



# Pensions Act 2008

## 2008 CHAPTER 30

### PART 1

#### PENSION SCHEME MEMBERSHIP FOR JOBHOLDERS

### CHAPTER 8

#### APPLICATION AND INTERPRETATION

#### *F1* Exceptions

#### Textual Amendments

- F1** S. 87A and cross-heading inserted (11.9.2014) by [Pensions Act 2014 \(c. 19\)](#), ss. **38(2)**, 56(1); S.I. 2014/2377, art. 2(1)(a)(i)(2)(c)

#### **87A Power to create exceptions from the employer duties etc**

- (1) The Secretary of State may by regulations provide for exceptions to the employer duties; and an exception may in particular—
  - (a) turn an employer duty into a power;
  - (b) be framed by reference to a description of worker, particular circumstances or in some other way.
- (2) But the regulations may not provide for an exception for employers of a particular size.
- (3) Regulations which make provision under subsection (1)(a) may make provision modifying this Part or regulations made under it in connection with that provision.
- (4) The regulations may make provision in connection with the coming to an end of the state of affairs that caused an exception to apply, including provision—
  - (a) modifying this Part or regulations made under it in relation to a person;

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- (b) for the purpose of putting a person, wholly or partly, in the position he or she would have been in if the exception had never applied.
- (5) In this section “employer duties” means any duty of an employer under any provision of sections 2 to 11 and 54 or of regulations made under those sections.]

### *Workers*

## **88 “Employer”, “worker” and related expressions**

- (1) This section applies for the purposes of this Part.
- (2) “Contract of employment” means a contract of service or apprenticeship, whether express or implied, and (if it is express) whether oral or in writing.
- (3) “Worker” means an individual who has entered into or works under—
  - (a) a contract of employment, or
  - (b) any other contract by which the individual undertakes to do work or perform services personally for another party to the contract.
- (4) But a contract is not within subsection (3)(b) if the status of the other party is by virtue of the contract that of a client or customer of a profession or business undertaking carried on by the individual concerned.
- (5) For the purposes of subsection (3)(b), it does not matter whether the contract is express or implied or (if it is express) whether it is oral or in writing.
- (6) Any reference to a worker's contract is to be read in accordance with subsections (3) to (5).
- (7) “Employer”, in relation to a worker, means the person by whom the worker is employed (subject to sections 37(5) and 38(6)).
- (8) “Employment” in relation to a worker, means employment under the worker's contract, and related expressions are to be read accordingly.

## **89 Agency workers**

- (1) This section applies to an individual (“the agency worker”)—
  - (a) who is supplied by a person (“the agent”) to do work for another person (“the principal”) under a contract or other arrangements made between the agent and the principal,
  - (b) who is not, as respects that work, a worker, because of the absence of a worker's contract between the individual and the agent or the principal, and
  - (c) who is not a party to a contract under which the agency worker undertakes to do the work for another party to the contract whose status is, by virtue of the contract, that of a client or customer of a profession or business undertaking carried on by the individual.
- (2) Where this section applies, the other provisions of this Part have effect—
  - (a) as if there were a worker's contract for the doing of the work by the agency worker, made between the agency worker and the relevant person under subsection (3), and
  - (b) as if that person were the agency worker's employer.

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- (3) The relevant person is—
- (a) whichever of the agent and the principal is responsible for paying the agency worker in respect of the work, or
  - (b) if neither the agent nor the principal is responsible for doing so, whichever of them pays the agency worker in respect of the work.

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

- C1 S. 89 applied by 1993 c. 48, s. 123(3A) (as inserted (11.9.2014) by [Pensions Act 2014 \(c. 19\)](#), [ss. 42\(2\)\(c\)](#), [56\(1\)](#); [S.I. 2014/2377](#), [art. 2\(1\)\(a\)\(i\)\(2\)\(e\)](#))

## 90 Directors

- (1) A person who holds office as a director of a company is not, by virtue of that office or of any employment by the company, a worker for the purposes of this Part, unless—
- (a) the person is employed by the company under a contract of employment, and
  - (b) there is at least one other person who is employed by the company under a contract of employment.
- (2) In this section, “company” includes any body corporate.

## 91 Crown employment

- (1) This Part has effect in relation to employment by or under the Crown as it has effect in relation to other employment.
- (2) For the purposes of the application of the provisions of this Part in accordance with subsection (1)—
- (a) references to a worker are to be construed as references to a person employed by or under the Crown;
  - (b) references to a worker's contract are to be construed as references to the terms of employment of a person employed by or under the Crown.
- (3) This section does not impose criminal liability on the Crown.
- (4) But on the application of the Regulator the High Court or the Court of Session may declare unlawful a failure by the Crown to comply with any of the duties mentioned in section 45(1).

## 92 Armed forces

- (1) A person serving as a member of the naval, military or air forces of the Crown is not, by virtue of that service, a worker for the purposes of this Part.
- (2) A member of any of the forces specified in subsection (3) who assists the activities of any of those forces is not, by virtue of anything done in assisting those activities, a worker for the purposes of this Part.
- (3) The forces are—
- (a) the Combined Cadet Force;
  - (b) the Sea Cadet Corps;

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- (c) the Army Cadet Force;
- (d) the Air Training Corps.

### 93 House of Lords staff

- (1) This Part has effect in relation to employment as a relevant member of the House of Lords staff as it has effect in relation to other employment.
- (2) In this section, “relevant member of the House of Lords staff” means any person who is employed under a worker's contract with the Corporate Officer of the House of Lords.

### 94 House of Commons staff

- (1) This Part has effect in relation to employment as a relevant member of the House of Commons staff as it has effect in relation to other employment.
- (2) In this section, “relevant member of the House of Commons staff” means any person—
  - (a) who was appointed by the House of Commons Commission, or
  - (b) who is a member of the Speaker's personal staff.
- (3) For the purposes of the application of the provisions of this Part in relation to a relevant member of the House of Commons staff—
  - (a) references to a worker are to be read as references to a relevant member of the House of Commons staff, and
  - (b) references to a worker's contract are to be read as references to the terms of employment of a relevant member of the House of Commons staff.

### 95 Police

- (1) This Part has effect in relation to a person who—
  - (a) holds the office of constable or an appointment as a police cadet, and
  - (b) does not hold that office or appointment under a contract of employment,
 as if the person were employed by the [<sup>F2</sup>relevant local policing body or] relevant police authority under a worker's contract.
- (2) A [<sup>F3</sup>local policing body, or a] police authority that maintains a police force is the relevant [<sup>F4</sup>local policing body, or relevant] police authority—
  - (a) in relation to a constable, if the constable is a member of that police force;
  - (b) in relation to a police cadet, if the cadet is undergoing training with a view to becoming a member of that police force.

#### Textual Amendments

- F2** Words in s. 95(1) inserted (16.1.2012) by [Police Reform and Social Responsibility Act 2011 \(c. 13\)](#), ss. 99, 157(1), [Sch. 16 para. 371\(2\)](#); S.I. 2011/3019, [art. 3](#), Sch. 1 para. nnn(iii)
- F3** Words in s. 95(2) inserted (16.1.2012) by [Police Reform and Social Responsibility Act 2011 \(c. 13\)](#), ss. 99, 157(1), [Sch. 16 para. 371\(3\)\(a\)](#); S.I. 2011/3019, [art. 3](#), Sch. 1 para. nnn(iii)
- F4** Words in s. 95(2) inserted (16.1.2012) by [Police Reform and Social Responsibility Act 2011 \(c. 13\)](#), ss. 99, 157(1), [Sch. 16 para. 371\(3\)\(b\)](#); S.I. 2011/3019, [art. 3](#), Sch. 1 para. nnn(iii)

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## 96 Persons working on vessels

- (1) Subject to regulations under this section, a person employed or engaged in any capacity on board a ship is not, by virtue of that employment or engagement, a worker for the purposes of this Part.
- (2) The Secretary of State may by regulations provide that, to the extent and for the purposes specified in the regulations, the relevant provisions apply, with or without modification, in relation to a person employed or engaged in any capacity on board a ship (whether or not that person is working or ordinarily works in any part of the United Kingdom).
- (3) For the purposes of this section, the relevant provisions are—
  - (a) this Part (and any enactment as amended by this Part), and
  - (b) any provision in force in Northern Ireland corresponding to any provision of this Part (and any enactment as amended by such a provision).
- (4) Regulations under this section—
  - (a) may provide for a provision to apply in relation to individuals whether or not they are British subjects;
  - (b) may provide for a provision to apply in relation to bodies corporate whether or not they are incorporated under the law of a part of the United Kingdom;
  - (c) may do so even where the application may affect the individual's or body's activities outside the United Kingdom.
- (5) Regulations under this section—
  - (a) may provide for a court or tribunal on which jurisdiction is conferred by the relevant provisions to have jurisdiction, in respect of offences or other matters, for the purposes of any provision as it applies by virtue of the regulations;
  - (b) may exclude from the operation of section 3 of the Territorial Waters Jurisdiction Act 1878 (c. 73) (consents required for prosecutions) proceedings for offences under any provision as it applies by virtue of the regulations;
  - (c) may provide that such proceedings may not be brought without such consent as may be required by the regulations.
- (6) Any jurisdiction conferred on a court or tribunal under this section is without prejudice to jurisdiction exercisable apart from this section by that or any other court or tribunal.
- (7) In this section, “ship” includes—
  - (a) a hovercraft within the meaning of the Hovercraft Act 1968 (c. 59), and
  - (b) every description of vessel used in navigation.

### Commencement Information

- II** S. 96 wholly in force at 30.6.2012; s. 96 in force for certain purposes at Royal Assent see s. 149(2)(k); s. 96 in force so far as not already in force at 30.6.2012 by [S.I. 2012/1682](#), [art. 2\(1\)\(2\)\(a\)](#), [Sch. 1](#)

## 97 Persons in offshore employment

- (1) Her Majesty may by Order in Council provide that, to the extent and for the purposes specified in the Order, the relevant provisions apply, with or without modification, in relation to a person in offshore employment.

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- (2) For the purposes of this section, the relevant provisions are—
- (a) this Part (and any enactment as amended by this Part), and
  - (b) any provision in force in Northern Ireland corresponding to any provision of this Part (and any enactment as amended by such a provision).
- (3) In this section, “offshore employment” has the same meaning as in section 201(1) of the Employment Rights Act 1996 (c. 18).
- (4) An Order in Council under this section—
- (a) may provide for a provision to apply in relation to individuals whether or not they are British subjects;
  - (b) may provide for a provision to apply in relation to bodies corporate whether or not they are incorporated under the law of a part of the United Kingdom;
  - (c) may do so even where the application may affect the individual's or body's activities outside the United Kingdom.
- (5) An Order in Council under this section—
- (a) may make different provision for different cases;
  - (b) may provide for a court or tribunal on which jurisdiction is conferred by the relevant provisions to have jurisdiction, in respect of offences or other matters, for the purposes of any provision as it applies by virtue of the Order;
  - (c) may (without prejudice to subsection (1) and paragraph (a)) provide for a provision to apply in relation to any person in employment in a part of the areas referred to in section 201(1)(a) and (b) of the Employment Rights Act 1996 (c. 18);
  - (d) may exclude from the operation of section 3 of the Territorial Waters Jurisdiction Act 1878 (c. 73) (consents required for prosecutions) proceedings for offences under any provision as it applies by virtue of the Order;
  - (e) may provide that such proceedings may not be brought without such consent as may be required by the Order.
- (6) Any jurisdiction conferred on a court or tribunal under this section is without prejudice to jurisdiction exercisable apart from this section by that or any other court or tribunal.
- (7) No Order in Council may be made under this section unless a draft of the Order has been laid before and approved by a resolution of each House of Parliament.

**Commencement Information**

- I2** S. 97 wholly in force at 30.6.2012; s. 97 in force for certain purposes at Royal Assent see s. 149(2)(k); s. 97 in force so far as not already in force at 30.6.2012 by [S.I. 2012/1682](#), [art. 2\(1\)\(2\)\(a\)](#), [Sch. 1](#)

**98 Extension of definition of worker**

The Secretary of State may by regulations make provision for this Part to apply with or without modifications—

- (a) as if any individual of a prescribed description (who would not otherwise be a worker) were a worker,
- (b) as if there were in the case of any such individual a worker's contract of a prescribed description under which the individual works, and

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- (c) as if a person of a prescribed description were the employer under that contract.

#### Commencement Information

**I3** S. 98 wholly in force at Royal Assent by virtue of s. 149(2)(k)

### General

## 99 Interpretation of Part

In this Part—

“active member”—

- (a) in relation to an occupational pension scheme, means a person who is in pensionable service under the scheme;
- (b) in relation to a personal pension scheme, means a jobholder in relation to whom there is an agreement within section 26(4) between the provider of the scheme and the employer or (where section 9 applies) a worker in relation to whom there are direct payment arrangements (within the meaning of section 111A of the Pension Schemes Act 1993 (c. 48)) between the worker and the employer;

“automatic enrolment scheme” is to be read in accordance with section 3(8);

“average salary benefits” means benefits the rate or amount of which is calculated by reference to the average salary of a member over the period of service on which the benefits are based;

[<sup>F5</sup>“collective money purchase benefit” has the meaning given by section 1 of the Pension Schemes Act 2021;]

“contract of employment” has the meaning given by section 88;

“defined benefits”, in relation to a member of an occupational pension scheme, means benefits which are not money purchase benefits (but the rate or amount of which is calculated by reference to earnings or service of the member or any other factor other than an amount available for their provision);

“defined benefits scheme” means an occupational pension scheme under which all the benefits that may be provided are defined benefits;

“employer”, “employment” and related expressions have the meaning given by section 88;

“enrolment duty” means a duty under section 3(2), 5(2), 7(3) or 9(2);

“hybrid scheme” means an occupational pension scheme which is neither a defined benefits scheme nor a money purchase scheme;

<sup>F6</sup> ...

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

“money purchase benefits”, in relation to a member of a pension scheme, [<sup>F7</sup>means—

- (a) benefits] the rate or amount of which is calculated by reference to a payment or payments made by the member or by any other person in respect of the member and [<sup>F8</sup>which fall within section 99A][<sup>F9</sup>, and
- (b) collective money purchase benefits;]

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- “money purchase scheme” means an occupational pension scheme under which all the benefits that may be provided are money purchase benefits;
- “occupational pension scheme” has the meaning given by section 18;
- “pension scheme” has the meaning given by section 1(5) of the Pension Schemes Act 1993 (c. 48);
- “pensionable age” has the meaning given by the rules in paragraph 1 of Schedule 4 to the Pensions Act 1995 (c. 26);
- “pensionable service”, in relation to a member of an occupational pension scheme, means service in any description of employment to which the scheme relates which qualifies the member (on the assumption that it continues for the appropriate period) for pension or other benefits under the scheme;
- “personal pension scheme” has the meaning given by section 19;
- “prescribed” means prescribed by regulations;
- “provider”—
- (a) in relation to a personal pension scheme to which section 26 applies, means the person referred to in subsection (1)(b) of that section;
  - (b) in relation to any other personal pension scheme, has the meaning prescribed;
- “qualifying earnings” has the meaning given by section 13;
- “qualifying scheme” is to be read in accordance with section 2(5);
- “regulations” means regulations made by the Secretary of State;
- “the Regulator” means the Pensions Regulator;
- “tax year” means the 12 months beginning with 6th April in any year;
- “trustee or manager”—
- (a) in relation to England and Wales or Scotland, is to be construed in accordance with section 178 of the Pension Schemes Act 1993 (c. 48) (trustees and managers of schemes: interpretation);
  - (b) in relation to Northern Ireland, is to be construed in accordance with section 173 of the Pension Schemes (Northern Ireland) Act 1993 (c. 49) (trustees or managers of schemes);
- “worker” has the meaning given by section 88.

#### Textual Amendments

- F5** Words in s. 99 inserted (11.2.2021 for specified purposes, 1.8.2022 in so far as not already in force) by [Pension Schemes Act 2021 \(c. 1\)](#), s. 131(1)(3)(a), **Sch. 1 para. 6(2)**; S.I. 2022/721, regs. 1(2), 3(a)
- F6** Words in s. 99 omitted (31.12.2020) by virtue of [The Occupational and Personal Pension Schemes \(Amendment etc.\) \(EU Exit\) Regulations 2019 \(S.I. 2019/192\)](#), regs. 1, **6(3)**; 2020 c. 1, Sch. 5 para. 1(1)
- F7** Words in s. 99 substituted (11.2.2021 for specified purposes, 1.8.2022 in so far as not already in force) by [Pension Schemes Act 2021 \(c. 1\)](#), s. 131(1)(3)(a), **Sch. 1 para. 6(3)(a)**; S.I. 2022/721, regs. 1(2), 3(a)
- F8** Words in s. 99 substituted (retrospective to 5.7.2010) by [Pensions Act 2011 \(c. 19\)](#), **s. 29(3)(8)**; S.I. 2010/10, **art. 2(c)**
- F9** Words in s. 99 inserted (11.2.2021 for specified purposes, 1.8.2022 in so far as not already in force) by [Pension Schemes Act 2021 \(c. 1\)](#), s. 131(1)(3)(a), **Sch. 1 para. 6(3)(b)**; S.I. 2022/721, regs. 1(2), 3(a)



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#### Commencement Information

- I4** S. 99 wholly in force at 5.7.2010; s. 99 in force for certain purposes at Royal Assent see s. 149(2)(k); s. 99 otherwise in force at 5.7.2010 by [S.I. 2010/10](#), [art. 2\(c\)](#)

#### [<sup>F10</sup>99A Money purchase benefits: supplementary

- (1) This section applies for the purposes of [<sup>F11</sup>paragraph (a) of the definition] of “money purchase benefits” in section 99.
- (2) A benefit other than a pension in payment falls within this section if its rate or amount is calculated solely by reference to assets which (because of the nature of the calculation) must necessarily suffice for the purposes of its provision to or in respect of the member.
- (3) A benefit which is a pension in payment falls within this section if—
  - (a) its provision to or in respect of the member is secured by an annuity contract or insurance policy made or taken out with an insurer, and
  - (b) at all times before coming into payment the pension was a benefit falling within this section by virtue of subsection (2).
- (4) For the purposes of subsection (2) it is immaterial if the calculation of the rate or amount of the benefit includes deductions for administrative expenses or commission.
- (5) In this section references to a pension do not include income withdrawal or dependants' income withdrawal (within the meaning of paragraphs 7 and 21 of Schedule 28 to the Finance Act 2004).]

#### Textual Amendments

- F10** S. 99A inserted (retrospective to 5.7.2010) by [Pensions Act 2011 \(c. 19\)](#), [s. 29\(4\)\(8\)](#); [S.I. 2010/10](#), [art. 2\(c\)](#)
- F11** Words in [s. 99A\(1\)](#) substituted (11.2.2021 for specified purposes, 1.8.2022 in so far as not already in force) by [Pension Schemes Act 2021 \(c. 1\)](#), [s. 131\(1\)\(3\)\(a\)](#), [Sch. 1 para. 7](#); [S.I. 2022/721](#), [regs. 1\(2\), 3\(a\)](#)

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**Changes and effects yet to be applied to the whole Act associated Parts and Chapters:**

Whole provisions yet to be inserted into this Act (including any effects on those provisions):

- s. 3(1A) inserted by [2023 c. 44 s. 1\(2\)](#)
- s. 5(1C) inserted by [2023 c. 44 s. 1\(3\)](#)
- s. 13(3)(ec) inserted by [2023 c. 20 Sch. para. 56](#)
- s. 13A inserted by [2023 c. 44 s. 1\(4\)](#)
- s. 24(1)(c) inserted by [2015 c. 8 Sch. 2 para. 43\(2\)\(d\)](#)
- s. 143(6)(7) inserted by [2023 c. 44 s. 1\(5\)\(b\)](#)