



# Pensions Act 2004

## 2004 CHAPTER 35

### PART 9

#### MISCELLANEOUS AND SUPPLEMENTARY

##### *General*

#### **306** Overriding requirements

- (1) Where any provision mentioned in subsection (2) conflicts with the provisions of an occupational or personal pension scheme—
  - (a) the provision mentioned in subsection (2), to the extent that it conflicts, overrides the provisions of the scheme, and
  - (b) the scheme has effect with such modifications as may be required in consequence of paragraph (a).
- (2) The provisions referred to in subsection (1) are those of—
  - (a) 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;

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- (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

- I1** 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](#)
- I2** [S. 306\(2\)\(h\)\(m\)](#) 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](#)
- I3** [S. 306\(2\)\(j\)\(k\)\(4\)\(5\)](#) in force at 6.4.2006 by [S.I. 2006/560](#), [art. 2\(3\)](#), [Sch. Pt. 3](#)

### 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

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- (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

- 14** 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](#)
- 15** 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](#)
- 16** S. 307(2)(4) in force at 8.3.2005 by [S.I. 2005/275, art. 2\(5\)](#), [Sch. Pt. 5](#)

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),

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

#### Commencement Information

I7 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—

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- (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);
  - (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)).

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#### Commencement Information

**I8** 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.

#### Commencement Information

**I9** 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

**I10** 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

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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)).

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