



# Pensions Act 2004

## 2004 CHAPTER 35

### PART 1

#### THE PENSIONS REGULATOR

##### *Exercise of regulatory functions*

#### **97 Special procedure: applicable cases**

- (1) The special procedure in section 98 (and not the standard procedure) applies to—
  - (a) a case falling within subsection (2),
  - (b) a case falling within subsection (3), and
  - (c) a case falling within subsection (4).
- (2) A case falls within this subsection if—
  - (a) the Regulator considers that it may be necessary to exercise a regulatory function listed in subsection (5) immediately because there is, or the Regulator considers it likely that if a warning notice were to be given there would be, an immediate risk to—
    - (i) the interests of members under an occupational or personal pension scheme, or
    - (ii) the assets of such a scheme,
  - (b) the Regulator accordingly dispenses with the giving of a warning notice and an opportunity to make representations as described in section 96(2)(a) and (b), and
  - (c) the Regulator determines to exercise the function immediately on the basis that it is necessary to do so because there is, or the Regulator considers it likely that if the function were not exercised immediately there would be, an immediate risk to—
    - (i) the interests of members under an occupational or personal pension scheme, or
    - (ii) the assets of such a scheme.

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- (3) A case falls within this subsection if—
- (a) the Regulator gives a warning notice as described in section 96(2)(a) in relation to a determination whether to exercise a regulatory function listed in subsection (5), and
  - (b) before it has considered the representations of those persons to whom the warning notice is given, the Regulator determines to exercise the function immediately on the basis that it is necessary to do so because there is, or the Regulator considers it likely that if the function were not exercised immediately there would be, an immediate risk to—
    - (i) the interests of members under an occupational or personal pension scheme, or
    - (ii) the assets of such a scheme.
- (4) A case falls within this subsection if the Regulator—
- (a) gives a warning notice as described in section 96(2)(a) in relation to a determination whether to exercise a regulatory function which—
    - (i) is listed in subsection (5), and
    - (ii) is not a function listed in section 96(6) (functions which may be exercised immediately under the standard procedure),
  - (b) considers the representations of those persons to whom the warning notice is given, and
  - (c) determines to exercise the function immediately on the basis that it is necessary to do so because there is, or the Regulator considers it likely that if the function were not exercised immediately there would be, an immediate risk to—
    - (i) the interests of members under an occupational or personal pension scheme, or
    - (ii) the assets of such a scheme.
- (5) The regulatory functions referred to in subsections (2), (3) and (4) are—
- (a) the power to make or extend a restraining order under section 20;
  - (b) the power to make a freezing order under section 23;
  - (c) the power to make an order under section 25(3) extending the period for which a freezing order has effect;
  - (d) the power to make an order under section 26 validating action taken in contravention of a freezing order;
  - (e) the power to make an order under section 28 directing that specified steps are taken;
  - (f) the power to make an order under section 30 giving a direction where a freezing order ceases to have effect;
  - (g) the power to make an order under section 31(3) directing the notification of members;
  - (h) the power to make an order under section 231 modifying a scheme, giving directions or imposing a schedule of contributions;
  - (i) the power to make an order under section 3(1) of the Pensions Act 1995 (c. 26) prohibiting a person from being a trustee;
  - (j) the power to make an order under section 3(3) of that Act revoking such an order;

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- [<sup>F1</sup>(ja) the power under section 3A(3) of that Act to give a notice waiving a prohibition;]
- (k) the power to make an order under section 4(1) of that Act suspending a trustee;
- (l) the power to make an order under section 4(5) of that Act revoking such an order;
- (m) the power to make an order under section 7 of that Act appointing a trustee;
- (n) the power under section 9 of that Act to exercise by order the same jurisdiction and powers as the High Court or the Court of Session for vesting property in, or transferring property to, trustees in consequence of the appointment or removal of a trustee;
- (o) the power to make an order under section 11 of that Act directing or authorising an occupational pension scheme to be wound up;
- (p) the power to make an order under section 23 of that Act appointing an independent trustee;
- (q) the power under section 29(5) of that Act to give a notice waiving a disqualification under section 29 of that Act;
- (r) the power under section 30(2) of that Act to exercise by order the same jurisdiction and powers as the High Court or the Court of Session for vesting property in, or transferring property to, the trustees where a trustee becomes disqualified under section 29 of that Act;
- (s) the power to make an order under section 67G(2) of that Act by virtue of which any modification of, or grant of rights under, an occupational pension scheme is void to any extent;
- (t) the power to make an order under section 67H(2) of that Act prohibiting, or specifying steps to be taken in relation to, the exercise of a power to modify an occupational pension scheme;
- [<sup>F2</sup>(ta) a power under section 24H of the Pension Schemes Act 1993;]
- [<sup>F3</sup>(tb) the power to withdraw authorisation of a Master Trust scheme under section 19 of the Pension Schemes Act 2017;
- (tc) the power to make a pause order under section 31 of that Act;
- (td) the power to make an order under paragraph 2(2) of Schedule 1 to that Act extending the period for which a pause order has effect;
- (te) the power to make an order under paragraph 3 of that Schedule validating action taken in contravention of a pause order;
- (tf) the power to make an order under paragraph 4(3) of that Schedule directing the notification of members or employers;]
- (u) such other regulatory functions as may be prescribed;
- (v) the power under section 101(1)(b) to vary or revoke in relation to the exercise of any of the regulatory functions mentioned in paragraphs (a) to (u) other than those mentioned in paragraph (j) or (l).

#### Textual Amendments

- F1** S. 97(5)(ja) inserted (11.9.2014) by [Pensions Act 2014 \(c. 19\)](#), s. 56(1), [Sch. 19 para. 9](#); S.I. 2014/2377, [art. 2\(1\)\(a\)\(i\)\(2\)\(l\)](#)
- F2** S. 97(5)(ta) inserted (1.3.2009 for specified purposes, 6.4.2009 in so far as not already in force) by [Pensions Act 2007 \(c. 22\)](#), [ss. 14\(6\)](#), 30(2)(a); S.I. 2009/406, [art. 2\(a\)\(b\)](#)
- F3** S. 97(5)(tb)-(tf) inserted (5.9.2018 for specified purposes, 1.10.2018 so far as not already in force) by [Pension Schemes Act 2017 \(c. 17\)](#), s. 44(2), [Sch. 3 para. 11](#); S.I. 2018/965, [reg. 2](#)

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#### **Commencement Information**

- I1** S. 97(1)-(4)(5)(a)-(t)(v) in force at 6.4.2005 by [S.I. 2005/275, art. 2\(7\)](#), [Sch. Pt. 7](#)
- I2** S. 97(5)(u) 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](#)

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