (2) “the GB transfer provisions” means section 161(1), (2)(a), (3) and (5) to (8) and Schedule 6 (other than paragraph 7).

### **325 Short title**

This Act may be cited as the Pensions Act 2004.

**Status:**

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**Changes to legislation:**

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