



# Pensions Act 2004

## 2004 CHAPTER 35

### PART 9

#### MISCELLANEOUS AND SUPPLEMENTARY

##### *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).

#### **Commencement Information**

**II** [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),

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- (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

- I2** S. 315 partly in force; s. 315(1)-(5) in force at Royal Assent see s. 322
- I3** S. 315(6) 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**

### 316 Parliamentary control of subordinate legislation

- (1) Subject to subsections (2) [<sup>F1</sup>, (2A)] 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.
- (2) A statutory instrument which contains—
- [<sup>F2</sup>(za) regulations under section 38A(10) or 38B(13) (section 38 contribution notices: “the material detriment test”);]
  - [<sup>F3</sup>(zaa) regulations under section 38E(2)(a) (section 38 contribution notice: constitution of resources of employer);
  - (zab) regulations under section 38E(2)(b) (section 38 contribution notice: valuation of resources of employer);]
  - [<sup>F4</sup>(zb) regulations under section 39A(5), 39B(8) or 43B(8) (contribution notices and financial support directions: bulk transfers);]
  - [<sup>F5</sup>(zc) regulations under section 58A(1) (offence of avoidance of employer debt: power to except certain schemes);
  - (zd) regulations under section 58B(1) (offence of conduct risking accrued scheme benefits: power to except certain schemes);
  - (ze) regulations under section 58C(1) (financial penalty for avoidance of employer debt: power to except certain schemes);

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- (zf) regulations under section 58D(1) (financial penalty for conduct risking accrued scheme benefits: power to except certain schemes);
- (zg) regulations under section 73(5B)(a) (inspection of premises: power to specify provisions by reference to which there may be inspection);
- (zh) regulations under section 88A(3) (financial penalties: power to amend maximum amount of penalty);]
- <sup>F6</sup>(a) .....
- (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) [<sup>F7</sup>which is made by virtue of section 178(8)] ;
- (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);
- <sup>F8</sup>(ia) the first regulations under section 221A(4)(a) and (b) (funding and investment strategy: matters to be taken into account etc and level of detail);
- (ib) the first regulations under section 221B(2)(d) (Part 2 of statement of strategy: additional matters to be included);
- (ic) the first regulations under section 221B(8)(a) and (b) (Part 2 of statement of strategy: matters to be taken into account etc and level of detail);]
- (j) regulations under section 237 (combined pension forecasts);
- (k) regulations under section 238 (information and advice to employees);
- <sup>F9</sup>(ka) regulations under section 238A (qualifying pensions dashboard service);]
- <sup>F10</sup>(kb) regulations under section 238D (information from occupational pension schemes);
- (kc) regulations under section 238G (compliance with regulations under section 238D);]
- (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) [<sup>F11</sup>, except regulations prescribing an exception for the purposes of paragraph (b) of the definition of “qualifying pension scheme” in subsection (2) of that section;]
- <sup>F12</sup>(na) regulations under section 286A(11) (power to provide that references in section 286A to the scheme manager are to have effect as references to a prescribed person);]
- (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);

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- (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 [<sup>F13</sup>paragraph 26A(7)] of that Schedule (orders specifying the compensation cap in respect of payments from the Pension Protection Fund) [<sup>F14</sup>except an order which is made by virtue of paragraph 27 of that Schedule]; 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.

[<sup>F15</sup>(2A) Subsection (1) does not apply to regulations under section 286 prescribing an exception for the purposes of paragraph (b) of the definition of “qualifying pension scheme” in subsection (2) of that section, if a draft of the instrument containing them 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).

#### Textual Amendments

- F1** Words in s. 316(1) inserted (26.11.2008) by [Pensions Act 2008 \(c. 30\)](#), **ss. 124(8)**, 149(2)
- F2** S. 316(2)(za) inserted (26.11.2008) by [Pensions Act 2008 \(c. 30\)](#), s. 149(2)(3), **Sch. 9 para. 5**
- F3** S. 316(2)(zaa)(zab) inserted (25.6.2021) by [Pension Schemes Act 2021 \(c. 1\)](#), s. 131(1), **Sch. 7 para. 12(2)**; S.I. 2021/752, reg. 2
- F4** S. 316(2)(zb) inserted (26.11.2008) by [Pensions Act 2008 \(c. 30\)](#), s. 149(2)(3), **Sch. 9 para. 12**
- F5** S. 316(2)(zc)-(zh) inserted (1.10.2021) by [Pension Schemes Act 2021 \(c. 1\)](#), s. 131(1), **Sch. 7 para. 12(3)**; S.I. 2021/950, reg. 2(4)(g)
- F6** S. 316(2)(a) omitted (3.1.2012) by virtue of [Pensions Act 2011 \(c. 19\)](#), s. 38(4), **Sch. 4 para. 18(2)**; S.I. 2011/3034, art. 3(i)(iii)
- F7** Words in s. 316(2)(f) inserted (3.1.2012) by [Pensions Act 2011 \(c. 19\)](#), s. 38(4), **Sch. 4 para. 18(3)**; S.I. 2011/3034, art. 3(i)(iii)
- F8** S. 316(2)(ia)-(ic) inserted (11.2.2021 for specified purposes) by [Pension Schemes Act 2021 \(c. 1\)](#), s. 131(1)(3)(b), **Sch. 10 para. 11**
- F9** S. 316(2)(ka) inserted (11.2.2021 for specified purposes, 14.10.2022 in so far as not already in force) by [Pension Schemes Act 2021 \(c. 1\)](#), **ss. 118(3)**, 131(1)(3)(a); S.I. 2022/1044, reg. 2(a)
- F10** S. 316(2)(kb)(kc) inserted (11.2.2021 for specified purposes, 14.10.2022 in so far as not already in force) by [Pension Schemes Act 2021 \(c. 1\)](#), **ss. 119(4)**, 131(1)(3)(a); S.I. 2022/1044, reg. 2(b)
- F11** Words in s. 316(2)(n) added (26.11.2008) by [Pensions Act 2008 \(c. 30\)](#), **ss. 124(9)**, 149(2)
- F12** S. 316(2)(na) inserted (26.11.2008) by [Pensions Act 2008 \(c. 30\)](#), **ss. 125(3)**, 149(2)
- F13** Words in s. 316(2)(s) substituted (6.4.2017) by [Pensions Act 2014 \(c. 19\)](#), s. 56(1), **Sch. 20 para. 5** (with [Sch. 20 paras. 9, 11](#)); S.I. 2017/297, art. 2(b) (with transitional provisions in S.I. 2017/301)
- F14** Words in s. 316(2)(s) inserted (3.1.2012) by [Pensions Act 2011 \(c. 19\)](#), s. 38(4), **Sch. 4 para. 18(4)**; S.I. 2011/3034, art. 3(i)(iii)

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**F15** S. 316(2A) inserted (26.11.2008) by [Pensions Act 2008 \(c. 30\)](#), **ss. 124(10), 149(2)**

### **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.

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