



EXPLANATORY NOTES

Pension Schemes Act 2021

Chapter 1

£16.40

PENSION SCHEMES ACT 2021

EXPLANATORY NOTES

What these notes do

These Explanatory Notes relate to the Pension Schemes Act 2021 which received Royal Assent on 11 February 2021 (c. 1).

- These Explanatory Notes have been prepared by the Department for Work and Pensions in order to assist the reader in understanding the Act. They do not form part of the Act and have not been endorsed by Parliament.
- These Explanatory Notes explain what each part of the Act will mean in practice; provide background information on the development of policy; and provide additional information on how the Act will affect existing legislation in this area.
- These Explanatory Notes might best be read alongside the Act. They are not, and are not intended to be, a comprehensive description of the Act.

Table of Contents

Subject	Page of these Notes
Overview of the Act	8
Policy background	8
Collective Money Purchase Benefits	8
The Pensions Regulator's powers	8
Criminal and Civil Sanctions	9
Contribution Notices (CNs)	10
Corporate Transaction Oversight	10
Gathering Information	10
Pensions Dashboards	10
Defined Benefit schemes: funding	11
Climate change risk	12
Transfers of rights	12
Pension Protection Fund	12
Administration Charges	13
Legal background	13
Territorial extent and application	14
Commentary on provisions of Act	15
Part 1: Collective Money Purchase Benefits	15
Definitions	15
Section 1: Collective money purchase benefits and schemes	15
Section 2: Qualifying benefits	15
Section 3: Qualifying schemes	15
Section 4: Qualifying schemes: supplementary	16
Section 5: Schemes divided into sections	16
Section 6: Amendment of definitions of "money purchase benefits" etc	16
Schedule 1: Money purchase benefits	16
Authorisation	16
Section 7: Authorisation of collective money purchase schemes	16
Section 8: Application for authorisation	17
Section 9: Decision on application	17
Section 10: Reference to Tribunal of refusal to grant authorisation	17
Authorisation criteria	18
Section 11: Fit and proper persons requirement	18
Section 12: Scheme design requirement	18
Section 13: Viability report	18
Section 14: Financial sustainability requirement	19
Section 15: Communication requirement	19

These Explanatory Notes relate to the Pension Schemes Act 2021 which received Royal Assent on 11 February 2021 (c. 1)

Section 16: Systems and processes requirements	19
Section 17: Continuity strategy requirement	19
Valuation and benefit adjustment	20
Section 18: Calculation of benefits	20
Section 19: Advice of scheme actuary	20
Section 20: Actuarial valuations	20
Section 21: Certificate that actuarial valuation prepared in accordance with scheme rules	21
Section 22: Benefits adjustments	21
Section 23: Powers of the Pensions Regulator	21
Members' Rights	22
Section 24: Rules about modifying schemes	22
Section 25: Transfer rights	22
Ongoing supervision	23
Section 26: List of authorised schemes	23
Section 27: Requirement to submit supervisory return	23
Section 28: Duty to notify the Pensions Regulator of significant events	23
Section 29: Risk notices	24
Section 30: Withdrawal of authorisation	25
Triggering events and continuity options	25
Section 31: Triggering events	25
Section 32: Triggering event periods	25
Section 33: Notification of triggering events	25
Section 34: Continuity options	26
Section 35: When a decision to withdraw authorisation becomes final	27
Section 36: Continuity option 1: discharge of liabilities and winding up	27
Section 37: Continuity option 2: resolving triggering event	27
Section 38: Continuity option 3: conversion to closed scheme	28
Section 39: Implementation strategy	28
Section 40: Approval of implementation strategy	29
Section 41: Trustees' duties once implementation strategy approved	29
Section 42: Prohibition on winding up except in accordance with continuity option 1	29
Section 43: Periodic reporting requirements	30
Section 44: Pause orders	30
Schedule 2: Pause orders	31
Section 45: Prohibition on increasing charges etc during triggering event period	31
Publication of information	33
Section 46: Publication of information	33
Powers to make further provision	33
Section 47: Powers to extend definition of qualifying schemes	33
Supplementary	33
Section 48: Minor and consequential amendments	33
Schedule 3: Collective money purchase benefits: minor and consequential amendments	33
Section 49: Interpretation of Part 1	34
Section 50: Index of defined expressions	34
Section 51: Regulations	34
Part 2: Collective Money Purchase Benefits: Northern Ireland	34
Definitions	34
Section 52: Collective money purchase benefits and schemes	34
Section 53: Qualifying benefits	34
Section 54: Qualifying schemes	34
Section 55: Qualifying schemes: supplementary	34
Section 56: Schemes divided into sections	34
Section 57: Amendment of definitions of "money purchase benefits" etc	34

These Explanatory Notes relate to the Pension Schemes Act 2021 which received Royal Assent on 11 February 2021 (c. 1)

Schedule 4: Money purchase benefits: Northern Ireland	34
Authorisation	35
Section 58: Authorisation of collective money purchase schemes	35
Section 59: Application for authorisation	35
Section 60: Decision on application	35
Section 61: Reference to Tribunal of refusal to grant authorisation	35
Authorisation criteria	35
Section 62: Fit and proper persons requirement	35
Section 63: Scheme design requirement	35
Section 64: Viability report	35
Section 65: Financial sustainability requirement	35
Section 66: Communication requirement	35
Section 67: Systems and processes requirements	35
Section 68: Continuity strategy requirement	35
Valuation and benefit adjustment	36
Section 69: Calculation of benefits	36
Section 70: Advice of scheme actuary	36
Section 71: Actuarial valuations	36
Section 72: Certificate that actuarial valuation prepared in accordance with scheme rules	36
Section 73: Benefits adjustments	36
Section 74: Powers of the Pensions Regulator	36
Members' Rights	36
Section 75: Rules about modifying schemes	36
Section 76: Transfer rights	36
Ongoing supervision	37
Section 77: List of authorised schemes	37
Section 78: Requirement to submit supervisory return	37
Section 79: Duty to notify the Pensions Regulator of significant events	37
Section 80: Risk notices	37
Section 81: Withdrawal of authorisation	37
Triggering events and continuity options	37
Section 82: Triggering events	37
Section 83: Triggering event periods	37
Section 84: Notification of triggering events	37
Section 85: Continuity options	37
Section 86: When a decision to withdraw authorisation becomes final	37
Section 87: Continuity option 1: discharge of liabilities and winding up	37
Section 88: Continuity option 2: resolving triggering event	37
Section 89: Continuity option 3: conversion to closed scheme	38
Section 90: Implementation strategy	38
Section 91: Approval of implementation strategy	38
Section 92: Trustees' duties once implementation strategy approved	38
Section 93: Prohibition on winding up except in accordance with continuity option 1	38
Section 94: Periodic reporting requirements	38
Section 95: Pause orders	38
Schedule 5: Pause orders: Northern Ireland	38
Section 96: Prohibition on increasing charges etc during triggering event period	38
Publication of information	38
Section 97: Publication of information	38
Powers to make further provision	39
Section 98: Powers to extend definition of qualifying schemes	39
Supplementary	39
Section 99: Minor and consequential amendments	39

These Explanatory Notes relate to the Pension Schemes Act 2021 which received Royal Assent on 11 February 2021 (c. 1)

Schedule 6: Collective money purchase benefits: minor and consequential amendments for Northern Ireland	39
Section 100: Interpretation of Part 2	39
Section 101: Index of defined expressions	39
Section 102: Regulations	39
Part 3: The Pensions Regulator	39
Contribution notices where avoidance of employer debt etc	39
Section 103: Grounds for issuing a section 38 contribution notice	39
S38C: Section 38 contribution notice: meaning of “employer insolvency test”	39
S38D: Section 38 contribution notice issued by reference to employer insolvency test: defence	40
S38E: Section 38 contribution notice: meaning of “employer resources test”	42
S38F: Section 38 contribution notice issued by reference to employer resources test: defence	42
Section 104: Reasonableness of issuing a contribution notice	43
Section 105: Determination of sum specified in a contribution notice	44
Section 106: Sanctions for failure to comply with a contribution notice	44
Section 40 (content and effect of a section 38 contribution notice)	44
Section 41 (section 38 contribution notice: relationship with employer debt)	44
42A Offence of failing to comply with a section 38 contribution notice	45
42B Financial penalty for failure to comply with a section 38 contribution notice	45
Sanctions for avoidance of employer debt etc	45
Section 107: Sanctions for avoidance of employer debt etc	45
S58A: Offence of avoidance of employer debt	46
S58B: Offence of conduct risking accrued scheme benefits	46
S58C: Financial penalty for avoidance of employer debt	47
S58D: Financial penalty for conduct risking accrued scheme benefits	48
Collecting information	49
Section 108: Duty to notify the Regulator of certain events	49
Section 109: Duty to give notices and statements to the Regulator in respect of certain events	49
Gathering information	51
Section 110: Interviews	51
72A Interviews	51
Section 111: Inspection of premises	51
Section 112: Fixed penalty notices and escalating penalty notices	52
77A: Fixed penalty notices	52
77B Escalating penalty notices	52
Provision of false or misleading information	52
Section 113: Provision of false or misleading information to Regulator	52
80A Financial penalty for providing false or misleading information to the Regulator	53
Section 114: Provision of false or misleading information to trustees or managers	53
80B Financial penalty for providing false or misleading information to trustees or managers	53
Financial penalties	54
Section 115: Financial penalties	54
88A Financial penalties	54
88B Financial penalties: time for recovery	55
88C Financial penalties: recovery	55
Supplementary	55
Section 116: Minor and consequential amendments	55
Schedule 7: The Pensions Regulator: minor and consequential amendments	55
Northern Ireland	55
Section 117: The Pensions Regulator: Northern Ireland	55
Schedule 8: The Pensions Regulator: Northern Ireland	55
Part 1: Amendments of the Pensions (Northern Ireland) Order 2005	56
Part 2: Minor and Consequential Amendments	56

Part 4: Pensions Dashboards	57
Section 118 and 119: Pensions dashboards	57
Section 118: Qualifying pensions dashboard service	57
238A Qualifying pensions dashboard services	57
238B Qualifying pension dashboard service: further provision	58
238C Sections 238A and 238B: interpretation	59
Section 119: Information from occupational pension schemes	59
238D Information from occupational pension schemes	59
238E Information from occupational pension schemes: further provision	60
238F Sections 238D and 238E interpretation	61
238G Compliance	61
Section 120: Pensions Dashboards: Northern Ireland	62
Schedule 9: Pensions dashboards: Northern Ireland	62
Section 121: Information from personal and stakeholder pension schemes	62
137FAA Financial Conduct Authority general rules: pensions dashboards	62
137FAB Pensions dashboards: further provision	63
137FAC Sections 137FAA and 137FAB: supplementary	64
Section 122: The Money and Pensions Service: the pensions guidance function	64
Part 5: Further provision relating to pension schemes	65
Scheme funding	65
Section 123: Funding of defined benefit schemes	65
Schedule 10: Funding of defined benefit schemes	65
Background	65
221A Funding and Investment Strategy	65
221B Statement of strategy	66
Amending the Statutory Funding Objective	67
Requirements in relation to actuarial valuations and reports	67
Recovery plan	67
Matters requiring agreement of employer	67
Powers of the Regulator	67
Climate change risk	68
Section 124: Climate change risk	68
41A Climate change risk	68
41B Climate change risk: publication of information	69
41C Sections 41A and 41B: compliance	69
Other provisions	69
Transfer rights	69
Section 125: Exercise of right to cash equivalent	69
The Pension Protection Fund	71
Section 126: Modification of provisions relating to pensionable service	71
Administration charges	72
Section 127: Administration charges	72
Categories of pension schemes	72
Section 128: Pension Schemes Act 2015: repeals	72
Northern Ireland	72
Section 129: Further provision relating to pension schemes: Northern Ireland	72
Schedule 11: Further provision relating to pension schemes: Northern Ireland	72
Part 1: Funding of defined benefit schemes	72
Part 2: Other provision	72
Part 6: Final	73
Section 130: Extent	73
Section 131: Commencement	73

These Explanatory Notes relate to the Pension Schemes Act 2021 which received Royal Assent on 11 February 2021 (c. 1)

Section 132: Short title	73
Commencement	73
Related documents	74
Annex A – Hansard References	75
Annex B – Progress of Bill Table	76

Overview of the Act

- 1 Measures in this Act make provision in four areas:
 - Collective money purchase benefits
 - The Pensions Regulator
 - Pensions dashboards
 - Further provision relating to pension schemes

Policy background

Collective Money Purchase Benefits

- 2 Collective money purchase is the legislative term for collective defined contribution (“CDC”) schemes where contributions into the scheme are pooled and invested with a view to delivering an aspired benefit level. An important principle of CDC schemes is that contributions into the scheme are fixed, and the benefit level offered can only ever be a target or an estimate. It is not guaranteed by the employer and members should recognise from the outset that the benefit levels aspired to may not be achieved and that the level at which pensions are paid may fluctuate.
- 3 The Government published a consultation on delivering CDC schemes in October 2018.¹
- 4 Following the consultation, the Government committed to legislate to allow CDC schemes to operate in the United Kingdom (UK).
- 5 Part 1 of the Act provides the legislative framework to establish and operate CDC schemes. The Act refers to CDC benefits and CDC schemes using the terms Collective Money Purchase Benefits and Collective Money Purchase Schemes. It takes this approach to be consistent with existing terminology in pensions legislation.
- 6 Part 1 includes provision for CDC schemes to be authorised and supervised by the Pensions Regulator and requirements to disclose certain information to members to ensure that there is appropriate communication and transparency about how the scheme operates.

The Pensions Regulator’s powers

- 7 The Pensions Regulator is the independent UK regulator of work-based pensions. Its statutory objectives are set out in the Pensions Act 2004, one of which is to protect the benefits of members of occupational pension schemes. To do so, it works with trustees, employers, and business advisers of occupational pension schemes in the private and public sectors, to help them understand their legal duties and the standards expected.
- 8 The Regulator also has an enforcement role where it can investigate both breaches of regulations and action by sponsoring employers and other related entities which may have a detrimental effect on schemes. It can impose civil penalties, undertake criminal prosecutions, or order relevant individuals to make payments into the scheme.

¹ <https://www.gov.uk/government/consultations/delivering-collective-defined-contribution-pension-schemes>

- 9 The Act builds on the Government commitment to tighten the rules of abuse against pension schemes by improving the Pensions Regulator’s powers so that they:
- can be more proactive and get involved earlier when sponsoring employers make changes which could impact the pension scheme;
 - have the necessary powers to be able to obtain the right information about a scheme and its sponsoring employer in a timely manner;
 - are able to gain redress for a pension scheme and its members when things go wrong; and
 - can deter reckless behaviours.
- 10 In March 2018, the Government published the White Paper ‘*Protecting Defined Benefit Pension Schemes*’.² The White Paper stated that the existing system of protection is working well for the majority of Defined Benefit pension schemes, members, trustees and sponsoring employers, but that there were ways in which the system could be improved further.
- 11 In June 2018, the Government published the consultation: ‘*Protecting Defined Benefit Pension Schemes - A Stronger Pensions Regulator*’, which set out the Government’s proposals to improve and amend the Regulator’s existing powers, including establishing new Criminal Offences and Financial Penalties, and changes to the Contribution Notice (CN), Financial Support Direction (FSD), and Corporate Transaction Oversight regimes.³ Stakeholders were generally supportive of the Government’s proposals, seeing them as a positive step towards ensuring the security of Defined Benefit scheme members’ savings.
- 12 In February 2019, the Government published its response to the consultation, outlining the proposals it would take forward.⁴ This response also included measures that the Government would take forward to improve the Regulator’s Information Gathering powers.
- 13 Cumulatively, the improvements to the Regulator’s powers in this Act will help the Regulator to meet their aim of being “clearer, quicker, and tougher”, and, in turn, will afford increased protection for Defined Benefit scheme members’ savings.

Criminal and Civil Sanctions

- 14 To support its enforcement role, the Regulator can impose criminal offences and financial penalties on sponsoring employers and other related entities who engage in wrongdoing in relation to their defined benefit pension scheme. Existing offences target a limited list of breaches only, and current penalty amounts are not an effective deterrent to more serious breaches.

2

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/693655/protecting-defined-benefit-pension-schemes.pdf

3

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/719779/protecting-defined-benefit-pension-schemes.pdf

4

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/777758/response-protecting-defined-benefit-pension-schemes.pdf

- 15 The measures in the Act will strengthen the existing sanctions regime by introducing three new criminal offences, and a new power to issue civil penalties of up to £1 million.
- 16 The new offences and penalty will create a stronger and more comprehensive sanctions regime. They will provide additional deterrents for unscrupulous behaviours and, will enable the Regulator to punish abuse and wrongdoing within the occupational pensions industry appropriately.

Contribution Notices (CNs)

- 17 In order to safeguard Defined Benefit pension scheme members' benefits, and to minimise the risk of a call on the Pension Protection Fund, the Regulator has a range of powers, including the power to issue CNs to recover any losses caused to a Defined Benefit pension scheme as a result of avoidance behaviours.
- 18 The Regulator's CN regime is generally fit for purpose. Following a small number of cases, it has become apparent that changes are necessary to update and strengthen the regime.
- 19 The measures in this Act amend the CN regime, and in doing so, will ensure that the industry has greater clarity around the meaning of the current legislation, and will enable the Regulator to take effective and efficient action as appropriate.

Corporate Transaction Oversight

- 20 The provisions in the Act will require certain persons involved in a corporate transaction to make a statement setting out information about the event and how any detriment to a Defined Benefit pension scheme, as a result of this event, is to be mitigated.

Gathering Information

- 21 One of the Pensions Regulator's powers is to investigate potential breaches of pension legislation. To do this, they have a range of information gathering powers which enable them to inspect premises and the records held there, interview individuals, and issue formal written requests for information. The Regulator can also impose civil penalties or instigate criminal proceedings for non-compliance where they are investigating a potential breach of pension legislation.
- 22 These information gathering powers vary depending on the particular function the Regulator undertakes, or the type of pension scheme it is investigating. The fact that the Regulator has the power to undertake inspections only in some circumstances, interviews in others, or issue civil penalties in different specified circumstances, can hinder investigations and cause confusion among those being regulated.
- 23 The measures in the Act will give the Regulator a more coherent set of information gathering powers.

Pensions Dashboards

- 24 Pensions dashboards build on the Government's commitment to help people with better planning for retirement and to achieve financial security in their later life. Pensions dashboards are online services which will allow people to access their pension information in a clear and simple form. They will bring together an individual's savings from multiple pensions, including State Pension, in a single place online. The Money and Pensions Service will bring together industry to lead the development and delivery of dashboards and Government has committed to facilitate this, including to provide an appropriate legislative framework and safeguard the interests of consumers. The Money and Pensions Service will also provide a non-commercial dashboard service.

25 The Government sought views on making it a legal requirement for pension schemes to provide data via dashboards, in the Government's consultation *'Pensions dashboards: Working together for the consumer'*,⁵ published on 3 December 2018. Overall, there was consensus that this is crucial for the successful delivery of dashboards. The *'Government response to the consultation'*,⁶ published on 4 April 2019, confirmed the Government's commitment to enact the necessary requirements.

Defined Benefit schemes: funding

26 The scheme funding provisions deliver the Government's commitments in the White Paper *'Protecting Defined Benefit Pension Schemes'*⁷ to improve the system and to ensure it continues to protect members' Defined Benefit pensions in a maturing landscape. With most schemes closed, comprising fewer contributing members, or reaching a phase where pension scheme benefits only are being paid out, it is important trustees manage their funding and investment decisions with a clear strategy for ensuring pensions and other benefits can be provided over the long term. Although the White Paper showed most sponsors and trustees work well together and use the flexibilities of the current system reasonably, good practice is not universal. The new scheme funding provisions seek to help trustees to improve their scheme funding and investment decision-making and to strengthen the Pensions Regulator's ability to take stronger, more effective, action to protect members' pensions.

27 The provisions:

- require trustees to have a scheme specific funding and investment strategy, and for the Statutory Funding Objective to be achieved in the context of this strategy. The White Paper describes this as a long term objective, which could be to 'run on' with minimal employer support; to buy out with an insurer, or to enter a consolidator;
- require trustees to explain to the Regulator their approach to achieving the strategy in a statement of strategy, including information on mitigating risks, submitted with the actuarial valuation - described as a Defined Benefit Chair's Statement in the White Paper;
- require the trustee board to appoint a Chair, who is responsible for signing the statement on behalf of the Board;
- strengthen the Regulator's scheme funding enforcement powers, enabling them to direct trustees to revise their funding and investment strategy if they fail to comply with their legislative requirements.

28 New regulation-making powers, to be used with existing regulation-making powers, will ensure regulations can contain sufficient detail to support trustees and their sponsoring employers to be clear about what they are required to do.

5

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/760659/pensions-dashboards-working-together-for-the-consumer.pdf

6

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/792303/government-response-pensions-dashboards.pdf

7

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/693655/protecting-defined-benefit-pension-schemes.pdf

Climate change risk

- 29 In 2019, the Government published its Green Finance Strategy⁸ which made commitments to steps the Government will take to ‘green’ the financial system. The climate change risk provisions in Part 5 of the Act support the Government’s expectation, set out in the Green Finance Strategy, that all large asset owners will make disclosures in line with the recommendations of the Task Force on Climate-related Financial Disclosures (TCFD) by 2022. The TCFD recommendations are the most widely used framework against which institutional investors report and assess exposure to the financial risk of climate change.
- 30 Section 124 inserts new sections into the Pensions Act 1995, to provide a legislative framework for requiring trustees and managers of occupational pension schemes to make disclosures in line with the TCFD recommendations.
- 31 The new powers will enable regulations to be made requiring trustees or managers of occupational pension schemes to undertake specified governance-related activities and to publish information relating to the effects of climate change on the scheme. Such regulations may require that trustees or managers take into account the different ways in which the climate might change and the steps that might be taken as a result, including with regard to climate change goals such as the goal in Article 2(1)(a) of the Paris Agreement⁹ of holding the increase in the average global temperature to well below 2°C above pre-industrial levels. The inserted provisions will also enable regulations to be made providing the Pensions Regulator with streamlined enforcement powers to address compliance issues.
- 32 The long-term objective is to protect members’ benefits against the physical risks of climate change and ensure that scheme trustees and managers are properly taking into account the risks and opportunities associated with the transition to a lower-carbon economy.
- 33 The new powers will be subject to the consultation requirements in section 120 of the Pensions Act 1995.
- 34 Schedule 11, paragraph 12 of the Act makes equivalent provision for Northern Ireland to that made for Great Britain by section 124, by inserting new articles into the Pensions (Northern Ireland) Order 1995.¹⁰

Transfers of rights

- 35 These sections amend existing legislation to permit regulations to be made to stipulate the destinations and circumstances under which a pension scheme member will have a right to transfer their pension savings to another pension scheme. This will protect members from pension scams by helping trustees of occupational pension schemes ensure transfers of pension savings are made to safe and not fraudulent schemes.

Pension Protection Fund

- 36 The Pension Protection Fund (PPF) pays compensation to members of eligible occupational pension schemes, where the sponsoring employer has become insolvent and the scheme’s assets are insufficient to meet its pension commitments. The policy intention is that an individual’s relevant fixed pension and any other pensionable service within the scheme should be added together for the purposes of determining their PPF compensation payment, and applying the cap, where relevant.

⁸ Green Finance Strategy, 2019. HMT, BEIS, DWP. <https://www.gov.uk/government/publications/green-finance-strategy>

⁹ The Paris Agreement, 2015. UNFCCC. <https://unfccc.int/process-and-meetings/the-paris-agreement/the-paris-agreement>

¹⁰ 1995 Order No. 3213 (N.1. 22). <https://www.legislation.gov.uk/nisi/1995/3213/contents>

- 37 A High Court ruling (*Anthony Beaton v the Board of the PPF*)¹¹ determined that where an individual has benefits derived from a fixed pension transfer, such benefits are not attributable to pensionable service and thus cannot be aggregated with the individual's other pension benefits for the purposes of applying the compensation cap.
- 38 To ensure that the PPF could continue to administer the compensation regime as intended, the Pension Protection Fund (Compensation) Regulations 2005¹² and the Pension Protection Fund (Multi-employer Schemes) (Modification) Regulations¹³ were amended prospectively to enable a fixed pension to be treated as pensionable service for the purposes of calculating PPF compensation, except when aggregating benefits for the cap. Section 126 provides for those amendments to be treated as if they had always applied, so that the legislation supports the policy intent and past practice.

Administration Charges

- 39 In March 2014, the Government published Better workplace pensions: further measures for savers (Cm 8840)¹⁴ which detailed a range of measures to tackle pension charges to protect employees in workplace Defined Contribution pension schemes.
- 40 The scope of these and subsequent measures rely on how an administration charge is defined. The Government has received a number of informal queries over whether particular costs or charges are covered by the definition of "administration charge" as currently drafted. The measure will update the definition to make clear which costs are in scope of the overarching definition.
- 41 There are existing measures in secondary legislation which rely on the definition of "administration charge". These include charge caps for stakeholder pension schemes and schemes used for automatic enrolment. It is not the intention to change the effect of any of those measures. Corresponding changes will be made to the relevant secondary legislation to retain the existing policy.

Legal background

- 42 The following notes give a brief overview of significant existing legislation that is referenced by this Act. Further explanation, if required, is given in the section-by-section commentary.
- 43 The Pension Schemes Act 1993 is a consolidation Act that sets out various provisions in relation to classification of pension schemes, contracting out, early leavers (including preservation, revaluation and the right to take a transfer), the Pensions Ombudsman and other miscellaneous requirements.
- 44 The Pensions Act 1995 contains provisions relating to the Pensions Regulator, as well as provisions relating to the role and responsibilities of trustees, professionals and employers. It also provides requirements in respect of scheme administration, indexation of pensions in payment, protection against detrimental modifications, employer debt and winding up.

¹¹ [2017] EWHC 2623

¹² SI 2005/670

¹³ SI 2005/441

¹⁴ [Gov.uk/better-workplace-pensions-march-2014](https://www.gov.uk/better-workplace-pensions-march-2014)

- 45 The Welfare Reform and Pensions Act 1999 makes provision for pension sharing on divorce and controlling charges in relation to stakeholder pension schemes, as defined in section 1 of that Act.
- 46 The Financial Services and Markets Act 2000 makes provision for the Financial Conduct Authority (FCA) and for a regulatory framework for financial services and markets. Amongst other things, the Authority is responsible for authorising and regulating the operation of contract-based personal pension schemes and certain stakeholder pension schemes.
- 47 The Pensions Act 2004 makes provision with regard to the Pensions Regulator and the Pension Protection Fund. It also makes provision in relation to scheme funding, and contains other miscellaneous provisions applying to pension schemes including internal controls, pension protection where there is a TUPE transfer and employer consultation requirements.
- 48 The Pensions Act 2008 makes provision for automatic enrolment, under which employers are required to enrol qualifying employees into a suitable pension scheme and to make pension contributions on their behalf.
- 49 The Public Service Pensions Act 2013 makes provision for the reform of public sector pensions.
- 50 The Pensions Act 2014 makes provision for restricting charges and imposing requirements in relation to pension schemes.
- 51 The Pension Schemes Act 2015 makes provision allowing members to access their pension savings flexibly on retirement. It also makes provision in relation to defined ambition schemes and collective benefits.
- 52 The Pension Schemes Act 2017 makes provision for an authorisation and supervision regime for Master Trusts.
- 53 The Money and Pensions Service was established by the Financial Guidance and Claims Act 2018. Its objectives include improving the ability of people to make informed financial decisions. One of its functions is to provide free and impartial information and guidance relating to occupational and personal pensions.
- 54 Northern Ireland has separate but corresponding legislation to the Acts listed in paragraphs 43 to 45 and 47 to 51 and to provisions of the Act cited in paragraph 51.

Territorial extent and application

- 55 Section 130 in Part 6 sets out the territorial extent of the Act.
- 56 The provisions of this Act extend to England and Wales and Scotland only, subject to the following exceptions:
- Part 2, sections 117, 120, and 129, and Schedules 4, 5, 6, 8, 9 and 11 extend to Northern Ireland; and
 - Part 6, section 126(2) and section 127(4) extend to England and Wales, Scotland and Northern Ireland.
- 57 The Act also contains amendments to certain Acts that extend and apply to England and Wales, Scotland and Northern Ireland, including the Building Societies Act 1986, the Financial Services and Markets Act 2000 and the Financial Guidance and Claims Act 2018.

Commentary on provisions of Act

Part 1: Collective Money Purchase Benefits

Definitions

Section 1: Collective money purchase benefits and schemes

58 This section defines the terms ‘collective money purchase benefit’ (CMPB) and ‘collective money purchase scheme’. The definitions refer to the terms ‘qualifying scheme’ and ‘qualifying benefit’ which are defined in subsequent sections. References to ‘collective money purchase scheme’ mean a qualifying scheme or a section of a qualifying scheme, where all of the benefits provided under the scheme or section are qualifying benefits. To be a CMPB the benefit must be a qualifying benefit provided by a qualifying scheme.

Section 2: Qualifying benefits

59 This section defines what is a qualifying benefit. Subsections (1)(a) and (1)(b) provide that to be a qualifying benefit the rules of the scheme must provide for the rate or amount of the benefit to be variable so as to achieve a balance between the available assets of the scheme and the ‘required amount’, which is the projected costs of paying benefits under the scheme. The benefit must also be paid out of the available assets of the scheme. This makes it clear that qualifying benefits are not subject to any guaranteed level and that the employer is consequently not liable for any deficit.

60 Subsection (1)(c) allows for benefits specified in regulations to be excluded from being categorised as qualifying benefits. This power is intended to ensure that benefits not intended to be CMPB do not inadvertently fall within the definition. For example, regulations could be made under this section to exclude non-money purchase benefits in the event a risk arises that they might be reclassified in law as CMPB and, therefore, removed from scheme funding requirements and eligibility for entry to the PPF.

61 Subsection (2) defines the terms ‘available assets of the scheme’ and ‘the required amount’. The available assets do not include deductions for administration charges. The definition of ‘the required amount’ makes it clear that the calculation involves the application of actuarial assumptions and relates to the cost of providing benefits under the scheme on a collective basis.

62 Where an occupational pension scheme is divided into sections, subsection (4) enables the provisions in this section to be read as if they referred to a section of the scheme.

Section 3: Qualifying schemes

63 This section sets out the requirements for schemes to be qualifying schemes, and so able to provide CMPB.

64 Subsection (2) requires all qualifying schemes to be occupational pension schemes set up under trust by an employer or group of connected employers. Subsection (3) limits qualifying schemes to those schemes used by a single employer or group of connected employers. Subsection (4) prevents public service pension schemes from providing CMPBs.

65 Subsection (5) requires qualifying schemes to provide a pension income in retirement.

66 Where a scheme offers both qualifying and other benefits, subsection (6) provides that there must be appropriate separation of the qualifying benefits. Subsection (7) provides that there is appropriate separation only if the scheme is divided into separate sections and that a section

providing qualifying benefits cannot provide any other types of benefits. Payments of qualifying benefits under a section must also be allocated to that section, and the assets attributable to each section cannot be used for any other section.

- 67 Where a scheme offers more than one kind of CMPB, in a way to be described in regulations, subsections (8) and (9) require that the different types of CMPB must be provided under different sections. Payments of qualifying benefits under a section must be allocated to that section and the assets attributable to each section cannot be used for any other section.

Section 4: Qualifying schemes: supplementary

- 68 This section sets out what constitutes a public service pension scheme for the purpose of subsection (4) of section 3.

Section 5: Schemes divided into sections

- 69 Subsection (1) provides for regulations to specify when a qualifying scheme offering CMPBs is to be classed as being divided into sections.
- 70 Subsection (2) allows regulations to provide that authorised status may apply to newly created sections within a previously authorised qualifying scheme where these sections satisfy certain conditions.
- 71 Subsection (3) provides that each section of a qualifying scheme which is divided into separate sections and which provides CMPBs is treated as a separate scheme, but that the overall ‘umbrella’ scheme is not treated as a collective money purchase scheme.

Section 6: Amendment of definitions of “money purchase benefits” etc

- 72 This section introduces Schedule 1 which makes amendments to existing definitions of ‘money purchase benefits’ set out in legislation to insert CMPBs as a type of money purchase benefit. It also amends section 32 of the Pensions Act 2011, which contains a power to amend by regulations the definitions of money purchase benefits in legislation, so that regulations made under section 32 may also amend the definition of CMPBs in this Act and other legislation.

Schedule 1: Money purchase benefits

- 73 This Schedule inserts the term “collective money purchase benefits” as defined by this Act into other relevant legislation as a subset of “money purchase benefit” for the purposes of the legislation.

Authorisation

Section 7: Authorisation of collective money purchase schemes

- 74 This section sets out a general prohibition – that a person cannot operate a collective money purchase scheme unless that scheme is authorised. A person operates a collective money purchase scheme, if in relation to the scheme, the person accepts money from members or prospective members, or money from employers or prospective employers in respect of contributions, fees, charges or anything else (although trustees may receive money paid by an employer in advance of authorisation where this is to meet the costs of setting up the scheme or costs relating to obtaining authorisation for the scheme) (subsection (5)). To become authorised, the Pensions Regulator must be satisfied that the scheme meets certain criteria which are set out in section 9.
- 75 Subsection (2) provides that if a person does operate a collective money purchase scheme that is not authorised, they may be subject to a civil penalty under section 10 of the Pensions Act 1995.

76 Subsections (3) and (4) provide that where the Regulator becomes aware that a collective money purchase scheme is operating without authorisation, it is required to notify the trustees that the scheme is not authorised. The notification must explain that the notification is a triggering event (see section 31) and include an explanation of the trustees' duties under sections 31 to 45.

Section 8: Application for authorisation

77 This section makes provision regarding the application for authorisation of a collective money purchase scheme, which is to be made to the Pensions Regulator, and the information which must be included in the application. Under subsection (1), the trustees of the scheme may apply to the Pensions Regulator; the application will need to be made in the manner and form specified by the Regulator (subsection (2)).

78 Subsection (3) provides that an application must include the scheme's viability report and viability certificate (see section 13), and continuity strategy (see section 17).

79 Subsection (4) provides a power for the Secretary of State to make regulations setting out other information to be provided in an application and prescribing an application fee payable to the Regulator.

80 Subsection (5) provides that in considering an application, the Regulator may take into account any matters it considers appropriate including additional information provided by the applicant and subsequent changes to the application or information provided by the applicant.

Section 9: Decision on application

81 This section sets out that where an application is made for authorisation, the Pensions Regulator must make a decision regarding authorisation within six months of the date of receiving the application. The Regulator will need to decide if it is satisfied that a collective money purchase scheme has met the six authorisation criteria set out in subsection (3), which are detailed in later sections of the Act. The criteria relate to: the individuals who are involved in the scheme; the soundness of the scheme's design, the sustainability of the scheme's financial position; the scheme's systems and processes for communicating with members and others; the scheme's systems and processes used in running the scheme; and the scheme's continuity strategy if a triggering event occurs. All of the authorisation criteria must be met for a collective money purchase scheme to be authorised, and they must continue to be met for it to remain authorised. Sections 11 to 17 set out further detail about each of the criteria and the matters that the Regulator must take into account when satisfying itself as to whether the scheme meets the authorisation criteria.

82 Where the Pensions Regulator is satisfied that the authorisation criteria have been met, it is required to authorise the scheme and notify the trustees of its decision. The scheme will also need to be included on the Regulator's published list of authorised collective money purchase schemes (see section 26).

83 If the Regulator is not satisfied that the criteria have been met, it must refuse to grant the authorisation and must notify the trustees of its decision, the reasons for it and details of the right of referral to the First-tier Tribunal or Upper Tribunal (see section 10).

Section 10: Reference to Tribunal of refusal to grant authorisation

84 This section provides that a decision to refuse to grant authorisation to a collective money purchase scheme by the Pensions Regulator can be referred to the First Tier or Upper Tier Tribunal in accordance with Tribunal Procedure Rules.

- 85 A referral to the Tribunal can be made by the trustees of the scheme, or any other person who appears to the Tribunal to be directly affected by the Regulator's decision to refuse authorisation.

Authorisation criteria

Section 11: Fit and proper persons requirement

- 86 This section applies for the purposes of enabling the Pensions Regulator to decide if key individuals involved with the scheme are fit and proper to act in their roles in relation to the scheme. Subsection (2) sets out that the people who must be assessed for these purposes to act in relation to the scheme in the capacity mentioned are: the person who establishes the scheme, a trustee of the scheme, persons who have the power to appoint or remove trustees, persons who have the power to vary the scheme's provisions (i.e. trust deed or scheme rules) and persons acting in a capacity specified in regulations by the Secretary of State.
- 87 Under subsection (3)(a), in assessing whether a person is fit and proper to act in that person's role, the Regulator must take into account any matters specified in regulations. Under subsection (3)(b) the Regulator may also take into account other matters as it considers appropriate, including matters relating to a person who is connected with the person being assessed. The circumstances in which persons are connected for these purposes are set out in subsection (5), in line with definitions set out in sections 251 and 435 of the Insolvency Act 1986. They include individuals who are directors, or shadow directors, of the same company or where a trustee is able to exercise a power under the trust to benefit a specific individual.

Section 12: Scheme design requirement

- 88 This section applies for the purposes of enabling the Pensions Regulator to decide whether it is satisfied that the design of a collective money purchase scheme is sound.
- 89 Subsection (2) provides that in deciding whether the design of the scheme is sound, the Regulator must take into account the scheme's viability report and viability certificate (see section 13) and any matters specified in regulations made by the Secretary of State (these regulations may include provision requiring specified information to be provided to the Regulator (subsection (3))).

Section 13: Viability report

- 90 This section requires the trustees of a collective money purchase scheme to produce a document (a viability report) explaining the design of the scheme and why they consider that design to be sound. They must also obtain a certificate from the scheme actuary (a viability certificate) certifying that, in the actuary's opinion, the scheme design is sound.
- 91 Under subsection (2) a viability certificate cannot be provided by the scheme actuary unless the scheme actuary is satisfied that the scheme has rules that are compliant with the requirements imposed by section 18 (Calculation of benefits) and any regulations under that section.
- 92 Subsection (3) provides a power for the Secretary of State to make regulations, amongst other things, regarding the information to be included in a viability report, how the report and the certificate must be prepared and making provision about additional information or documents to be prepared or obtained in connection with a report.
- 93 The trustees are also required at least annually to review the most recent viability report; if appropriate, revise it; and obtain a new viability certificate (subsection (4)). The trustees must also revise the report and obtain a new viability certificate in respect of the revised report, if the most recent viability report becomes inaccurate or incomplete to any significant extent (subsection (5)).

- 94 The most recent viability report, viability certificate and any additional information or documents specified by regulations under subsection (3), must be submitted to the Regulator when applying for authorisation; within three months of revising the viability report and at any other time on request by the Regulator (subsection (6) and (7)).

Section 14: Financial sustainability requirement

- 95 Section 14 applies for the purposes of enabling the Pensions Regulator to decide whether a collective money purchase scheme is financially sustainable. In order to be satisfied of this, the Regulator must be satisfied that the scheme has sufficient financial resources to meet the costs (a) of setting up and running the scheme, and, (b) in the event of a triggering event occurring, of complying with requirements under sections 31 to 45 and of continuing to run the scheme for a period as the Regulator thinks appropriate for the scheme (which must be at least 6 months and no more than two years) (subsection (2)).
- 96 Subsection (3) provides a power for the Secretary of State to make regulations setting out matters that the Regulator must take into account in deciding if it is satisfied that a scheme has sufficient financial resources to meet these costs, which may include provision requiring specified information to be provided to the Regulator or specifying financial requirements to be met by the scheme (subsection (4)).

Section 15: Communication requirement

- 97 This section applies for the purposes of enabling the Pensions Regulator to decide whether a collective money purchase scheme has adequate systems and processes for communicating with members and others. The Regulator must be satisfied that the scheme has adequate systems and processes for providing information in relation to the scheme to the persons set out in subsection (3) and for securing that information provided to those persons is correct and not misleading.
- 98 Subsection (4) provides a power for the Secretary of State to make regulations setting out the matters that the Regulator must take into account in deciding whether this criterion is met. A non-exhaustive list of the matters which the Secretary of State may address in those regulations is set out in subsection (5). In making its decision, subsection (4) states that the Pensions Regulator may also take into account any communications made using the systems and processes referred to in subsection (2).

Section 16: Systems and processes requirements

- 99 This section applies for the purposes of enabling the Pensions Regulator to decide whether a collective money purchase scheme has sufficient systems and processes to ensure it is run effectively. It provides a power for the Secretary of State to make regulations specifying matters that the Pensions Regulator must take into account (subsection (2)) in deciding if this criterion is met.
- 100 Subsection (3) provides a non-exhaustive list of the matters concerning systems and processes about which the Secretary of State may make regulations. These include, but are not limited to, the standards, functions and maintenance of IT systems, and processes relating to the appointment and removal of trustees.

Section 17: Continuity strategy requirement

- 101 This section applies for the purposes of enabling the Pensions Regulator to decide whether a collective money purchase scheme has an adequate continuity strategy. It requires the trustees of a collective money purchase scheme to prepare a document – (a continuity strategy) - which sets out how the interests of members are to be protected if the scheme experiences a triggering event. Triggering events are set out in section 31.

- 102 A continuity strategy must include a section setting out the levels of administration charges that apply in relation to members of the scheme. Regulations are to specify the manner in which the administration charge levels must be set out in the strategy (subsections (3) and (4)).
- 103 Subsection (5) provides a power for the Secretary of State to make regulations requiring other information to be included in a strategy and how the strategy must be prepared.
- 104 The trustees of a collective money purchase scheme are required to keep the continuity strategy under review and to revise it as appropriate (subsection (6)).
- 105 The continuity strategy must be submitted to the Regulator by the trustees when applying for authorisation, within three months of revising the strategy, and at any other time on request by the Regulator (subsection (7)).
- 106 The Regulator, when determining whether a continuity strategy is adequate, must take into account any matters which the Secretary of State may specify in regulations. Those regulations may require specified information to be provided to the Regulator (subsections (8) and (9)).

Valuation and benefit adjustment

Section 18: Calculation of benefits

- 107 This section sets legal requirements on how benefits under a collective money purchase scheme must be calculated and adjusted.
- 108 Subsections (1) and (2) require that the method for calculating the rate or amount of benefits must be set out in the scheme's rules. This must include rules on how the assets of the scheme are identified and valued, how the amount expected to be required for providing benefits under the scheme is to be determined, and rules about how the rate or amount of benefits is to be adjusted. Regulations made under subsections (4), (5) and (6) can make provision about the matters which must be included in the rules, including how adjustments are to be treated, and assumptions and methods underpinning the benefit calculation.
- 109 Subsection (7)(a) makes it clear that the regulations made under subsection (4) of this section can apply to both future benefits and to benefits which have already accrued in the scheme, ensuring that future adjustments of benefits accrued before the regulations came into force will be in accordance with the regulations.
- 110 Subsection (7)(b) allows regulations made under this section to override scheme rules where there is a conflict.

Section 19: Advice of scheme actuary

- 111 This section requires collective money purchase scheme trustees to take the advice of the scheme actuary before deciding which methods or assumptions are to be used for the calculation of benefits. Subsection (2) allows regulations to prescribe requirements which the scheme actuary must comply with when advising trustees about this. Subsection (3) provides that the regulations may require the scheme actuary to take account of guidance issued by prescribed persons.
- 112 Subsection (4) makes provision for financial penalties under section 10 of the Pensions Act 1995 (civil penalties) to apply in cases where trustees have failed to take all reasonable steps to obtain the advice of the scheme actuary as required under subsection (1).

Section 20: Actuarial valuations

- 113 This section requires the trustees of a collective money purchase scheme to instruct the scheme actuary to prepare actuarial valuations of the scheme. An actuarial valuation of a collective money purchase scheme will form the basis of the calculation of the rate or amount of benefits to be provided under the scheme.

- 114 Subsection (2) sets out what should be included in such a valuation – the actuary must report on:
- a. the scheme assets and their value;
 - b. the amount expected to be required to provide benefits under the scheme; and
 - c. whether the rate or value of the benefits need to be adjusted under the rules of the scheme.
- 115 Subsection (4) provides that the scheme actuary must prepare the actuarial valuation in accordance with the scheme rules.
- 116 Subsection (5) gives power to the Secretary of State to make regulations about the actuarial valuations, including the information and statements they must contain, when the report must be prepared, and when it must be submitted to the Pensions Regulator.
- 117 Subsection (6) set out that where regulations have not been made to specify the frequency of the actuarial valuation, trustees are required to obtain an actuarial valuation within the period of one year beginning with the date the qualifying scheme is established and on an annual basis thereafter.
- 118 Subsection (7) provides that where regulations have not been made to specify the date by reference to which the actuarial valuation is to be prepared, the date is to be the effective date.
- 119 Subsection (8) makes provision for financial penalties under section 10 of the Pensions Act 1995 (civil penalties) to apply in cases where trustees have failed to take all reasonable steps to obtain an actuarial valuation.

Section 21: Certificate that actuarial valuation prepared in accordance with scheme rules

- 120 This section requires the scheme actuary, when preparing an actuarial valuation in respect of a qualifying scheme, to certify that the actuarial valuation has been prepared in accordance with the scheme rules.

Section 22: Benefits adjustments

- 121 This section applies where an adjustment to the rate or amount of benefits is required in accordance with the scheme rules. Subsection (2) provides that the trustees of a collective money purchase scheme must report to the Pensions Regulator as soon as reasonably practicable if an adjustment to benefit values is required in accordance with the scheme rules, and the adjustment has either not been made in accordance with the most recent actuarial valuation or has been made in a way that is different to that set out in the scheme rules. Subsection (3) requires that the Regulator must be given a clear statement of why the adjustment has been made in a different way as well as any other information prescribed by the Secretary of State.
- 122 Subsection (4) applies section 10 of the Pensions Act 1995 (civil penalties) to a trustee if they do not take all reasonable steps comply with the requirements under this section.

Section 23: Powers of the Pensions Regulator

- 123 This section gives the Pensions Regulator powers to direct trustees to take actions, where the trustees have without good reason failed to (i) obtain an actuarial valuation as required by the legislation or (ii) adjust the benefits in accordance with the most recent valuation and / or the scheme rules. Subsections (2) and (3) permit the Regulator to direct the trustees to obtain an actuarial valuation, specifying the reference date and period within which the actuarial valuation must be obtained (and any other information as prescribed by the Secretary of State), or to take any steps the Regulator considers appropriate to mitigate the failure.

124 Subsection (4) requires the Regulator to have regard to specified requirements in regulations when exercising their power to issue directions under this section.

125 Subsection (5) imposes the financial civil penalty under section 10 of the Pensions Act 1995 on any trustees who fail to take all reasonable steps to comply with a direction issued by the Regulator.

Members' Rights

Section 24: Rules about modifying schemes

126 The subsisting rights provisions ensure that members of occupational pension schemes have a legal right to their benefit entitlement. In a collective money purchase scheme, members will not have a right to a certain value of CMPB, but will have a right to a variable amount or rate of benefit calculated according to scheme rules and paid as a pension income for life. This section amends the existing legislation around subsisting rights in sections 67 and 67A of the Pensions Act 1995 (1995 Act) to ensure that rights under collective money purchase schemes are included.

127 Subsection (2)(a) inserts new subsection (1A) into section 67 of the 1995 Act which makes any exercise of a power to make a prohibited modification void. Subsection (2)(b) amends subsection (2)(a)(i) of section 67 of the 1995 Act to make all regulated modifications (i.e. protected modifications and detrimental modifications) to a collective money purchase scheme voidable unless the consent requirements are satisfied. Subsection (2)(e) inserts a new subsection (3A) to section 67 of the 1995 Act which provides for regulations to disapply the subsisting rights provisions in prescribed cases. This would, for example, enable the Secretary of State to make regulations if needed, to remove any ambiguity around the application of the subsisting rights provisions to a CMPB.

128 Subsections (3) and (4) amend Section 67A of the 1995 Act so as to define "prohibited modification" as a modification of a pension scheme which would or might result in a member or survivor who is entitled to non-money purchase benefits under a scheme having those benefits converted to or replaced by collective money purchase benefits.

129 Subsection (5) amends section 67A of the 1995 Act to introduce the concept of "relevant transformation of a subsisting right". A relevant transformation of a subsisting right is a protected modification which means that it is voidable unless the consent requirements are satisfied. Subsection (6) inserts subsection (3A) and defines "relevant transformation of a subsisting right" as (a) conversion of non-money purchase benefits into any form of money purchase benefits other than a CMPB; (b) conversion of other money purchase benefits into CMPB; and (c) conversion of CMPB into other money purchase benefits.

130 Subsection (7) amends section 67A(4) of the 1995 Act to exclude "prohibited modifications" from the definition of "detrimental modification" for the purposes of the subsisting rights provisions.

131 Subsection (8) amends subsection (9) of section 67A of the 1995 Act, which provides that references in the subsisting rights provisions to scheme rules include legislative provisions which override the scheme rules, so as to include such provisions which are in this Act.

Section 25: Transfer rights

132 This section provides members with CMPBs the right to transfer their accrued pension rights to another pension scheme. This right is principally set out in Chapter 1 of Part 4ZA of the Pension Schemes Act 1993 (sections 93-101).

- 133 Subsection (2)(a) amends Section 93(7)(b) of that Act so that it does not apply to CMPBs. Subsection (2)(b) inserts new subsection (10A) into that Act. This states that where a pension scheme is divided into sections, each section of the scheme that relates to CMPBs is to be treated as a separate scheme for the purposes of the transfer provisions in Chapter 1 of Part 4ZA of the Pension Schemes Act 1993.
- 134 Subsection (3) inserts new subsection 3ZA into section 97 of the Pension Schemes Act 1993. This provides that if the six-month deadline for facilitating a CMPB transfer (at section 99(2)(b) of the Pension Schemes Act 1993) is extended to a period which is longer than six months, the reference to six-months in section 97(3)(b) should be read as if it were the period to which the deadline has been extended.
- 135 Subsection 4 amends section 99(2) of the Pension Schemes Act 1993 to make clear that the deadline for facilitating CMPB transfers is six months from the date of application or such longer period as may be prescribed in regulations. For example, operational issues may emerge once these new schemes are bedded in that may necessitate a longer period to facilitate these transfers.
- 136 Subsection (5) inserts new section 99A into the Pension Schemes Act 1993, which places further duties on trustees when they are dealing with an application to transfer a member's CMPBs. It requires the trustees to notify the member in writing of their cash equivalent. It also stipulates that the trustees cannot facilitate the transfer of the cash equivalent without the written consent of the member for a period of three weeks commencing from the day after the date the trustees notified the member of their cash equivalent. If the trustees fail to comply with this requirement, any agreement reached with a third party regarding the transfer of the member's cash equivalent is deemed to be void.
- 137 Subsection (6) provides for minor and consequential amendments to be made to section 100B(2) of the Pension Schemes Act 1993.

Ongoing supervision

Section 26: List of authorised schemes

- 138 This section places a requirement on the Pensions Regulator to publish and maintain a list of collective money purchase schemes that have been authorised. The list must include the name of the scheme and may include other information the Regulator considers appropriate.

Section 27: Requirement to submit supervisory return

- 139 This section enables the Pensions Regulator to issue a notice requiring trustees of a collective money purchase scheme to submit a supervisory return to the Pensions Regulator. Subsection (2) provides a power for the Secretary of State to make regulations setting out the information that may be required in a supervisory return.
- 140 Subsection (3) makes provision for what must be included in the notice. Subsection (4) specifies that a supervisory return may not be required more frequently than once in any 12-month period. Subsection (5) provides that a civil penalty under section 10 of the Pensions Act 1995 applies to a trustee who fails to submit a return when required to do so.

Section 28: Duty to notify the Pensions Regulator of significant events

- 141 This section creates a requirement for specified persons to notify the Pensions Regulator of significant events, in writing, as soon as reasonably practicable after the person becomes aware such an event has occurred in relation to an authorised collective money purchase scheme.

- 142 Subsection (2) sets out the people who are required to notify the Regulator of significant events. They are: trustees of the scheme, employers in relation to the scheme, persons who have power to appoint or remove a trustee or vary a provision of the scheme, persons who provide legal, financial or actuarial advice to the scheme, the manager of the scheme administration services and persons acting in a capacity specified in regulations.
- 143 Subsection (3) sets out that the Secretary of State must make regulations setting out the significant events that are required to be reported.
- 144 Subsection (4) provides that the Secretary of State may make regulations specifying further information that is to be provided by a person required to give notice of a significant event.
- 145 Subsection (5) sets out that the disclosure of information under this section does not breach any obligation of confidence owed by the person making the disclosure or any other restriction on the disclosure of information (however imposed). Subsection (6) makes it clear that this section does not require a disclosure of information if the disclosure would contravene data protection legislation (as defined in section 49(1)). Under subsection (7), a person is not required by this section to disclose anything in respect of which a claim to legal professional privilege (or, in Scotland, to confidentiality of communications) could be maintained in legal proceedings.
- 146 Subsection (8) provides that a civil penalty under section 10 of the Pensions Act 1995 applies where there is a failure to comply with a requirement imposed by or under this section.

Section 29: Risk notices

- 147 If the Pensions Regulator considers that there is an issue of concern in relation to a collective money purchase scheme which will, or is likely to lead to, a breach of the authorisation criteria if the issue is not resolved, this section provides that it may issue a risk notice requiring the trustees to submit a resolution plan to the Regulator setting out proposals for resolving the issue of concern (see subsections (1) and (2)).
- 148 Under subsection (3), a risk notice must specify the issue of concern and the date by which the resolution plan is to be submitted. It must also contain any other information required by regulations made by the Secretary of State under subsection (10).
- 149 The Regulator may give a further notice requiring the submission of a revised resolution plan if it is not satisfied with the original submitted resolution plan (subsection (4)).
- 150 Subsections (5) and (7) provide that where a resolution plan (including any revised plan) is approved by the Regulator, the trustees must implement the plan as agreed, and submit reports to the Regulator on their progress (progress reports) in resolving the issue of concern. The time period within which the first report must be submitted is to be specified in regulations, whilst the timing for submission of subsequent reports is to be specified by the Regulator.
- 151 The resolution plan and progress reports submitted by the trustees must be provided in the manner and form specified by the Regulator (subsection (8)).
- 152 Where trustees fail to implement the proposals contained in a resolution plan that has been agreed by the Regulator, it may direct them to do so (subsection (6)).
- 153 Subsection (11) makes provision for the imposition of a civil penalty under section 10 of the Pensions Act 1995 (civil penalties) in cases where a trustee fails to comply with a risk notice issued under subsection (1) or a further notice issued under subsection (4) or a requirement in respect of a progress report under subsection (7), or fails to comply with a direction to implement a resolution plan under subsection (6).

Section 30: Withdrawal of authorisation

- 154 This section provides that where the Pensions Regulator is no longer satisfied that an authorised collective money purchase scheme meets the authorisation criteria it may decide to withdraw the scheme's authorisation.
- 155 Subsection (2) provides that when the Regulator either issues a warning notice under its standard procedure or a determination notice under its special procedure in relation to a decision to withdraw authorisation, the notice must explain that the issue of the notice is a triggering event together with an explanation of the trustees' duties under sections 31 to 45.
- 156 Subsection (3) sets out that where a collective money purchase scheme's authorisation is withdrawn the Regulator must notify the trustees of this and remove the scheme from its list of authorised collective money purchase schemes.

Triggering events and continuity options

Section 31: Triggering events

- 157 Subsection (1) and the table in subsection (4) set out the triggering events and when they occur.
- 158 Subsection (2) provides that where an event falling within items 4 to 9 in the table occurs within an existing triggering event period for the scheme (see section 32), it is not a triggering event.
- 159 An event within items 1, 2 or 3 of the table at subsection (4), is a triggering event even if it occurs within an existing triggering event period. Item 1 is the issue of a warning notice by the Regulator under its standard procedure in respect of a decision to withdraw the scheme's authorisation. Item 2 is a determination notice issued by the Pensions Regulator under its special procedure in respect of a decision to withdraw authorisation. Item 3 is where the Regulator gives a notification under section 7(3) (scheme not authorised).

Section 32: Triggering event periods

- 160 Subsection (1) defines a 'triggering event period' as the period starting with the date on which the triggering event occurs and ending on the earliest of the dates set out under subsection (2). These are the dates on which:

- the trustees receive notification from the Pensions Regulator under section 37(4) (that the Regulator is satisfied that the triggering event is resolved), or
- the trustees receive the notification under section 38(4) (that the Regulator is satisfied that preparations for conversion to a closed scheme are complete and that the conversion will resolve the relevant events), or
- the date on which the scheme is wound up, or
- in the case of an item 1 or 2 triggering event, the date upon which it becomes clear that authorisation is not to be withdrawn.

- 161 Subsection (3) and the table at subsection (4) set out when it becomes clear authorisation is not to be withdrawn, for the purposes of subsection (2)(c).

Section 33: Notification of triggering events

- 162 Subsections (1) to (9) set out who has responsibility for notifying the Pensions Regulator of the occurrence of triggering events (set out in the table under section 31 (4)) and who has responsibility for notifying other persons of this and of such other matters as may be specified in regulations.

163 Regulations under subsection (10) are to set out the time periods within which notifications under this section must be made.

164 Subsection (11) sets out that the disclosure of information under this section does not breach any obligation of confidence owed by the person making the disclosure or any other restriction on the disclosure of information (however imposed). Subsection (12) makes it clear that this section does not require a disclosure of information if the disclosure would contravene data protection legislation (defined in section 49(1)). Under subsection (12) a person is not required by this section to disclose anything in respect of which a claim to legal professional privilege (or, in Scotland, to confidentiality of communications) could be maintained in legal proceedings.

165 Subsection (13) provides that a civil penalty under section 10 of the Pensions Act 1995 applies where there is a failure to notify as required under this section.

Section 34: Continuity options

166 Subsections (1) and (2) provide that where a qualifying scheme has a triggering event, the trustees must pursue a continuity option following that event. Continuity options are a series of actions to be followed by the trustees depending on the event in question.

167 There are 3 continuity options available:

- continuity option 1 (discharge of liabilities and winding up) which allows the qualifying scheme's collective money purchase liabilities to be discharged (that is moved from the scheme to another pensions arrangement or securing them by some other means as specified in regulations) and the qualifying scheme to be wound up (see section 36);
- continuity option 2 (resolving triggering event) – which allows for the triggering event to be resolved and the qualifying scheme to continue to operate (see section 37); and
- continuity option 3 (conversion to closed qualifying scheme) – which allows for conversion to a closed scheme (see section 38). A closed scheme either does not admit new members or does not allow members to build up further benefits or both.

168 The continuity options are required elements of the implementation strategy outlined in section 39 and section 40. Trustees must specify a continuity option when setting out their implementation strategy.

169 Subsections (3) and (4) set out when trustees must pursue continuity option 1 – i.e. where an item 1, 2 or 3 triggering event has occurred trustees are compelled to follow continuity option 1.

170 Subsection (5) sets out that trustees may only pursue continuity option 3 where conversion to a closed qualifying scheme is permitted within the scheme rules, and subject to that, provides that this section overrides any provision of the qualifying scheme to the extent there is a conflict.

171 Subsection (6) applies the civil penalty under section 10 of the Pensions Act 1995 to anyone who fails to act as required by this section.

Section 35: When a decision to withdraw authorisation becomes final

172 This section determines the date on which a decision to withdraw authorisation becomes final for the purposes of a triggering event within item 1 or 2 of the table in section 31. The date on which it becomes final is set out in the table under subsection (2) in the third column, for the circumstances set out in the second column.

Section 36: Continuity option 1: discharge of liabilities and winding up

173 This section makes provision for continuity option 1 under which trustees must discharge the liabilities of the qualifying scheme and then wind up the remaining structure of the scheme. Winding up will mean that the scheme will cease to exist.

174 Subsection (1) requires trustees to establish the individual values of beneficiaries' accrued rights to benefits under the scheme, to identify proposed arrangements for discharging these liabilities and to notify employers and beneficiaries of these proposed options, and such other matters as may be prescribed in regulations.

175 Subsection (2) sets out how trustees may discharge the liabilities of the scheme. These are, transferring the value of beneficiaries' accrued rights to benefits to another collective money purchase scheme, a Master Trust scheme, or an alternative scheme with the characteristics specified in regulations; or some other way of securing the benefits ('an alternative payment mechanism') as specified in regulations.

176 Subsection (3) provides that a transfer proposal may deal with the entitlements of different descriptions of beneficiaries in different ways.

177 Subsection (4) makes it clear that beneficiaries (scheme members and survivors) retain their right to take a cash equivalent transfer instead of the trustee's proposed discharge mechanism.

178 Subsection (5) allows for regulations which will set out the way in which the notification in subsection (1)(c) must be made, and the timing of the notification.

179 Subsection (6) allows for regulations to set out how continuity option 1 is to be given effect and provides a non-exhaustive list of other matters which may be covered by regulations under this subsection.

180 Subsection (7) provides a list of the matters about which the Secretary of State must make regulations under subsection (6). These include how the rights of beneficiaries are to be quantified, how pensioner beneficiaries who are receiving a periodic income are to be dealt with during the wind up period, the conditions that should be met by a pension scheme or alternative payment arrangement and provision about winding-up.

181 Subsection (8) defines "beneficiary" and "pensioner beneficiary" for the purposes of this part.

182 A financial penalty under section 10 of the Pensions Act 1995 applies to anyone who fails to comply with any requirement imposed by this section (subsection (9)) and regulations may also make provision for the application of Section 10 of the Pensions Act 1995 to a person failing to comply with requirements in the regulations (subsection (10)).

Section 37: Continuity option 2: resolving triggering event

183 This section sets out continuity option 2. Where the trustees decide to pursue this option they must attempt to resolve the triggering event.

184 The trustees are required to notify the Pensions Regulator (subsection (2)) when they consider the triggering event has been resolved. They must also set out how they consider that it has been resolved (subsection (3)). The Regulator is then required (subsection (4)) to notify the trustees of whether it is satisfied that the triggering event has been resolved.

185 Under subsection (5), the Regulator must also be satisfied that any other event within the table at section 31 that has occurred in relation to the qualifying scheme since the occurrence of the triggering event has also been resolved.

186 Subsection (6) provides that where a trustee fails to comply with a requirement imposed by this section, a financial penalty under Section 10 of the Pensions Act 1995 applies.

Section 38: Continuity option 3: conversion to closed scheme

187 This section makes provision for continuity option 3 under which trustees decide to convert the scheme so that it continues to operate but on a closed basis. A closed scheme is one where either no new contributions are made but the scheme continues to operate in relation to benefits built up prior to closure; or where no new members are admitted to the scheme but existing members can continue to build up new benefits; or a scheme which is closed to both new members and new contributions.

188 Trustees must notify the Pensions Regulator when they consider that preparations for conversion to a closed scheme are complete (subsection (2)).

189 Subsection (3) allows regulations to set out the timings for notification under subsection (2).

190 Subsection (4) provides that where the Regulator is satisfied that the preparations for conversion to a closed scheme are complete and the conversion will resolve the triggering event (and any other triggering event that may have subsequently occurred), the Regulator must notify the trustees of this.

191 Subsections (5) and (6) provide that a closed scheme option may only be pursued in accordance with the provisions of the scheme, and that a scheme may only convert to a closed scheme – i.e. begin to operate as one – once the trustees have been notified by the Regulator under subsection (4).

192 Once a conversion to a closed scheme has taken effect, trustees may not later reverse the action (subsection (7)).

193 Subsection (8) applies financial penalties under section 10 of the Pensions Act 1995 to a trustee who does not comply with the requirements and restrictions of this section.

194 Subsection (10) provides a definition of ‘closed scheme’.

Section 39: Implementation strategy

195 This section requires the trustees of a qualifying scheme to submit an implementation strategy to the Pensions Regulator for approval. This is a document setting out how the interests of members of the qualifying scheme are to be protected following the occurrence of a triggering event, and how that event will be resolved.

196 Under subsection (2), if a triggering event within item 1, 2 or 3 of the table in section 31(4) occurs within an existing triggering event period, the trustees need only submit an implementation strategy in relation to the most recent triggering event. Any implementation strategy which has already been approved for an earlier triggering event ceases to have effect when the later triggering event occurs.

197 Under subsection (3)(a), in relation to items 1 and 2 triggering events, the implementation strategy is only required to be submitted if the decision to withdraw authorisation has become final. Under subsection (3)(b), where it becomes clear that authorisation is not to be withdrawn, the override in respect of the original triggering event and implementation plan provided under subsection (2) no longer applies.

198 The Regulator may direct the trustees to comply with the requirements of this section (subsection (4)).

199 Where a person fails to comply with a direction under subsection (4), a financial penalty under section 10 of the Pensions Act 1995 may apply (subsection (5)).

200 Subsection (6) provides that this section overrides any provision of the scheme to the extent there is a conflict.

Section 40: Approval of implementation strategy

201 Under subsection (1) of this section the Pensions Regulator may approve the implementation strategy only if it is satisfied that it is adequate.

202 The implementation strategy must include a section setting out the levels of administration charges that apply in relation to members of the qualifying scheme (subsections (3 and 4)). This relates to the prohibition on increasing levels of charges during a triggering event period at section 45.

203 Subsection (5) provides that the implementation strategy must set out the continuity option that is being pursued as well as other information specified relating to the continuity option being pursued.

204 The implementation strategy must, further, include other information specified in regulations and be prepared in accordance with regulations (subsection (6)).

Section 41: Trustees' duties once implementation strategy approved

205 This section requires that when the Pensions Regulator has approved the implementation strategy, the trustees must pursue the continuity option identified in the strategy and take the steps set out in the implementation strategy to carry out the continuity option (subsection (1)). If they fail to do so, the Regulator has the power to direct the trustees to pursue the continuity option identified in the strategy and take the steps identified in the strategy to carry it out (subsection (4)). A financial penalty for failure to comply under section 10 of the Pensions Act 1995 applies to anyone who fails to comply with a direction made by the Pensions Regulator (subsection 5).

206 Regulations under subsection (2) may require the trustees to make the implementation strategy available to employers and relevant former employers by a specified time.

207 Subsection (3) provides that where an item 1, 2 or 3 triggering event occurs within the triggering event period for an earlier triggering event, trustees cease to be obliged to comply with the requirements of subsection (1) and any regulations under subsection (2) in respect of the original triggering event. If it becomes clear that authorisation is not to be withdrawn in relation to an item 1 or 2 triggering event, the trustees are subject to those requirements again from the date on which that becomes clear.

208 Subsection (6) provides that this section overrides any provisions of the qualifying scheme or any contracts that the scheme has entered into, to the extent that there is a conflict.

Section 42: Prohibition on winding up except in accordance with continuity option 1

209 This section provides that a collective money purchase scheme can only be wound up in accordance with continuity option 1.

210 Subsection (2) provides that this section overrides any provisions of the scheme to the extent there is a conflict.

211 Subsection (3) provides that where a person fails to comply with this section, a financial penalty under section 10 of the Pensions Act 1995 applies.

Section 43: Periodic reporting requirements

- 212 This section requires that during a triggering event period the trustees of a collective money purchase scheme must submit periodic reports to the Pensions Regulator.
- 213 The time period within which the first report must be submitted is to be specified in regulations. The timing for submission of subsequent reports is to be specified by the Regulator (subsections (2) and (3)), as is the form and manner in which they should be made (subsection (4)(d)).
- 214 Under subsection (4), the reports must report on progress in carrying out the implementation strategy, and regulations may set out further detail of other content required in the report.
- 215 A civil penalty under section 10 of the Pensions Act 1995 applies to any person who fails to comply with the requirements imposed by this section (subsection (5)).

Section 44: Pause orders

- 216 This section enables the Pensions Regulator to pause certain activities once a collective money purchase scheme has experienced a triggering event. Subsections (2) to (4) state that a pause order may be made if the Regulator is satisfied it will help the trustees carry out their implementation strategy (see section 39), or if the Regulator believes that doing so is necessary to protect the interests of the generality of the scheme members and that there is, or there is likely to be, an immediate risk to the interests of members of the scheme or the assets of the scheme if an order is not made.
- 217 A pause order is an order containing one or more directions that prevent a scheme from carrying out any or all of a number of actions which are specified in subsection (5) whilst the order has effect. These include:
- accepting new members;
 - making payments towards the scheme;
 - making transfers out of the scheme; and
 - paying benefits (or specified benefits).
- 218 The pause order may relate to all such actions, or those related to specified members, employers, payments or groups of such actions.
- 219 Subsection (6) provides that where a direction in subsection (5)(b) is made (preventing payments from being made towards the scheme), it does not include payments due to be made before the order takes effect. It does include payments in respect of pension credits where the person entitled to the credit is a member of the scheme.
- 220 Subsection (7) relates to a direction under subsection (5)(e) that no transfers or transfer payments are to be made out of the scheme of, or in respect of, a member's rights. It states that the direction may provide that these transfers or transfer payments cannot take place unless specified conditions are met and the amounts paid out in respect of these transfers are determined in a specified manner.
- 221 A pause order may require the trustees to obtain an actuarial valuation within a specified period (subsection (8)). An order containing such a requirement must (subsection (9)) specify the date by reference to which the matters to be set out in the valuation must be determined, the information and statements it must contain and any other requirements the valuation must satisfy.
- 222 There is further provision about pause orders in Schedule 2.

Schedule 2: Pause orders

- 223 Paragraph 1 of Schedule 2 sets out the consequences of a pause order. Sub-paragraph (1) states that any action taken in breach of a pause order is void, that is, it has no legal effect (except to the extent that the action is validated under paragraph 3 of Schedule 2).
- 224 Sub-paragraph (2) includes a provision that if a pause order prevents a scheme from accepting any payments then affected payments are treated as if they do not fall due and as if any obligation to make them does not arise. The pause order may include provisions under subsection (5)(c) of section 44 that where such payments have already been deducted from pay, they are to be repaid to affected scheme members.
- 225 Sub-paragraph (3) states that where a pause order contains a direction that no benefits or specified benefits are to be paid and an amount of benefit under the scheme rules was not paid as a result of the direction, the direction does not affect any entitlement to those benefits, and that any benefits that have been paused to which the member, or a person in respect of a member, remains entitled at the end of the period for which the pause order has effect are due once the pause order ceases to have effect.
- 226 Sub-paragraphs (4) and (5) create exceptions to a pause order to allow schemes to follow the requirements of pension sharing and pension earmarking orders. These orders are placed on member assets following divorce, dissolution and nullity proceedings in accordance with the relevant pieces of legislation in England and Wales, Scotland and Northern Ireland.
- 227 Sub-paragraphs (6) and (7) allow the Secretary of State to make regulations modifying specified areas of existing legislation where there is a pause order preventing transfers of members rights to ensure that the existing legislation works as intended.
- 228 Sub-paragraphs (8) to (10) apply the civil penalties under section 10 of the Pensions Act 1995 in relation to non-compliance with these provisions.
- 229 Paragraph 2 states that any pause order can take effect for a maximum of three months (sub-paragraph (1)), and can be extended for further periods of up to three months (sub-paragraph (2)). A pause order will automatically end if a triggering event period ends while it is in force (sub-paragraph (3)).
- 230 Paragraph 3 allows the Pensions Regulator to make an order validating any action that is taken in contravention of a pause order on application from the trustees, or a person directly affected by the pause order.
- 231 Paragraph 4 provides for notifications between various parties in respect of a pause order, or an order made validating action in contravention of a pause order under paragraph 3. The Regulator is required to inform the trustees that the relevant order has been made as soon as is practicable (sub-paragraph (2)). The Regulator may also direct the trustees, by order, to inform employers and members that the relevant order has been made and of its intended effect within a specified time period (sub-paragraph (3)). This may relate to all employers (or certain relevant former employers) and members, or only those specified in the Regulator's order (sub-paragraph (3)).
- 232 Civil penalties under section 10 of the Pensions Act 1995 apply to any trustee who has not taken all reasonable steps to ensure compliance with sub-paragraph (3).
- 233 Paragraph 5 allows pause orders to override any existing law or scheme rule to the extent that it is not unlawful under section 6(1) of the Human Rights Act 1998.

Section 45: Prohibition on increasing charges etc during triggering event period

- 234 This section places restrictions on trustees increasing or imposing administration charges when

- a scheme is in a triggering event period (section 32). The trustees of a collective money purchase scheme must not impose administration charges on or in respect of members above the level set out in the implementation strategy (subsection (1)(a)) and must not impose new administration charges on or in respect of members (subsection (1)(b)). Further, trustees must not impose administration charges on or in respect of members in consequence of a member leaving or deciding to leave the scheme during the triggering event period (subsection (1)(c)).
- 235 Subsection (2) provides for corresponding prohibitions on the trustees of a collective money purchase scheme or a Master Trust pension scheme which receives a transfer of the value of accrued rights to benefits from a collective money purchase scheme which is pursuing continuity option 1, having been proposed by the trustees or employer of that transferring scheme as a scheme to which those rights should be transferred. The trustees of such a receiving scheme must not increase administration charges above the level set out in the document the scheme is to provide to the Regulator by regulations under section 36(7)(e) and they must not impose any new charges on members, to meet costs set out under subsection (4). The costs set out under subsection (4) are the costs for which the receiving scheme is liable which were incurred by the transferring scheme or which relate directly to the transfer of the value of accrued rights to benefits under the transferring scheme.
- 236 Subsection (3)(a) allows regulations to omit administration charges specified in regulations from the prohibition imposed by subsection (1) or (2), whilst subsection (3)(b) allows regulations to set how the levels of administration charges are to be calculated for the purposes of this section.
- 237 Subsection (5) provides that this section overrides a provision of a collective money purchase scheme, a Master Trust scheme and any contracts that such a scheme may have entered into with persons providing services in relation to the scheme, where there is a conflict with the requirements of this section.
- 238 By regulations under subsection (6) the Secretary of State may apply requirements of this section to other schemes which are able to act as a 'receiving scheme' by regulations under section 36 (2)(b). A civil penalty under section 10 of the Pensions Act 1995 applies to a trustee who fails to comply with this section (subsection (7)).
- 239 Subsection (8) defines "receiving scheme" to mean a pension scheme that receives a transfer of the value of accrued rights from a transferring scheme to benefits under the receiving scheme during a triggering event period and which was a scheme that the trustees or employer of the transferring scheme proposed should receive the transfer. It also defines "transferring scheme" to mean a collective money purchase scheme in respect of which the trustees are pursuing continuity option 1 (see section 36) as a result of a triggering event.

Publication of information

Section 46: Publication of information

- 240 This section allows regulations to set out in detail what information trustees of collective money purchase schemes will be required to publish. This is intended to engender trust and enable transparency to ensure a clear understanding of the soundness of the scheme design, how the scheme is working and how members' interests are to be protected. Publication will allow for wider scrutiny, challenge and comparisons across similar schemes.
- 241 Subsection (2) makes provision for other matters which can be included in the regulations. These include that information be made available free of charge and that information be provided in the form specified. The regulations may require or permit specified information to be excluded from the published information.
- 242 Subsection (3) requires that trustees publishing information required by regulations made under subsection (1) must also have regard to any guidance prepared by the Secretary of State. The guidance will set out the manner the information should be published, any restrictions and how accessibility issues should be considered,
- 243 A financial penalty under section 10 of the Pensions Act 1995 applies to a trustee who fails to take all reasonable steps to comply with this section (subsection (4)).

Powers to make further provision

Section 47: Powers to extend definition of qualifying schemes

- 244 The Act currently restricts the definition of "qualifying schemes" to schemes established by one or more employers and intended to be used by a single employer or group of connected employers. This section permits regulations to disapply these requirements so that a scheme established by non-employers, or used by multiple employers, not all of whom are connected with one another, could be a qualifying scheme.
- 245 Subsections (2) to (4) allow regulations to make further provision to facilitate non-employer established schemes where some or all of the employers are not connected. Subsection (2) sets out some of the purposes for which the regulation-making power can be used, including provisions relating to the authorisation regime of relevant schemes, triggering events and continuity options and administration charges.
- 246 Subsection (3) allows regulations to apply the provisions set out in Part 1 of the Pensions Schemes Act 2017 to facilitate the provision of CMPB by schemes where some or all of the employers are not connected.
- 247 Subsection (4) further specifies that regulations made under subsection (1) and (2) may also make provision which modifies or amends provisions in Part 1 of the Act, and consequential modifications or amendments to other enactments.

Supplementary

Section 48: Minor and consequential amendments

- 248 This section introduces Schedule 3 which makes consequential amendments.

Schedule 3: Collective money purchase benefits: minor and consequential amendments

- 249 This Schedule makes minor and consequential amendments to other relevant legislation in respect of collective money purchase benefits.

Section 49: Interpretation of Part 1

250 The definition of various terms used in Part 1 of the Act are given in this section.

Section 50: Index of defined expressions

251 This section lists provisions which define terms used in Part 1 of the Act.

Section 51: Regulations

252 This section makes general provision regarding regulations made under Part 1 of the Act.

Part 2: Collective Money Purchase Benefits: Northern Ireland

Definitions

Section 52: Collective money purchase benefits and schemes

253 This section makes provision for Northern Ireland similar to that made by section 1.

Section 53: Qualifying benefits

254 This section makes provision for Northern Ireland similar to that made by section 2. In this case the power to make regulations is conferred on the Department for Communities in Northern Ireland.

Section 54: Qualifying schemes

255 This section makes provision for Northern Ireland similar to that made by section 3. In this case the power to make regulations is conferred on the Department for Communities in Northern Ireland.

Section 55: Qualifying schemes: supplementary

256 This section makes provision for Northern Ireland similar to that made by section 4.

Section 56: Schemes divided into sections

257 This section makes provision for Northern Ireland similar to that made by section 5. In this case the power to make regulations is conferred on the Department for Communities in Northern Ireland.

Section 57: Amendment of definitions of “money purchase benefits” etc

258 This section makes provision for Northern Ireland similar to that made by section 6. This section introduces Schedule 4, which makes amendments to Northern Ireland legislation similar to the amendments made by Schedule 1. Schedule 4 makes amendments to existing definitions of ‘money purchase benefits’ set out in legislation to insert CMPBs as a type of money purchase benefit. It also amends section 30 of the Pensions Act (Northern Ireland) 2012, which contains a power to amend by regulations the definitions of money purchase benefits in legislation, so that regulations made under section 30 may also amend the definition of CMPBs in this Act and other legislation. In this case the power to make regulations vests in the Department for Communities in Northern Ireland.

Schedule 4: Money purchase benefits: Northern Ireland

259 This Schedule makes provision for Northern Ireland similar to that made by Schedule 1.

Authorisation

Section 58: Authorisation of collective money purchase schemes

260 This section makes provision for Northern Ireland similar to that made by section 7.

Section 59: Application for authorisation

261 This section makes provision for Northern Ireland similar to that made by section 8. In this case the power to make regulations is conferred on the Department for Communities in Northern Ireland.

Section 60: Decision on application

262 This section makes provision for Northern Ireland similar to that made by section 9.

Section 61: Reference to Tribunal of refusal to grant authorisation

263 This section makes provision for Northern Ireland similar to that made by section 10.

Authorisation criteria

Section 62: Fit and proper persons requirement

264 This section makes provision for Northern Ireland similar to that made by section 11. In this case the power to make regulations is conferred on the Department for Communities in Northern Ireland.

Section 63: Scheme design requirement

265 This section makes provision for Northern Ireland similar to that made by section 12. In this case the power to make regulations is conferred on the Department for Communities in Northern Ireland.

Section 64: Viability report

266 This section makes provision for Northern Ireland similar to that made by section 13. In this case the power to make regulations is conferred on the Department for Communities in Northern Ireland.

Section 65: Financial sustainability requirement

267 This section makes provision for Northern Ireland similar to that made by section 14. In this case the power to make regulations is conferred on the Department for Communities in Northern Ireland.

Section 66: Communication requirement

268 This section makes provision for Northern Ireland similar to that made by section 15. In this case the power to make regulations is conferred on the Department for Communities in Northern Ireland.

Section 67: Systems and processes requirements

269 This section makes provision for Northern Ireland similar to that made by section 16. In this case the power to make regulations is conferred on the Department for Communities in Northern Ireland.

Section 68: Continuity strategy requirement

270 This section makes provision for Northern Ireland similar to that made by section 17. In this case the power to make regulations is conferred on the Department for Communities in Northern Ireland.

Valuation and benefit adjustment

Section 69: Calculation of benefits

271 This section makes provision for Northern Ireland similar to that made by section 18. In this case the power to make regulations is conferred on the Department for Communities in Northern Ireland.

Section 70: Advice of scheme actuary

272 This section makes provision for Northern Ireland similar to that made by section 19. In this case the power to make regulations is conferred on the Department for Communities in Northern Ireland.

Section 71: Actuarial valuations

273 This section makes provision for Northern Ireland similar to that made by section 20. In this case the power to make regulations is conferred on the Department for Communities in Northern Ireland.

Section 72: Certificate that actuarial valuation prepared in accordance with scheme rules

274 This section makes provision for Northern Ireland similar to that made by section 21.

Section 73: Benefits adjustments

275 This section makes provision for Northern Ireland similar to that made by section 22. In this case the power to make regulations is conferred on the Department for Communities in Northern Ireland.

Section 74: Powers of the Pensions Regulator

276 This section makes provision for Northern Ireland similar to that made by section 23. In this case the power to make regulations is conferred on the Department for Communities in Northern Ireland.

Members' Rights

Section 75: Rules about modifying schemes

277 This section makes provision for Northern Ireland similar to that made by section 24.

278 Subsection (2) applies the consent requirements in the subsisting rights provisions to the exercise of powers to modify collective money purchase schemes and inserts into Article 67 of the Pensions (Northern Ireland) Order 1995 a delegated power to disapply the subsisting rights provisions in prescribed cases. This would, for example, enable the Department for Communities in Northern Ireland to make regulations if needed, to remove any ambiguity around the application of the subsisting rights provisions to a CMPB.

279 Subsection (8) amends paragraph (9) of Article 67A of that Order, which provides that references in the subsisting rights provisions to scheme rules include legislative provisions which override the scheme rules, so as to include such provisions which are in this Act.

Section 76: Transfer rights

280 This section makes provision for Northern Ireland similar to that made by section 25. The power to make regulations contained in amendments made by this section vests in the Department for Communities in Northern Ireland.

Ongoing supervision

Section 77: List of authorised schemes

281 This section makes provision for Northern Ireland similar to that made by section 26.

Section 78: Requirement to submit supervisory return

282 This section makes provision for Northern Ireland similar to that made by section 27. In this case the power to make regulations is conferred on the Department for Communities in Northern Ireland.

Section 79: Duty to notify the Pensions Regulator of significant events

283 This section makes provision for Northern Ireland similar to that made by section 28. In this case the power to make regulations is conferred on the Department for Communities in Northern Ireland.

Section 80: Risk notices

284 This section makes provision for Northern Ireland similar to that made by section 29. In this case the power to make regulations is conferred on the Department for Communities in Northern Ireland.

Section 81: Withdrawal of authorisation

285 This section makes provision for Northern Ireland similar to that made by section 30.

Triggering events and continuity options

Section 82: Triggering events

286 This section makes provision for Northern Ireland similar to that made by section 31.

Section 83: Triggering event periods

287 This section makes provision for Northern Ireland similar to that made by section 32.

Section 84: Notification of triggering events

288 This section makes provision for Northern Ireland similar to that made by section 33. In this case the power to make regulations is conferred on the Department for Communities in Northern Ireland.

Section 85: Continuity options

289 This section makes provision for Northern Ireland similar to that made by section 34.

Section 86: When a decision to withdraw authorisation becomes final

290 This section makes provision for Northern Ireland similar to that made by section 35.

Section 87: Continuity option 1: discharge of liabilities and winding up

291 This section makes provision for Northern Ireland similar to that made by section 36. In this case the power to make regulations is conferred on the Department for Communities in Northern Ireland.

Section 88: Continuity option 2: resolving triggering event

292 This section makes provision for Northern Ireland similar to that made by section 37. In this case the power to make regulations is conferred on the Department for Communities in Northern Ireland.

Section 89: Continuity option 3: conversion to closed scheme

293 This section makes provision for Northern Ireland similar to that made by section 38. In this case the power to make regulations is conferred on the Department for Communities in Northern Ireland.

Section 90: Implementation strategy

294 This section makes provision for Northern Ireland similar to that made by section 39. In this case the power to make regulations is conferred on the Department for Communities in Northern Ireland.

Section 91: Approval of implementation strategy

295 This section makes provision for Northern Ireland similar to that made by section 40. In this case the power to make regulations is conferred on the Department for Communities in Northern Ireland.

Section 92: Trustees' duties once implementation strategy approved

296 This section makes provision for Northern Ireland similar to that made by section 41. In this case the power to make regulations is conferred on the Department for Communities in Northern Ireland.

Section 93: Prohibition on winding up except in accordance with continuity option 1

297 This section makes provision for Northern Ireland similar to that made by section 42.

Section 94: Periodic reporting requirements

298 This section makes provision for Northern Ireland similar to that made by section 43. In this case the power to make regulations is conferred on the Department for Communities in Northern Ireland.

Section 95: Pause orders

299 This section makes provision for Northern Ireland similar to that made by section 44.

300 There is further provision about pause orders in Schedule 5 which makes provision for Northern Ireland similar to that made by Schedule 2.

Schedule 5: Pause orders: Northern Ireland

301 Schedule 5 makes provision for Northern Ireland similar to that made by Schedule 2. In this case the power to make regulations is conferred on the Department for Communities in Northern Ireland.

Section 96: Prohibition on increasing charges etc during triggering event period

302 This section makes provision for Northern Ireland similar to that made by section 45. In this case the power to make regulations is conferred on the Department for Communities in Northern Ireland.

Publication of information

Section 97: Publication of information

303 This section makes provision for Northern Ireland similar to that made by section 46. In this case the power to make regulations is conferred on the Department for Communities in Northern Ireland.

Powers to make further provision

Section 98: Powers to extend definition of qualifying schemes

304 This section makes provision for Northern Ireland similar to that made by section 47. In this case the power to make regulations is conferred on the Department for Communities in Northern Ireland.

Supplementary

Section 99: Minor and consequential amendments

305 This section makes provision for Northern Ireland similar to that made by section 48. This section introduces Schedule 6 which makes consequential amendments to Northern Ireland legislation similar to provision made by Schedule 3.

Schedule 6: Collective money purchase benefits: minor and consequential amendments for Northern Ireland

306 This Schedule makes minor and consequential amendments to other relevant Northern Ireland legislation, similar to provision made by Schedule 3.

Section 100: Interpretation of Part 2

307 The definition of various terms used in Part 2 of the Act are given in this section, which makes provision for Northern Ireland similar to that made by section 49.

Section 101: Index of defined expressions

308 This section lists provisions which define terms used in Part 2 of the Act. This section makes provision for Northern Ireland similar to that made by section 50.

Section 102: Regulations

309 This section makes general provision regarding regulations made by the Department for Communities in Northern Ireland under Part 2 of the Act, similar to that made by section 51.

Part 3: The Pensions Regulator

Contribution notices where avoidance of employer debt etc

Section 103: Grounds for issuing a section 38 contribution notice

310 This section amends section 38 of the Pensions Act 2004 to include two new tests to enable the Pensions Regulator to issue section 38 contribution notices – the “employer insolvency test” and the “employer resources test” and their respective statutory defences.

311 Subsection (3) of the section inserts new sections 38C and 38D into the Pensions Act 2004 to provide the meaning of the “employer insolvency test” and the corresponding defence.

312 Subsection (4) of the section inserts new sections 38E and 38F into the Pensions Act 2004 to provide the meaning of the “employer resources test” and the corresponding defence.

S38C: Section 38 contribution notice: meaning of “employer insolvency test”

313 Subsection (1) of new section 38C, the “employer insolvency test”, enables the Regulator to issue a contribution notice where it is of the opinion that:

- immediately after an act, or failure to act, the value of the assets of the scheme was less than the liabilities of the scheme, and

- if a debt under section 75(4) of the Pensions Act 1995 had fallen due immediately after the relevant time, the act or failure to act would have materially reduced the amount that could be recovered by the trustees or managers from the employer in the case of a hypothetical insolvency of the employer.

314 Subsection (2) sets out that the value or amount of (i) the assets of the scheme, (ii) the liabilities of the scheme, and (iii) the debt that would have fallen due under section 75(4) of the Pensions Act 1995, will be the Regulator's estimate as at immediately after the relevant time.

315 Subsection (3) states that when estimating the value and the amounts referred to in subsection (2), the Regulator must take into account how the liabilities and assets and their value or amount of the employer are determined and calculated for the purposes of section 75(4) of the Pensions Act 1995.

316 Subsection (4) provides that any debts due under section 75 of the Pensions Act 1995 immediately after the relevant time are to be disregarded for the purpose of the test.

317 Subsection (5) defines "the relevant time".

S38D: Section 38 contribution notice issued by reference to employer insolvency test: defence

318 New section 38D provides a defence in respect of new section 38C.

319 Subsection (1) of the new section 38D applies where the Regulator believes that the conditions of new section 38C have been met, and a warning notice in respect of a contribution notice under section 38 of the Pensions Act 2004 has been issued, wholly or partly because in its opinion the employer insolvency test has been met.

320 Subsections (2) and (3) provide that where a defence has been raised, a contribution notice must not be issued if the Regulator is satisfied that certain conditions under this section are met.

321 Subsections (4) to (6) set out the conditions A to C for the defence: this provides that the person who wishes to raise the defence must satisfy the Regulator that he or she has met conditions A and C, and where relevant condition B. Those conditions provide for a three-step process.

322 Condition A is that, before becoming a party to the act or failure, the person gave due consideration to the extent to which, if a debt under section 75(4) of the Pensions Act 1995 were to fall due from the employer to the scheme either (i) immediately after the act or failure, or (ii) where the failure might continue for a period of time, at any time within that period, the act or failure to act might materially reduce the amount of the debt that could be recovered from the employer when it so fell due.

323 Condition B is that where, as a result of the consideration as outlined under condition A, the person took all reasonable steps to eliminate or minimise the potential for the act or failure to act to have such an effect.

324 Condition C is that, having regard to all circumstances prevailing at the time of the act or at the time when the failure to act first occurred, it was reasonable for the person to conclude that, if a debt under section 75(4) of the Pensions Act 1995 were to fall due from the employer to the scheme either (i) immediately after the act or failure, or (ii) where the failure might continue for a period of time, at any time within that period, the act or failure to act would not materially reduce the amount of that debt that could be recovered from the employer when the debt fell due.

- 325 Subsection (7) sets out condition D of the defence which provides that the person who wishes to raise the defence must satisfy the Regulator that immediately after the relevant time, the value of the assets of the scheme equalled or was more than the amount of the liabilities of the scheme immediately after the relevant time.
- 326 Subsection (8) gives further detail about what will be required in order for a person to be regarded as having given the consideration referred to in condition A. This is that the person must have made enquiries and done the other acts that a reasonably diligent person would have made or done in the circumstances.
- 327 Subsection (9) sets out that the person's assessment of whether or not an act or failure to act might materially reduce the amount of debt that could be recovered from the employer in a hypothetical insolvency situation, is to be judged by reference to the circumstances prevailing at that time and of which that person was aware or ought reasonably to have been aware at the time of the act or the time when the failure to act first occurred. This includes acts or failures to act which have occurred before that time and expectations at that time of other acts or failures to act occurring.
- 328 Subsection (10) provides that, for the purposes of conditions A, C and D, any debt due from the employer under section 75 of the Pensions Act 1995 (whether before or after the relevant time) is to be disregarded.
- 329 Subsections (11) to (14) set out how the defence applies in relation to a series of acts or failures to act.
- 330 Subsection (11) provides that the person must show either that the three conditions are met in relation to each of the acts or failures in the series, or that in relation to each of those acts or failures, it formed part of a group of acts or failures (as selected by the person raising the defence) in relation to which the matters set out in subsection (12) are shown.
- 331 Subsection (12) sets out the matters to be shown in order to meet conditions A, B and C in relation to a group of acts. They are that before becoming party to the first act or failure in the group, the person must show that condition A is met in relation to the overall effect of the group; condition B must be met in relation to that overall effect, and condition C must be met in relation to each of the acts or failures in the group.
- 332 Subsection (13) provides that if at any time the person considers that condition C will not be met in relation to any particular act or failure to act in the group, the previous acts or failures in the group are to be regarded as a separate group for the purposes of subsection (11) of this section, and the person may then select another group consisting of the particular act or failure concerned, and any subsequent act or failure, in relation to which the person shows the matters mentioned in subsection (12) of new inserted section 38D.
- 333 Subsection (14) states that if the person is unable to show in the case of each of the acts or failures to act in the series that the matters set out in subsection (11)(a) or (11)(b) are met, but does show in the case of some of them that those matters are met, the acts or failures to act within paragraph (b) are not to count for the purposes of new section 38C as acts or failures to act in the series.
- 334 Subsection (15) provides the definition of terms used in this section, including "the relevant time" and "a warning notice". It also sets out that a reference to a party to an act or failure to act includes a reference to a person who knowingly assists in the act or failure.

S38E: Section 38 contribution notice: meaning of “employer resources test”

335 Subsection (1) of new section 38E, the “employer resources test”, enables the Regulator to issue a contribution notice where it is of the opinion that:

- the act or failure to act reduced the value of the resources of the employer, and
- that reduction was a material reduction relative to the estimated section 75 debt in relation to the scheme.

336 Subsection (2) provides regulation making powers to enable the Secretary of State to specify what constitutes the resources of the employer, and how the value of the employer’s resources is to be determined, calculated and verified.

337 Subsection (3) sets out the meaning of “estimated section 75 debt”.

338 Subsection (4) provides that any actual debts due from the employer under section 75 of the Pensions Act 1995 at the relevant time are to be disregarded for the purpose of the test.

339 Subsection (5) defines “the relevant time”.

S38F: Section 38 contribution notice issued by reference to employer resources test: defence

340 New section 38F provides a defence in respect of new section 38E.

341 Subsection (1) of new section 38F applies where the Regulator believes that the conditions of new inserted section 38E have been met, and a warning notice in respect of a contribution notice under section 38 of the Pensions Act 2004 has been issued wholly or partly because in its opinion, the employer resources test has been met.

342 Subsection (2) provides that where a defence has been raised, a contribution notice must not be issued if the Regulator is satisfied that certain conditions under this section are met.

343 Subsections (3) to (5) set out the conditions for the defence: this provides that the person who wishes to raise the defence must satisfy the Regulator that he or she has met conditions A and C, and where relevant condition B. Those conditions provide for a three step process.

344 Condition A is that before becoming a party to the act or failure, the person gave due consideration to the extent to which the act or failure to act might reduce the value of the resources of the employer relative to the estimated section 75 debt.

345 Condition B is that where, as a result of the consideration outlined in condition A, the person took all reasonable steps to eliminate or minimise the potential for the act or failure to have such an effect.

346 Condition C is that, having regard to all circumstances prevailing at the time of the act or at the time when the failure to act first occurred, it was reasonable for the person to conclude that the act or failure to act would not reduce the value of the resources of the employer and would also not materially reduce the value of the resources of the employer relative to the estimated section 75 debt.

347 Subsection (6) gives further detail about what will be required in order for a person to be regarded as having given the consideration referred to in condition A. This is that the person must have made enquiries and done the other acts that a reasonably diligent person would have made or done in the circumstances.

- 348 Subsection (7) sets out that the person's assessment of whether or not an act or failure might materially reduce the value of the resources of the employer, is to be judged by reference to the circumstances prevailing at that time and of which that person was aware or ought reasonably to have been aware at the time of the act or the time when the failure to act first occurred. This includes acts or failures to act which have occurred before that time and expectations at that time of other acts or failures to act occurring.
- 349 Subsection (8) provides that, for the purposes of conditions A and C, the "estimated section 75 debt" means:
- (a) the amount which a reasonable estimate of the amount of the debt which would become due from the employer to the trustees or managers of the scheme under section 75 if section 75(2) applied, and the time designated by the trustees or managers of the scheme for the purposes of section 75(2) were the time immediately before the act occurred or the failure to act first occurred; and
 - (b) the amount of any debt due at the time in question from the employer under section 75 of the Pensions Act 1995 is to be disregarded.
- 350 Subsections (9) to (12) set out how the defence applies in relation to a series of acts or failures to act.
- 351 Subsection (9) provides that the person must show either that the three conditions are met in relation to each of the acts or failures in the series, or that in relation to each of those acts or failures, it formed part of a group of acts or failures (as selected by the person raising the defence) in relation to which the matters set out in subsection (10) are shown.
- 352 Subsection (10) sets out the matters to be shown to meet conditions A, B and C in relation to a group of acts. They are that before becoming party to the first act or failure in the group, the person must show that condition A is met in relation to the overall effect of the group, condition B must be met in relation to that overall effect, and condition C must be met in relation to each of the acts or failures in the group.
- 353 Subsection (11) provides that if at any time the person considers that condition C will not be met in relation to any particular act or failure to act in the group, the previous acts or failures in the group are to be regarded as a separate group for the purposes of subsection (9), and the person may then select another group consisting of the particular act or failure concerned and any subsequent act or failure, in relation to which the person shows the matters mentioned in subsection (10).
- 354 Subsection (12) states that if the person is unable to show in the case of each of the acts or failures to act in the series that the matters set out in subsection (9)(a) or (b) are met, but does show in the case of some of them that those matters are met, the acts or failures to act within paragraph (b) are not to count for the purposes of new section 38E as acts or failures to act in the series.
- 355 Subsection (13) provides the definition of terms used in this section, including "a warning notice" and "party to an act or failure to act". It also sets out that section 38E(2) (the resources of the employer and their value) has effect for the purpose of this section as it has effect for the purposes of section 38E.

Section 104: Reasonableness of issuing a contribution notice

- 356 This section amends section 38 of the Pensions Act 2004 by inserting two new factors for the Regulator to consider when ascertaining if it is reasonable to issue a contribution notice.
- 357 Subsection (2) amends section 38(7) of the Pensions Act 2004 to add the failure of a person to comply in respect of notices and accompanying statements under section 69A of the Pension Act 2004 as one of the matters the Regulator can take into account when considering if it is reasonable to impose liability on someone to pay a contribution notice sum.

358 Subsection (3) of the section introduces a new factor which provides that the Regulator may consider the effect of the act or failure to act on the value of the assets or liabilities of the scheme.

359 Subsection 4 of section 104 provides the meaning of “relevant transferee scheme”.

Section 105: Determination of sum specified in a contribution notice

360 This section amends section 39 of the Pensions Act 2004 by changing the date at which the shortfall sum, in respect of a contribution notice, will be calculated.

361 Subsection (2) amends section 39(4) of the Pensions Act 2004 to set the “relevant time” of the shortfall sum in relation to a scheme to be the end of the most recent scheme year prior to the issuing of a determination notice.

362 Subsection (3) omits subsection (4A) of section 39 of the Pensions Act 2004.

Section 106: Sanctions for failure to comply with a contribution notice

363 This section amends the Pensions Act 2004. Subsection (2) amends section 40 (content and effect of a section 38 contribution notice). Subsection (3) amends section 41 of the Pensions Act 2004 (section 38 contribution notice: relationship with employer debt). Subsection (4) of this section inserts new section 42A (Offence for failing to comply with section 38 contribution notice). Subsection (5) of this section inserts new section 42B (Financial penalty for failure to comply with a section 38 contribution notice).

Section 40 (content and effect of a section 38 contribution notice)

364 Subsection (2) of this section amends section 40 of the Pensions Act 2004 to insert new subsection (2A) and amend existing subsection (9) to require that a contribution notice issued under section 38 of the Pensions Act 2004 must specify a date for compliance.

Section 41 (section 38 contribution notice: relationship with employer debt)

365 Subsection (3) of this section amends section 41 of the Pensions Act 2004 to insert new subsections (8A), (10A), (11A) and (11B).

366 Subsection (3)(a) inserts the new subsection (8A) which states that an application for review under section 41(7) may not be made after the date specified in the contribution notice pursuant to new sections 40(2A) for the purposes of sections 42A(2) (the date specified for compliance with a section 38 contribution notice) and 42B(2) (the date specified for compliance with a revised section 38 contribution notice), or such a date as has effect instead of that date (see subsections (10A) and (11B)).

367 Subsection (3)(b) inserts the new subsection (10A) which specifies that if an application for review is made under section 41(7), the Regulator may change the date for compliance in either a contribution notice issued under section 38 of the Pensions Act 2004 or an earlier revised contribution notice, and specify the revised date in the revised contribution notice. Alternatively, if the Regulator does not issue a revised contribution notice under section 41(9)(b), the Regulator may issue a revised contribution notice specifying the revised date for compliance.

368 Subsection (3)(c) of this section inserts new subsections (11A) and (11B). Newly inserted subsection (11A) provides that subsection (11B) applies where a contribution notice has been issued to more than one person under section 38 of the Pensions Act 2004 imposing joint and several liability to pay the debt with other persons, and the Regulator issues a revised contribution notice specifying a revised date for compliance.

369 Newly inserted subsection (11B) states that where this subsection applies, the Regulator must change the date for compliance in the contribution notices or revised contribution notices to all those jointly and severally liable for the debt specified in the contribution notice, and must also specify the revised date for compliance. Alternatively, if the Regulator does not issue a revised contribution notice under subsection (11), the Regulator must issue revised contribution notices to all parties jointly and severally liable specifying the revised date for payment.

42A Offence of failing to comply with a section 38 contribution notice

370 Subsection (4) of this section inserts new section 42A into the Pensions Act 2004.

371 Subsection (1) of new section 42A states that this section applies where a contribution notice is issued to a person under section 38 of the Pensions Act 2004.

372 Subsection (2) outlines the parameters of the offence, that if a person fails to comply with a contribution notice without a reasonable excuse, then they are guilty of an offence.

373 Subsection (3) outlines that a person guilty of the offence is liable to a fine on summary conviction.

374 Subsection (4) provides that proceedings for an offence may not be instituted if an application has been made under section 41(7) of the Pensions Act 2004, and the application has not been determined, withdrawn or abandoned. To note, section 41(7) allows for a person to apply to the Regulator for a reduction in the specified amount in a contribution notice issued under section 38 of the Pensions Act 2004, where a sum has been paid by the employer in respect of a debt under section 75 of the Pensions Act 1995, either to the trustees/managers of the scheme, or to the Board of the Pension Protection Fund.

375 Subsection (5) provides that the proceedings of an offence under subsection (2) can only be commenced by the Regulator, Secretary of State, or by or with the consent of the Director of Public Prosecutions in England and Wales.

42B Financial penalty for failure to comply with a section 38 contribution notice

376 Subsection (5) of this section inserts new section 42B into the Pensions Act 2004.

377 Subsection (1) of the new section 42B states that this section applies where a contribution notice is issued to a person under section 38 of the Pensions Act 2004.

378 Subsection (2) outlines the parameters of the offence, that if a person fails to comply with a contribution notice, and does not have a reasonable excuse, then the financial penalty in section 88A of the Pensions Act 2004 applies.

379 Subsection (3) provides that the Regulator cannot issue a warning notice in respect of the civil penalty as it applies by virtue of subsection (2), if an application has been made under section 41(7) of the Pensions Act 2004 and the application has not been determined, withdrawn or abandoned.

380 Subsection (4) provides the meaning of “warning notice.”

Sanctions for avoidance of employer debt etc

Section 107: Sanctions for avoidance of employer debt etc

381 This section inserts new provisions in the Pensions Act 2004 to introduce new criminal offences and financial penalties for the avoidance of employer debt.

382 Subsection (2) of this section creates two new offences including: section 58A: an offence for avoidance of employer debt and section 58B: an offence for conduct risking accrued scheme benefits.

383 Subsection (3) of this section also creates two new civil penalties including: section 58C: a financial penalty for avoidance of employer debt and section 58D: a financial penalty for conduct risking accrued scheme benefits.

S58A: Offence of avoidance of employer debt

384 Subsection (1) of new section 58A states that it applies to occupational pension schemes other than money purchase schemes and other schemes as prescribed.

385 Subsection (2) of new section 58A provides that a person commits an offence under this section only if:

- (a) the person does an act or engages in a course of conduct that:
 - (i) prevents the recovery of the whole or any part of a debt due from the employer under section 75 of the Pensions Act 1995,
 - (ii) prevents such a debt becoming due,
 - (iii) compromises or otherwise settles such a debt, or
 - (iv) reduces the amount of such a debt which would otherwise become due,
- (b) the person intended the act or course of conduct to have such an effect, and
- (c) the person did not have a reasonable excuse for doing the act or engaging in that course of conduct.

386 Subsection (3) outlines that a reference in this section to an act or course of conduct includes a failure to act.

387 Subsection (4) provides that the offence does not apply to a person who is acting in accordance with their function as an insolvency practitioner.

388 Subsection (5) sets out that, for the purposes of this section, a debt due under section 75 of the Pensions Act 1995 includes a contingent debt under that section.

389 Subsection (6) further sets out that in the case of such a contingent debt, the reference in subsection (2)(b) of this section, to preventing a debt becoming due is to be read as including a reference to preventing the occurrence of any of the events specified in section 75(4C)(a) or section 75(4C)(b) of the Pensions Act 1995 upon which the debt is contingent.

390 Subsection (7) provides details of the sanction that a person guilty of an offence under this section is liable for. Subsection (7)(a) provides that on summary conviction in England and Wales, a person is liable to a fine. Subsection (7)(b) provides that in Scotland, a person is liable to a fine not exceeding the statutory maximum. Subsection (7)(c) provides that on conviction on indictment, a person is liable to imprisonment for a term not exceeding seven years, a fine, or both.

391 Subsection (8) states that proceedings for an offence under this section may be instituted in England and Wales only by the Regulator or the Secretary of State, or by or with the consent of the Director of Public Prosecutions.

392 Subsection (9) defines “insolvency practitioner” for the purposes of sections 58A to 58D to the Pensions Act 2004.

S58B: Offence of conduct risking accrued scheme benefits

393 Subsection (1) of new section 58B states that this section applies to occupational pension schemes other than money purchase schemes and other schemes as prescribed.

- 394 Subsection (2) provides that a person commits an offence under this section only if:
- a) the person does an act or engages in a course of conduct that detrimentally affects in a material way the likelihood of accrued scheme benefits being received,
 - b) the person knew or ought to have known that the act or course of conduct would have that effect, and
 - c) the person did not have a reasonable excuse for doing the act or engaging in the course of conduct.
- 395 Subsection (3) sets out that a reference in this section to an act or a course of conduct includes a failure to act.
- 396 Subsection (4) states that any reference in this section to accrued scheme benefits being received means benefits the rights to which have accrued by the relevant time being received by, or in respect of, the persons who were scheme members before that time.
- 397 Subsection (5) defines “the relevant time” for the purposes of this section as the end of the period of time during which the conduct producing the detrimental effect continued or, in any other case, the time of the conduct.
- 398 Subsection (6) states that a reference in this section to rights which have accrued is to be read in accordance with sections 67A(6) and (7) of the Pensions Act 1995. Section 67 of the Pensions Act 1995 applies whenever a power to modify an occupational pension scheme is exercised to make a change which would, or might, adversely affect a member’s subsisting rights. Sections 67A(6) and (7) outline the meaning of subsisting rights. Subsisting rights means any entitlement to benefits, or right to future benefits, which a member has at that time under the scheme rules. Sections 67A(6) and (7) also outline the meaning of subsisting rights in respect of the survivor of a scheme member, and where the pensionable service of a member of an occupational pension scheme is continuing.
- 399 Subsection (7) provides that under this section, benefits that may be received under Chapter 3 of Part 2 and section 286 of the Pensions Act 2004 are to be disregarded. These are respectively benefits received under the Pension Protection Fund and the Financial Assistance Scheme.
- 400 Subsection (8) provides that the offence does not apply to a person who is acting in accordance with their function as an insolvency practitioner. “Insolvency practitioner” is defined in accordance with section 58A(9) of the Pensions Act 2004.
- 401 Subsection (9) provides details of the sanction that a person guilty of an offence under this section is liable for. Subsection (9)(a) provides that on summary conviction in England and Wales, a person is liable to a fine. Subsection (9)(b) provides that in Scotland, a person is liable to a fine not exceeding the statutory maximum. Subsection (9)(c) provides that on conviction on indictment, a person is liable to imprisonment for a term not exceeding seven years, a fine, or both.
- 402 Subsection (10) states that proceedings for an offence under this section may be instituted in England and Wales only by the Regulator or the Secretary of State, or by or with the consent of the Director of Public Prosecutions.

S58C: Financial penalty for avoidance of employer debt

- 403 Subsection (1) of new section 58C states that it applies to occupational pension schemes other than from money purchase schemes and other schemes as prescribed.

404 Subsection (2) enables the Regulator to issue a financial penalty under section 88A of the Pensions Act 2004 to a person for avoidance of employer debt. The subsection provides that the Regulator can issue the penalty if the person was party to an act or failure where the main purpose was to:

- a. prevent the recovery of the whole or any part of a debt due from the employer under section 75 of the Pensions Act 1995,
- b. prevent such a debt becoming due,
- c. compromise or otherwise settle such a debt, or
- d. reduce the amount of such a debt which would otherwise become due,

and it was not reasonable for the person to act or fail to act in the way that the person did.

405 Subsection (3) provides that the penalty does not apply to a person who is acting in accordance with their function as an insolvency practitioner. "Insolvency practitioner" is defined in accordance with section 58A(9) of the Pensions Act 2004.

406 Subsection (4) sets out that, for the purposes of this section, a debt due under section 75 of the Pensions Act 1995 includes a contingent debt under that section.

407 Subsection (5) further sets out that in the case of such a contingent debt, the reference in subsection 2(b), of this section, to preventing a debt becoming due is to be read as including a reference to preventing the occurrence of any of the events specified in section 75(4C)(a) or section 75(4C)(b) of the Pensions Act 1995 upon which the debt is contingent.

408 Subsection (6) of new section 58C outlines that for this section, parties to an act or deliberate failure to act include persons who knowingly assist in the act.

409 Subsection (7) of new section 58C provides that where the Regulator is of the opinion that a person was party to a series of acts or failures to act, and the requirements of subsection (2) are met in relation to the series, the series of acts or failures to act is to be regarded as an act or failure in relation to which the requirements of subsection (2) are met.

S58D: Financial penalty for conduct risking accrued scheme benefits

410 Subsection (1) of new section 58D states that it applies to occupational pension schemes other than money purchase schemes or other schemes as prescribed.

411 Subsection (2) enables the Regulator to issue a financial penalty under section 88A of the Pensions Act 2004 to a person for conduct risking accrued scheme benefits. The subsection provides that the Regulator can issue the penalty if the person was party to an act or deliberate failure to act which detrimentally affected in a material way the likelihood of accrued scheme benefits being received if:

- a) the person knew or ought to have known that the act or failure to act would have that effect, and,
- b) it was not reasonable for the person to act or fail to act in the way that the person did.

412 Subsection (3) provides that the offence does not apply to a person who is acting in accordance with their function as an insolvency practitioner. "Insolvency practitioner" is defined in accordance with section 58A(9) of the Pensions Act 2004.

413 Subsection (4) states that any reference in this section to accrued scheme benefits being received means benefits the rights to which have accrued by the relevant time being received by, or in respect of, the persons who were scheme members before that time.

- 414 Subsection (5) outlines that in this section, the relevant time means: the end of the period of time during which the conduct producing the detrimental effect continued or, in any other case, the time of the conduct.
- 415 Subsection (6) states that a reference in this section to rights which have accrued is to be read in accordance with sections 67A(6) and (7) of the Pensions Act 1995. Section 67 of the Pensions Act 1995 applies whenever a power to modify an occupational pension scheme is exercised to make a change which would, or might, adversely affect a member's subsisting rights. Sections 67A(6) and (7) specifically consider subsisting rights. Subsisting right means any entitlement to benefits, or right to future benefits, which a member has at that time under the scheme rules. Sections 67A(6) and (7) also outline the meaning of subsisting rights in respect of the survivor of a scheme member, and where the pensionable service of a member of an occupational pension scheme is continuing.
- 416 Subsection (7) provides that under this section benefits that may be received under Chapter 3 of Part 2 and section 286 of the Pensions Act 2004 are to be disregarded. These are respectively benefits received under the Pension Protection Fund and the Financial Assistance Scheme.
- 417 Subsection (8) outlines that for this section, parties to an act or deliberate failure to act include persons who knowingly assist in the act.
- 418 Subsection (9) provides that where the Regulator is of the opinion that a person was party to a series of acts or failures to act, and the requirements of subsection (2) are met in relation to the series, the series of acts or failures to act is to be regarded as an act or failure in relation to which the requirements of subsection (2) are met.

Collecting information

Section 108: Duty to notify the Regulator of certain events

- 419 This section amends section 69 of the Pensions Act 2004.
- 420 Subsection (2) replaces the existing civil penalty under section 10 of the Pensions Act 1995 (civil penalties) with a new financial penalty under section 88A of the Pensions Act 2004 for failure to comply with the obligations imposed by section 69 of the Pensions Act 2004.
- 421 Subsection (3) amends section 80 of the Pensions Act 2004 to provide that it is an offence for trustees or managers of an occupational pension scheme, the employer in relation to the scheme (or a prescribed person) to knowingly or recklessly give the Regulator false or misleading information about a notifiable event.

Section 109: Duty to give notices and statements to the Regulator in respect of certain events

- 422 This section inserts a new section 69A into the Pensions Act 2004 which imposes a duty on employers and other prescribed persons to notify the Regulator about certain events relating to the sponsoring employer of a Defined Benefit occupational pension scheme.
- 423 Subsection (1)(a) of the new section 69A requires an appropriate person unless the Regulator has directed otherwise, to provide a notice to the Regulator in circumstances to be prescribed by regulations.
- 424 Subsection (1)(b) of new section 69A requires persons responsible for making a notice to report any material change to the intended event, or the effect of it, to the Regulator.
- 425 Subsection (1)(c) requires that, unless the Regulator has directed otherwise, in cases where a notice has been provided, the appropriate person must notify the Regulator if the event is not going to take place or does not take place.

- 426 Subsection (2) provides for “notifiable event” to be defined in regulations that will describe the nature of the events that may be required to be reported.
- 427 Subsection (3) defines who is an appropriate person in relation to the requirement to notify the Regulator which includes the employer in relation to the scheme, a person connected with the employer and an associate of the employer, for example the parent of the employer. Subsection (3)(d) provides that this duty will also fall on other persons as prescribed in regulations.
- 428 Subsection (4) provides for the new term “material change” to be defined in regulations that will describe the nature of changes to certain events relating to the sponsoring employer of a Defined Benefit occupational pension scheme that may be required to be reported.
- 429 Subsections (5)(a) and (b) specify that the notice of the notifiable event and any notifiable change must be given as soon as reasonably practicable after the person making it has become aware of the event or a material change to it.
- 430 Subsection (5)(c) requires that a notice about an event that is not going to, or did not, take place must be made as soon as reasonably practicable after the person required to send the notice becomes aware.
- 431 Subsection (6) sets out that regulations may provide for an earlier notification of a notifiable event or a material change to a notifiable event.
- 432 Subsection (7) specifies any notice of a notifiable event or a material change to a notifiable event must be accompanied by a statement.
- 433 Subsection (8) provides a power to make regulations setting out what information is to be included in the accompanying statement.
- 434 Subsection (9) illustrates the type of information that may be required in the statement made under the power at subsection (8). This includes how any detriment to the pension scheme resulting from the event is to be mitigated, and a description of any communication with the trustees or managers of the scheme about the event in question.
- 435 Subsection (10) provides that where a person is required to send a notice and accompanying statement to the Regulator, the person must also give a copy of that notice and any accompanying statement to the trustees or managers of the eligible pension scheme.
- 436 Subsection (11) specify that notices must be in writing and any accompanying statement must be in writing.
- 437 Subsection (12) provides that anyone who makes a notification and statement under this section is protected in the event that making such a notice and statements would otherwise contravene any other duty imposed on that person. For example, a confidentiality section in an employment contract.
- 438 Subsection (13) applies the new financial penalty at section 88A of the Pensions Act 2004 for failures to comply with the obligations imposed by this section.
- 439 Subsection (14) defines connected persons for the purpose of those who may be required to provide a notice and accompanying statement to have the meaning given in section 249 of the Insolvency Act 1986. This subsection also defines associated persons for the purpose of those who may be required to provide a notice and accompanying statement to have the meaning given in section 435 of the Insolvency Act 1986 and section 229 of the Bankruptcy (Scotland) Act 2016.
- 440 Subsection (15) of the new section 69A provides that an “eligible scheme” under this section has the same meaning as under section 126 of the Pensions Act 2004. That is an occupational pension scheme which is eligible to be taken over by the Board of the Pension Protection Fund. This subsection also provides that “event” under this section includes a failure to act.

441 Subsection (3) of this section also amends section 80 of the Pensions Act 2004 to provide that it is an offence to knowingly or recklessly give the Regulator false or misleading information in a notice given under this section or the accompanying statement.

Gathering information

Section 110: Interviews

442 This section inserts a new section 72A into the Pensions Act 2004.

443 Subsections (1) and (2) of the section amend the Pensions Act 2004 by inserting a new section 72A after section 72.

72A Interviews

444 Subsection (1) of the new section 72A introduces a new power enabling the Regulator to issue notices to require any person who would be in the scope of a notice under section 72(2) of the Pensions Act 2004 to attend an interview.

445 Subsection (2) provides a regulation making power enabling the Secretary of State to specify the information to be contained in a notice issued under section 72A(1).

446 Subsection (3) of section 110 repeals existing sections 72(1A) and (1B) of the Pensions Act 2004 which relate to a power to require persons to attend an interview with the Regulator concerning information provided in response to a section 72 notice in connection with the Regulator's function relating to automatic enrolment and master trusts. This is because the new interview powers in new section 72A will apply to employer duties relating to these types of pension benefits.

447 Subsection (4) of section 110 provides that not complying with the interview power under the new section 72A will be a criminal offence under section 77 of the Pensions Act 2004 in line with non-compliance with the Regulator's existing section 72 powers.

Section 111: Inspection of premises

448 This section amends section 73 of the Pensions Act 2004. It amends the range of premises that the Regulator can enter for the purposes of an inspection.

449 For an inspection to take place the Regulator must be investigating compliance with listed legislative provisions. Subsection (2) of the section adds the Pension Schemes Act 2017 and part 1 of this Act to that list.

450 Subsection (3) of this section inserts a further provision into section 73 of the Pensions Act 2004 that permits the Regulator to carry out inspections of premises liable to inspection at any reasonable time if it is investigating whether it has grounds to issue a contribution notice, restoration order or financial support direction. Subsection (2)(f) provides that this inspection power also applies to the corresponding provision in Northern Ireland legislation.

451 Subsection (4) of this section inserts new subsections (5A) and (5B) into section 73 of the Pensions Act 2004 which creates a new power for inspectors to carry out inspections of premises liable to inspection for compliance with relevant legislative provisions. Subsection (5B) provides a regulation making power to enable the Secretary of State to specify the legislative provisions that the Regulator may enter premises to investigate compliance.

452 Subsection (5) of this section amends the range of premises that an inspector may enter for the purposes of an inspection by adding those where documents are held which relate to the business of the sponsoring employer or, in the case of a scheme other than a money purchase scheme, certain significant corporate transactions the employer undertakes (rather than just documents relating to the administration of the pension scheme) are held.

453 Subsection (6) inserts a new subsection (6A) into section 73 of the Pensions Act 2004 that the definition of ‘employer’ will be the definition which is relevant to the pension provision in question. It also inserts a new subsection (6B) to make it clear that the definition of ‘employer’ includes a previous employer in relation to the scheme.

454 Subsection (7) of this section inserts a definition of “the pensions legislation” for the purpose of the new section 73(5B) of the Pensions Act 2004.

Section 112: Fixed penalty notices and escalating penalty notices

455 This section inserts two new sections, 77A and 77B into the Pensions Act 2004 to allow the Regulator to issued fixed and escalating civil penalties for non-compliance with the interview and inspection powers inserted or extended by sections 110 and 111 and written notices for information issued under section 72 of the Pensions Act 2004.

77A: Fixed penalty notices

456 New section 77A(1) details when a fixed penalty notice may be issued. New subsection (2) explains what is a fixed penalty notice and the effect of the notice. Subsection (3) provides a regulation making power to enable the Secretary of State to set the level of the penalty at a rate not exceeding £50,000 and subsection (4) details information which must be included in the fixed penalty notice.

457 Section 77A(5) sets out the review and appeal rights where a recipient wishes to challenge the penalty by applying the existing provisions in sections 42, 43 and 44 of the Pensions Act 2008 relating to the recovery of the penalty and the recipient’s rights to ask for review of the penalty notice or appeal to a tribunal. Subsection (6) provides that this section does not apply in a case if a fixed penalty under section 40 of the Pensions Act 2008 (automatic enrolment) or section 17 of the Pension Schemes Act 2017 (master trusts) is applicable.

77B Escalating penalty notices

458 New section 77B(1) details when an escalating penalty notice may be issued. New subsection (2) provides that where a person has exercised their right of referring the Regulator’s decision to issue a fixed penalty notice to a tribunal and the referral has not yet been determined, the Regulator may not issue an escalating penalty notice. New subsection (3) explains what an escalating penalty notice is and the effect of the notice, subsection (4) explains that an escalating penalty is a penalty calculated by reference to a prescribed daily rate and subsection (5) provides a regulation making power to enable the Secretary of State to set the level of the penalty at a rate not exceeding £10,000 a day. New subsection (6) details information which must be included in the escalating penalty notice.

459 New section 77B(7) sets out the review and appeal rights where a recipient wishes to challenge the penalty by applying the existing provisions in sections 42, 43 and 44 of the Pensions Act 2008 relating to the recovery of the penalty and the recipient’s rights to ask for a review of the penalty notice or appeal to a tribunal. Subsection (8) makes it clear that this section does not apply in a case if an escalating penalty was issued under section 41 of the Pensions Act 2008 or section 18 of the Pension Schemes Act 2017.

Provision of false or misleading information

Section 113: Provision of false or misleading information to Regulator

460 This section amends the Pensions Act 2004 with the insertion of new section 80A, which enables the Regulator to issue a financial penalty to a person for providing false or misleading information to the Regulator.

80A Financial penalty for providing false or misleading information to the Regulator

- 461 Subsection (1) of newly inserted section 80A provides that a person may be issued with a financial penalty under section 88A of the Pensions Act 2004 if the Regulator is satisfied that a person has knowingly or recklessly provided the Regulator with information that is false or misleading in a material particular, and the information was provided in specified circumstances.
- 462 Subsection (2) sets out the circumstances in which the Regulator can exercise the power to issue the new financial penalty. Subsection (2)(a) details the provisions under which the information was provided in purported compliance. Subsection (2)(b) of section 80A states that an additional condition is that the information is provided in applying for registration of a pension scheme under section 2 of the Welfare Reform and Pensions Act 1999 (registration of stakeholder pension schemes).
- 463 Subsection (2)(c) details additional circumstances where information is provided otherwise than as mentioned in subsections 2(a) or 2(b), but in circumstances in which the person providing the information intends, or could reasonably be expected to know, that it would be used by the Regulator for the purpose of exercising its functions under the Pensions Act 1995, the Pensions Act 2004, the Pensions Act 2008, Schedule 18 to the Pensions Act 2014, the Pension Schemes Act 2017, or Part 1 of the Pension Schemes Act 2021.

Section 114: Provision of false or misleading information to trustees or managers

- 464 This section amends the Pensions Act 2004 with the insertion of new section 80B, which enables the Regulator to issue a financial penalty to a person for providing false or misleading information to trustees or managers.

80B Financial penalty for providing false or misleading information to trustees or managers

- 465 Subsection (1) of new section 80B states that this section applies to occupational pension schemes apart from those specified in subsections (1)(a) and (1)(b). Subsection (1)(a) states that the section does not apply to money purchase schemes. Subsection (1)(b) provides a regulation making power to enable the Secretary of State to specify other schemes that the section does not apply to.
- 466 Subsection (2) provides that a person may be issued with a financial penalty under section 88A of the Pensions Act 2004 if the Regulator is satisfied that a person has knowingly or recklessly provided a trustee or manager of a non-money purchase scheme with information that is false or misleading in a material particular, and the information was provided in specified circumstances.
- 467 Subsection (3) details the circumstances in which the Regulator can exercise the power to issue the new financial penalty. Subsection (3)(a) of inserted section 80B details the sections of the relevant legislation which the information should be provided in purported compliance with.
- 468 Subsection (3)(b) of new section 80B provides that an additional condition is that the information is provided otherwise than as mentioned in subsection (3)(a) but in circumstances in which the person providing the information intends, or could reasonably be expected to know, that it would be used by the trustees or managers who receive it in that person's capacity as a trustee or manager of the scheme.

Financial penalties

Section 115: Financial penalties

469 This section amends the Pensions Act 2004 with the insertion of new section 88A, which introduces a new financial penalty, new section 88B, which outlines detail for the time for recovery of the financial penalty, and new section 88C, which details how the financial penalty is to be recovered.

88A Financial penalties

470 Subsection (1) of newly inserted section 88A enables the Regulator to issue a notice requiring a person to pay a specified penalty amount, within a specified time-frame, in relation to an act that person has done.

471 Subsection (2) states that the penalty is to be an amount determined by the Regulator, not exceeding a maximum of £1 million.

472 Subsection (3) provides a regulation making power to enable the Secretary of State to increase the maximum amount that a civil penalty can be issued under section 88A to an amount above £1 million.

473 Subsection (4) states that the minimum time-frame for compliance with the penalty notice is at least 28 days after the date on which the notice was issued.

474 Subsection (5) of section 88A provides that the notice must specify the legislative provision by virtue of which the penalty is imposed.

475 Subsection (6) details that this section applies in relation to a person where the Regulator determines that a penalty under this section may be imposed on a body corporate, and the act in question was done with the consent or willingness of a director, manager, secretary or other similar office of the body or a person purporting to act in any such capacity.

476 Subsection (7) provides that where the affairs of a body corporate are managed by its members, the new financial penalty introduced by this section will apply in relation to the acts of a member in connection with the member's functions of management, similar to a director of a body corporate.

477 Subsection (8) stipulates that section 88A applies in relation to a person where the Regulator determines that a penalty under this section may, apart from this subsection, be imposed on a Scottish partnership, and the act in question was done with the consent or willingness of a partner.

478 Subsection (9) provides that if the Regulator requires a person to pay a penalty under section 88A by virtue of subsection (6) or (8), the Regulator may not also require the body corporate or the Scottish partnership to pay a penalty in respect of the same act.

479 Subsection (10) details that the Regulator may not issue a notice for the new financial penalty in relation to an act if the person has been convicted of an offence in respect of the same act, or if criminal proceedings for the offence have been instituted and have yet to be concluded against the person in respect of the same act.

480 Subsection (11) states that the Regulator may not issue a notice under this section in respect of an act if the Regulator has required the person to pay a penalty under section 10 of the Pensions Act 1995 (civil penalties) in respect of the same act.

481 Subsection (12) of inserted section 88A provides that in this section, any references to "act" includes any omissions to act.

88B Financial penalties: time for recovery

482 Subsection (1) of new section 88B provides that subsection (3) applies where:

- a. the Regulator is satisfied that section 88A applies to a person by virtue of section 58C or 58D (financial penalty for avoidance of employer debt etc);
- b. the Regulator issues a notice under section 88A requiring a person to pay a penalty in respect of the act or failure to act in question; and
- c. when the notice is issued, the person is subject to one or more contribution notices issued under section 38 (contribution notices where avoidance of employer debt).

483 Subsection (2) of section 88B states that subsection (3) does not apply if, when a notice under section 88A is issued, a qualifying insolvency event has occurred in relation to the person who is the employer in relation to the scheme and the penalty notice issued under section 88A relates to that employer.

484 Subsection (3) details that the Regulator may not take any step to recover the penalty specified in a notice under section 88A, and may not treat an amount received as payment or part payment of the penalty, until after the relevant date, or if sooner, the date on which the qualifying insolvency event occurs in relation to the person who is the employer in relation to the scheme and the penalty notice issued under section 88A relates to that employer.

485 Subsection (4) provides the meaning of “qualifying insolvency event” and “the relevant date”.

88C Financial penalties: recovery

486 Subsection (1) of new section 88C provides that a penalty under new section 88A is recoverable by the Regulator.

487 Subsection (2) states that in England and Wales, the new financial penalty is, if the county court orders, recoverable under section 85 of the County Courts Act 1984.

488 Subsection (3) states that in Scotland, the new financial penalty is enforceable as if it were an order issued by the sheriff court.

489 Subsection (4) stipulates that the Regulator must pay any recovered penalties into the Consolidated Fund.

Supplementary

Section 116: Minor and consequential amendments

490 This section gives effect to Schedule 7.

Schedule 7: The Pensions Regulator: minor and consequential amendments

491 This Schedule makes minor and consequential amendments to other relevant legislation following from the changes to the Regulator’s powers.

Northern Ireland

Section 117: The Pensions Regulator: Northern Ireland

492 This section introduces Schedule 8, which contains provision for Northern Ireland corresponding to provision made for England, Wales and Scotland in sections 103 to 115 and minor and consequential amendments.

Schedule 8: The Pensions Regulator: Northern Ireland

493 This Schedule makes provision for Northern Ireland similar to that made by Part 3 and Schedule 7.

Part 1: Amendments of the Pensions (Northern Ireland) Order 2005

- 494 Part 1 of the Schedule makes provision for Northern Ireland similar to that made by sections 103 to 115.
- 495 Paragraph 2 (grounds for issuing an Article 34 contribution notice) corresponds to section 103. The power to make regulations contained in amendments made by this paragraph vests in the Department for Communities in Northern Ireland.
- 496 Paragraph 3 (reasonableness of issuing contribution notice) corresponds to section 104.
- 497 Paragraph 4 (determination of sum specified in a contribution notice) corresponds to section 105.
- 498 Paragraph 5 (sanctions for failure to comply with a contribution notice) corresponds to section 106.
- 499 Paragraph 6 (sanctions for avoidance of employer debt etc) corresponds to section 107. The power to make regulations contained in amendments made by this paragraph vests in the Department for Communities in Northern Ireland.
- 500 Paragraph 7 (duty to notify the Regulator of certain events) corresponds to section 108.
- 501 Paragraph 8 (duty to give notices and statements to the Regulator in respect of certain events) corresponds to section 109. The power to make regulations contained in amendments made by this paragraph vests in the Department for Communities in Northern Ireland.
- 502 Paragraph 9 (interviews) corresponds to section 110. The power to make regulations contained in amendments made by this paragraph vests in the Department for Communities in Northern Ireland.
- 503 Paragraph 10 (inspection of premises) corresponds to section 111. The power to make regulations contained in amendments made by this paragraph vests in the Department for Communities in Northern Ireland.
- 504 Paragraph 11 (fixed penalty notices and escalating penalty notices) corresponds to section 112. The power to make regulations contained in amendments made by this paragraph vests in the Department for Communities in Northern Ireland.
- 505 Paragraph 12 (provision of false or misleading information to Regulator) corresponds to section 113.
- 506 Paragraph 13 (provision of false or misleading information to trustees or managers) corresponds to section 114. The power to make regulations contained in amendments made by this paragraph vests in the Department for Communities in Northern Ireland.
- 507 Paragraph 14 (financial penalties) corresponds to section 115. The power to make regulations contained in amendments made by this paragraph vests in the Department for Communities in Northern Ireland.

Part 2: Minor and Consequential Amendments

- 508 Part 2 of the Schedule makes provision for Northern Ireland similar to that made by Schedule 7.
- 509 Paragraph 15 corresponds to paragraph 1 of Schedule 7.
- 510 Paragraph 17 corresponds to paragraph 3 of Schedule 7.
- 511 Paragraph 18 corresponds to paragraph 4 of Schedule 7.

- 512 Paragraph 19 corresponds to paragraph 5 of Schedule 7.
- 513 Paragraph 20 corresponds to paragraph 6 of Schedule 7.
- 514 Paragraph 21 corresponds to paragraph 7 of Schedule 7.
- 515 Paragraph 22 corresponds to paragraph 8 of Schedule 7.
- 516 Paragraph 23 corresponds to paragraph 9 of Schedule 7.
- 517 Paragraph 24 corresponds to paragraph 10 of Schedule 7.
- 518 Paragraph 25 corresponds to paragraph 11 of Schedule 7.
- 519 Paragraph 26 corresponds to paragraph 12 of Schedule 7. This paragraph amends Article 288 of the Pensions (Northern Ireland) Order 2005 which governs Assembly control of subordinate legislation.
- 520 Paragraph 28 corresponds to paragraph 14 of Schedule 7.
- 521 Paragraph 30 corresponds to paragraph 16 of Schedule 7.
- 522 Paragraph 31 corresponds to paragraph 17 of Schedule 7.

Part 4: Pensions Dashboards

Section 118 and 119: Pensions dashboards

- 523 These sections amend the Pensions Act 2004 by inserting new sections in Part 4 (financial planning for retirement) of that Act. The inserted sections give the Secretary of State the power to make regulations to support the provision of pensions information to individuals who use certain pensions dashboard services or the pensions dashboard service provided by or on behalf of the Money and Pensions Service. Section 118(2) introduces new sections 238A to 238C.

Section 118: Qualifying pensions dashboard service

238A Qualifying pensions dashboard services

- 524 Subsection (1) sets out the meaning of a pensions dashboard service. It is an electronic communications service by which pensions information may be requested by, and provided to, an individual using the service.
- 525 Subsection (2) enables the Secretary of State to make regulations setting out that a pensions dashboard service must meet certain requirements if it is to be a qualifying pensions dashboard service. The duties imposed by new section 238D (information from occupational pension schemes) and new section 137FAA (information from personal and stakeholder pension schemes) of the Financial Service and Markets Act 2000 (as inserted by this act) apply where the pensions dashboard service meets the requirements for a qualifying pensions dashboard service. This is to ensure that the service meets certain conditions and standards before those responsible for a pension scheme are required to provide pensions information.
- 526 Subsection (3) provides that those requirements may, in particular, relate to what relevant or other information must be provided to the individual using the dashboard service, how and in what circumstances it must be provided, as well as requirements relating to how the service is established, maintained and operated.

527 Subsection (4) defines what is meant by “relevant information”. This is information set out in the regulations relating to state pensions, basic or additional retirement pension, to occupational or personal pension schemes, or to a particular description of such schemes. This may include information relevant to an individual’s state pension, occupational or personal pensions.

528 The regulation-making power in subsection (2) is further illustrated by subsection (5). The regulations may provide that the pensions dashboard service must comply with certain standards, specifications or technical requirements published by the Secretary of State, the Money and Pensions Service or a person specified or described in the regulations (subsection (5)(a)) or that the service provider must meet certain conditions (subsection (5)(b)). The regulations may further provide that a person operating a pensions dashboard service must be a person approved or authorised from time to time by a person or body described in this paragraph (subsection (5)(c)) or require the provider to provide or not to provide certain information, facilities or services in connection with the dashboard service (subsection (5)(d)).

529 As set out in the Government’s consultation response, the provision of pensions dashboard services will involve multiple parties, technical services and governance. This is made up of the supporting digital architecture which allows dashboards to work, the dashboards themselves (with which consumers interact) and a governance system which monitors the whole infrastructure.

530 Subsection (6) enables the regulations to allow for the making of determinations by Secretary of State, the Money and Pensions Service or a person specified or described in the regulations. This is to enable those identified in regulations to make decisions related to the establishment and running of pensions dashboard services and the related infrastructure.

238B Qualifying pension dashboard service: further provision

531 This section supplements section 238A. In particular, subsection (1) provides that regulations under 238A(2) may impose requirements about how requests for information about pensions must be dealt with. This may include requirements about the format and presentation of data and the use of intermediaries to ensure the data is held in a compatible format for the purposes of matching and presentation. Section 238(1) further provides that the regulations may also impose requirements about the involvement of the dashboard service provider in arrangements for dealing with requests for pensions information.

532 Subsection (2) provides that regulations subsection (1) may, in particular, impose requirements concerning the use of electronic communications, for example networks designed to support qualifying pensions dashboard services and the pensions dashboard service provided by the Money and Pensions Service (subsection (2)(a)). Subsection (2) also makes it clear that the regulations may impose requirements concerning the use of facilities or services (subsection (2)(b)) or the provision of assistance in connection with establishing, maintaining or managing those facilities or services (subsection (2)(c)). The regulations may also provide that a qualifying pensions dashboard service must take part in arrangements for establishing, maintaining and managing such facilities and services as enable a pensions dashboard service to function (subsection (2)(d)).

533 Subsection (3) clarifies that the facilities or services outlined in subsection (2)(b) above may include facilities or services designed for transmitting or authenticating information or for authenticating a person’s identity. This is so that the pensions information provided in relation to the scheme is accurate and can be securely transmitted using a trusted electronic communications network.

534 Subsection (4)(a) goes on to provide that regulations under subsection (2)(b) may impose requirements as respects facilities or services which may include compliance with standards, specifications or technical requirements as are published from time to time by the Secretary of State, the Money and Pensions Service or a person specified or described in the regulations. Subsection (4)(b) allows regulations to require that facility or service providers in relation to a pension dashboard service are approved by the Secretary of State, the Money and Pensions Service or a person specified or described in the regulations.

535 Subsection (5) makes it clear that regulations under subsection (2)(d) may, in particular, require the provider of the pensions dashboard service to co-operate, and to co-ordinate activities, with the Money and Pensions Service or a person specified or described in the regulations, and to enable them to monitor or audit compliance by the provider. This is to ensure that pensions dashboard services, which will be overseen or provided by the Money and Pensions Service, operate effectively and efficiently.

536 Subsection (6) enables the regulations to provide that a disclosure of information provided for by the regulations is not to be a breach of a duty of confidence or a breach of any other restriction on the processing of personal data. This is subject to subsection (7) which makes it clear that this does not extend to authorising or requiring the processing of personal data which would otherwise contravene the data protection legislation, as defined in the next section.

238C Sections 238A and 238B: interpretation

537 This section sets out a series of definitions used for sections 238A and 238B.

538 Subsection (2) provides that “state pensions information” about an individual refers to the information set out in the section 42(7) of the Child Support, Pensions and Social Security Act 2000 or section 38(7) of the Child Support, Pensions and Social Security Act (Northern Ireland) 2000.

539 Subsection (3) makes it clear that any reference made to the Money and Pensions Service also includes those persons (known as “delivery partners”) to whom the Money and Pensions Service has delegate functions under section 5 of the Financial Guidance and Claims Act 2018.

540 Subsection (4) defines what is meant by “additional retirement pension”, “basic retirement pension”, “the data protection legislation”, “electronic communications service”, “personal data” and “state pension”.

541 Section 118(3) amends section 316 of the Pensions Act 2004 and provides that any regulations that are made under the new section 238A, is subject to the affirmative resolution procedure.

Section 119: Information from occupational pension schemes

542 Section 119 (1) and (2) introduce sections 238D to 238F into the Pensions Act 2004.

238D Information from occupational pension schemes

543 Subsection (1) of the inserted section 238D enables the Secretary of State to make regulations imposing requirements on the trustees or managers of a relevant occupational pension scheme in relation to the provision, by a qualifying pensions dashboard service, of pensions information. “Relevant occupational pension scheme” is defined in section 238F. The regulations may also impose obligations on the scheme trustees or managers with respect to assisting a qualifying pensions dashboard service to provide this information. Subsection (1) also enables the regulations to impose similar requirements on the scheme trustees or managers with respect to the pensions dashboard service provided by the Money and Pensions Service.

- 544 Subsection (2) enables the regulations to specify the meaning of “pensions information” in relation to a relevant occupational pension scheme. This information may, in particular, include information about an individual’s rights and obligations under the scheme, the pensions and other benefits to which they are or may be entitled and information designed to help the individual find out if they are a member of the scheme or to understand the scheme.
- 545 Subsection (3) provides that regulations under subsection (1) may impose requirements relating to the provision of pensions information by the scheme trustees or managers. These include the persons to whom, and the manner, form and time in which, information must be provided and the steps to be taken before it is provided. For example, the regulations may provide that ID verification must be completed before any information is provided or that information must be in a certain electronic format.
- 546 Subsection (4) provides that the regulations may require the scheme managers or trustees to comply with standards, specifications or technical requirements as are published from time to time by the Secretary of State, the Money and Pensions Service or a person specified or described in regulations, for example the Pensions Regulator.
- 547 Subsection (5) enables the regulations under subsection (1) to allow for the making of determinations by the Secretary of State, the Money and Pensions Service or a person specified in the regulations. This is to enable those identified in regulations to make decisions related to the establishment and running of pensions dashboard services and the related infrastructure.
- 548 Subsection (6) provides that regulations under subsection (1) may require the scheme trustees or managers to provide information about the carrying out by them of their requirements under this section to the Pensions Regulator, the Money and Pensions Service or a person specified or described in the regulations. This is, for example, to confirm the accuracy of data held and to support activity designed to help schemes provide data to dashboards and ongoing management information.
- 549 Subsection (7) enables the regulations to provide that the scheme trustees or managers must have regard to any guidance issued by the Secretary of State or a person specified or described in the regulations in complying with their responsibilities under this section.

238E Information from occupational pension schemes: further provision

- 550 Subsection (1) provides that regulations under 238D(1) may make provision about the way pensions information is provided, which may include the use of intermediaries, for example, parties providing elements of the infrastructure such as the pension finder service under contractual arrangement with the Money and Pension Service. Subsection (1) also enables regulations to set out the arrangements that the scheme trustees or managers must make to deal with requests for information about pensions.
- 551 Subsection (2) makes it clear that regulations under subsection (1) may, in particular, impose requirements on the trustees or managers concerning the use of electronic communications networks, facilities or services. This is designed to support qualifying pensions dashboard services and the pensions dashboard service provided by the Money and Pensions Service. The scheme trustees or managers may also be required to provide assistance or to participate in arrangements for establishing, maintaining and managing such facilities and services as enable a pensions dashboard service to function.
- 552 Subsection (3) clarifies that the facilities or services outlined in subsection (2)(b) may include facilities or services designed for transmitting or authenticating information and for verifying a person’s identity. This is so that the pensions information provided in relation to the scheme is accurate and can be securely transmitted using a trusted electronic communications network.

553 Subsection (4)(a) goes on to provide that the regulations under subsection (2)(b) may require the trustees or managers to comply with requirements as regards the use of facilities or services which may include compliance with standards, specifications or technical requirements as are published from time to time by the Secretary of State, the Money and Pensions Service or a person specified or described in the regulations. Subsection (4)(b) makes provision for the regulations to require that a person who is providing a facility or service used in connection with a pensions dashboard service must be approved by the Secretary of State, the Money and Pensions Service or a person specified or described in the regulations.

554 Subsection (5) provides that regulations under subsection (2)(d) may, in particular, require the trustees or managers to co-operate, and co-ordinate activities, with the Money and Pensions Service or a person specified or described in the regulations, for example to enable the collection of management information to enable audit activity such as the response times.

555 Subsections (6) and (7) make the same provision as respects the exercise of the regulation –making powers in section 238D(1) and processing of personal data as is found in section 238B.

238F Sections 238D and 238E interpretation

556 Subsection (1) applies for the purposes of sections 238D and 238E.

557 Subsection (2) clarifies that any reference made to Money and Pensions Service also applies to those with whom the Money and Pensions Service have made arrangements to act as delivery partners.

558 Subsection (3) defines what is meant by “the data protection legislation”, “pension dashboard service”, “personal data”, “qualifying pensions dashboard service” and “relevant occupational pension scheme”.

238G Compliance

559 The new inserted subsection 238G(1) enables the Secretary of State to make provision in regulations for ensuring compliance with the duties imposed on the trustees or managers of a relevant occupational pension scheme in regulations made under section 238D. In section 238G, the Regulator refers to the Pensions Regulator (see Part 1 of the Pensions Act 2004).

560 Subsection (2) provides that regulations may (amongst other things) make provision for the imposition of compliance notices, penalty notices, and for the making of appeals. They may also confer additional functions on the Regulator.

561 Subsection (3) provides that regulations may determine the amount or maximum amount of penalty, which must not exceed £5000 in the case of an individual or £50,000 in any other case (subsection (4)).

562 Subsection (5) explains that “a relevant occupational pension scheme” is as defined in 238F.

563 Section 119(3) amends section 310 of the Pensions Act 2004 with the effect that any information given in relation to schemes is admissible in proceedings relating to financial penalties under new section 238G.

564 Section 119(4) amends section 316 of the Pensions Act 2004 with the effect that any regulations that are made under sections 238D or 238G of that Act are subject to the affirmative resolution procedure.

565 Section 119(5) amends Schedule 1 of the Pensions Act 2004 to enable regulations to permit the Regulator to authorise other persons to exercise the functions in new section 238G on its behalf.

Section 120: Pensions Dashboards: Northern Ireland

566 This section introduces Schedule 9 which contains provision for Northern Ireland corresponding to provision made for England, Wales and Scotland set out in sections 118 and 119.

Schedule 9: Pensions dashboards: Northern Ireland

567 This Schedule makes provision for Northern Ireland similar to that made by Part 4, sections 118 and 119.

568 Paragraph 2 (qualifying pensions dashboard service) corresponds to section 118.

569 Paragraph 3 (information from occupational pension schemes) corresponds to section 119.

570 These paragraphs amend the Pensions (Northern Ireland) Order 2005 by inserting new Articles after Article 215 of the Pensions (Northern Ireland) Order 2005. They allow the Department for Communities in Northern Ireland to make regulations which are designed to support the provision of pensions information to individuals who use certain pensions dashboard services or a pensions dashboard service provided by or on behalf of the Money and Pensions Service. This includes setting out the requirements for providing such services.

571 Paragraph 4 (Admissibility of statements) corresponds to section 119(3).

572 Paragraph 5 (Assembly control of regulations) corresponds to section 119(4). This paragraph amends Article 288 of the Pensions (Northern Ireland) Order 2005 and provides that any regulations that are made in respect of the new Articles 215A, 215D and 215G are subject to the confirmatory procedure.

Section 121: Information from personal and stakeholder pension schemes

573 This section amends the Financial Services and Markets Act 2000 (“FSMA”) by inserting three new sections, section 137FAA, 137FAB & 137FAC, into that Act. These new sections set out the requirement that, subject to certain exceptions, the Financial Conduct Authority must exercise its general rule making powers to make rules in relation to personal pension schemes and certain stakeholder pension schemes with respect to the provision of pensions dashboard services.

137FAA Financial Conduct Authority general rules: pensions dashboards

574 Subject to certain exceptions (which are provided for in section 137FAB), section 137FAA(1) requires the Financial Conduct Authority to exercise its general rule making powers in section 137A of FSMA to impose requirements on certain persons with respect to the provision, by a qualifying pensions dashboard service or any dashboard service provided by the Money and Pensions Service, of pensions information. The rules must (subject to exceptions) also impose requirements on such persons with respect to assisting a qualifying pensions dashboard service or the pensions dashboard service provided by the Money and Pensions Service to provide this information.

575 The requirements apply to persons authorised by the Authority and specified in the rules (see section 137FAC for the meaning of “specified authorised persons”). The intention is that the rules will apply to the person who is authorised under Part 4A of FSMA to operate a personal pension scheme or a stakeholder pension scheme.

576 Subsection (2) enables rules to specify the meaning of “pensions information” in relation to a personal pension or a stakeholder pension scheme. This information may, in particular, include information about an individual’s rights and obligations under the scheme, the pensions and other benefits to which they are or may be entitled and information designed to help the individual find out if they are a member of the scheme or to understand the scheme.

- 577 Subsection (3) provides that rules may impose requirements relating to the provision of pensions information to the individual, by authorised persons. These include the persons to whom, and the manner and form in which, information must be provided and the steps to be taken before it is provided. For example, the rules may provide that ID verification must be completed before any information is provided or that information must be in a certain electronic format.
- 578 Subsection (4) provides that the rules may require specified authorised persons to comply with standards, specifications or technical requirements as are published by the Secretary of State, the Money and Pensions Service or a person specified or described in rules.
- 579 Subsection (5) enables the rules to allow for the making of determinations by the Secretary of State, the Money and Pensions Service or a person specified or described in rules.
- 580 Subsection (6) provides that rules may require specified authorised persons to provide information about the carrying out by them of their requirements under this section to the Financial Conduct Authority, the Money and Pensions Service or a person specified or described in the rules. This is for example, to confirm the accuracy of data held and to support activity to help schemes provide data to dashboards and ongoing management information.
- 581 Subsection (7) enables rules to provide that specified authorised persons must have regard to any guidance issued from time to time by persons specified or described in the rules in complying with their responsibilities under this section.
- 582 Subsection (8) specifies that the Financial Conduct Authority must have regard to any regulations made under 238D of the Pensions Act 2004 or any corresponding provision in force in Northern Ireland in determining what should be included within the rules.

137FAB Pensions dashboards: further provision

- 583 This section makes further provision in relation to the rules under section 137FAA(1). Subsection (1) provides that rules may, in particular, impose requirements on specified authorised persons to provide pensions information in a particular way and concerning the arrangements for dealing with requests for this information. This may include the format and the use of intermediaries, for example, parties providing elements of the infrastructure including under contractual arrangements with the Money and Pension Service.
- 584 Subsection (2) provides that rules may, in particular, impose requirements on specified authorised persons concerning the use of electronic communications networks, facilities or services. This is designed to support qualifying pensions dashboard services and the pensions dashboard service provided by the Money and Pensions Service. The authorised person may also be required to provide assistance or to participate in arrangements for establishing, maintaining and managing such facilities and services as enable a pensions dashboard service to function.
- 585 Subsection (3) further clarifies that the services and facilities outlined in subsection (2)(b) above may include facilities or services designed for transmitting or authenticating information and for verifying a person's identity. This is so that the pensions information provided in relation to the scheme is accurate and can be securely transmitted using a trusted electronic communications network.
- 586 Subsection (4)(a) makes it clear that that rules under subsection (2)(b) may impose requirements as regards facilities or services which may include compliance with standards, specifications or technical requirements published from time to time by the Secretary of State, the Money and Pensions Service or a person specified or described in the rules. Subsection (4)(b) provides that the rules may require that a facility or service provider in relation to a pension dashboard service is approved by the Secretary of State, the Money and Pensions Service or a person specified or described in the rules.

587 Subsection (5) makes it clear that rules under subsection (2)(d) may require authorised persons to co-operate, and to co-ordinate activities, with the Money and Pensions Service or a person specified or described in the rules. This is to ensure that pensions dashboard services, which will be overseen or provided by the Money and Pensions Service, operate effectively and efficiently.

588 Subsections (6) and (7) make the similar provision as respects the processing of personal data to that in section 238D(1) of the Pensions Act 2004.

137FAC Sections 137FAA and 137FAB: supplementary

589 Subsection (1) provides that the Financial Conduct Authority must consult the Secretary of State and HM Treasury before publishing a draft of the rules.

590 Subsection (2) provides that section 137AA is not to be treated requiring the Financial Conduct Authority to make general rules by virtue of that section which come into force before regulations under section 238D of the Pensions Act 2004 are in force.

591 Whilst section 137FAA imposes a duty on the Financial Conduct Authority to make rules, subsection (3) makes it clear that this is not to be taken as requiring the Authority to make rules in every case to which the power extends. This is so that provision may be made for exceptions, for example where a personal pension scheme has very few members, or to allow for a phased introduction so that the requirements apply to some schemes before others.

592 Subsection (4) clarifies that any reference made to the Money and Pensions Service also applies to those with whom the Money and Pensions Service have made arrangements to act as delivery partners.

593 Subsection (5) provides for definitions relevant to newly inserted sections 137FAA and 137FAB, including definitions of “pensions dashboard service”, “personal pension scheme”, “qualifying pensions dashboard service”, “specified authorised person” and “stakeholder pension scheme”.

594 Section 121(3) makes an amendment to section 138F of FSMA whereby the Financial Conduct Authority will not be required to notify the Bank of England about rules made under section 137FAA in regards to pensions dashboards.

Section 122: The Money and Pensions Service: the pensions guidance function

595 Section 122 inserts a new section 4A after section 4 in the Financial Guidance and Claims Act 2018.

596 The pensions guidance function of the Single Financial Guidance Body, otherwise known as the Money and Pensions Service, is to provide to members of the public free and impartial information and guidance relating to occupational and personal pensions (see section 3 of that Act).

597 Subsection (1) of new section 4A makes it clear that the Money and Pension Service must provide a pension dashboard service dealing with information which occupational and personal pension schemes are required to provide. Subsection (2) enables the Money and Pensions Service to also provide state pensions information as part of their dashboard service, including information relating to an individual, and information about basic and additional retirement pension.

598 Subsection (3) makes it clear that the Money and Pensions service can carry out other functions in relation to pensions dashboard services for which provision is made in regulations or FCA rules as the result of the new sections introduced in this Part of the Act. Subsection (4) provides that, in particular, the functions referred to in subsections (1) to (3) are part of the pension

guidance function. But, as subsection (4) overlaps with things that the Money and Pensions Service can do already in pursuance of its pensions guidance function, subsection (5) is included to make sure that the breadth of its existing functions is maintained.

599 Subsection (6) concerns definitions relevant to section 4A.

Part 5: Further provision relating to pension schemes

Scheme funding

Section 123: Funding of defined benefit schemes

600 Section 123 introduces Schedule 10 to the Act which provides for amendments to the statutory framework for defined benefit pension scheme funding set out in Part 3 of the Pensions Act 2004.

Schedule 10: Funding of defined benefit schemes

Background

601 The White Paper *Protecting Defined Benefit Pension Schemes* proposed a package of measures to deliver clearer more enforceable scheme funding standards in order to better protect members' pensions. These amendments deliver the measures proposed in the White Paper.

221A Funding and Investment Strategy

602 Paragraph 2 inserts a new section 221A into the Pensions Act 2004.

603 Subsection (1) of section 221A imposes a duty on trustees or managers to have a funding and investment strategy for the purpose of ensuring pensions and other scheme benefits to and in respect of members can be paid over the long term. In the White Paper we described this as a long term objective for the scheme.

604 Subsection (2) of section 221A sets out what the strategy must cover, including the planned 'funding level' of the scheme on the relevant date or dates, and the planned investments to be held by the scheme on those dates.

605 Subsection (3) makes clear that the funding level is the ratio of assets to liabilities and provides for regulations to set out how 'relevant date' is determined.

606 Subsection (4) makes provision for regulations which may make provision:

- to require trustees or managers to take into account prescribed matters and follow prescribed principles when determining the funding and investment strategy relating to the scheme. For example, the regulations may require information in relation to the scheme's maturity, whether it is open or closed and the financial strength of the sponsoring employer. Factors such as these will affect the timeframe, funding levels and investments which are held;
- for the level of detail required in the strategy;
- to set how long trustees have to determine their strategy; and
- to specify when trustees should review and if necessary revise their strategy – for example, the regulations could be used to require trustees to review their strategy annually.

607 Subsection (5) makes clear the matters and principles trustees may be required to take into account includes the actuarial methods or assumptions used to determine the funding level.

608 Subsection (6) means that trustees who do not have a funding and investment strategy which complies with the requirements in new section 221A could be subject to a civil penalty where they have not taken all reasonable steps to ensure compliance: this could be up to £5,000 for individuals and up to £50,000 for organisations.

221B Statement of strategy

609 Paragraph 2 also inserts new section 221B into the Pensions Act 2004.

610 Subsection (1) of section 221B requires trustees to prepare a written statement, defined as a “statement of strategy”, setting out the scheme’s funding and investment strategy itself and supplementary matters. In the White Paper this was referred to as a “DB Chair’s Statement”.

611 Subsection (2) sets out the supplementary matters to be included in the statement. These are:

- the trustees’ assessment of whether the funding and investment strategy is being successfully implemented, or any remedial action they intend to take, to get the strategy back on course;
- the key risks and mitigations for implementation; reflections on any key decisions trustees have taken and lessons learned; and other prescribed matters, which may include a view of the sponsoring employer.

612 Subsection (3) does three things:

- defines the written statement required under subsection (1) of section 221B as a ‘statement of strategy’;
- makes clear Part 1 of the statement of strategy is to cover the funding and investment strategy; and
- Part 2 of the same statement is to cover the supplementary matters.

613 Subsection (4) requires trustees or managers to regularly review and where necessary revise Part 2 of the statement of strategy and on occasions which may be prescribed in regulations.

614 Subsection (5) requires trustees or managers to consult the employer when preparing the supplementary matters to be included in the statement of strategy.

615 Subsection (6) requires the chair of the trustees to sign the statement of strategy on behalf of the scheme trustee board. Regulations may require a person to meet prescribed conditions to be appointed chair.

616 Subsection (7) requires the trustee board to appoint a Chair if they do not already have one.

617 Subsection (8) provides that regulations may be made to:

- require the trustees or managers to take account of prescribed matters and follow prescribed principles when preparing Part 2 of the statement of strategy;
- ensure sufficient detail is included in Part 2 of the statement for example to explain trustees’ decision making and to support the Pensions Regulator in their regulatory enforcement;

- require trustees to provide the information required in the statement in a particular form i.e. a template;
- set out when, and the occasions on which trustees must send the statement to the Regulator – for example to ensure the statement is submitted every three years with the actuarial valuation, or to ensure a revised statement is submitted following a direction from the Regulator to the scheme to revise their funding and investment strategy.

618 Subsection (9) provides that trustees who do not comply with these requirements can be subject to the section 10 of the Pensions Act 1995 civil penalty where they fail to take all reasonable steps to secure compliance.

Amending the Statutory Funding Objective

619 The statutory funding objective requires schemes to have sufficient and appropriate assets to cover its technical provisions (section 222 of the Pensions Act 2004).

620 Paragraph 3 of Schedule 10 inserts new subsection (2A) into section 222 of the 2004 Pensions Act so that the calculation of the scheme’s technical provisions is consistent with the scheme’s funding and investment strategy as set out in the scheme’s statement of strategy.

Requirements in relation to actuarial valuations and reports

621 Paragraph 4 of Schedule 10 amends section 224 of the Pensions Act 2004. It inserts subsection (7A) to require trustees to send to the Regulator as soon as practicable, an actuarial valuation (full report) prepared for the purposes of Part 3 of the Pensions Act 2004, together with any other prescribed information. Other prescribed information may include the statement of funding principles, the statement of investment principles and, as noted, the statement of strategy.

622 The amendment at sub-paragraph (3) provides that trustees who do not comply with the requirements under subsection (7A) can be subject to the section 10 of the Pensions Act 1995 civil penalty where they fail to take all reasonable steps to secure compliance.

Recovery plan

623 Paragraph 5 amends section 226 of the Pensions Act 2004 so that regulations can set out the matters to be taken into account, or the principles to be followed, in determining whether a recovery plan is appropriate for the purposes of subsection (3) having regard to the nature and circumstances of the scheme. These may include matters such as the length of time taken by trustees to meet the statutory funding objective, taking into account whether the sponsoring employer can afford to pay more into the scheme.

Matters requiring agreement of employer

624 Paragraph 6 amends section 229 of the Pensions Act 2004 to require the trustees or managers to obtain the sponsoring employer’s agreement to the funding and investment strategy (as defined in section 221A).

Powers of the Regulator

625 Paragraph 7 amends section 231 of the Pensions Act 2004 so as to make provision regarding the action the Pensions Regulator can take when trustees do not comply with the requirements relating to the funding and investment strategy (set out in this Act and any subsequent regulations). Subparagraph (3) inserts paragraph (aa) at subsection (2) which provides that the Regulator may direct trustees or managers to revise the scheme’s funding and investment strategy in accordance with the direction.

626 Part 2 of Schedule 10 contains minor and consequential amendments to the Pensions Act 2004. Paragraph 9 amends section 60 so that the full name and address of any chair of the trustees is registrable information. Paragraph 10 amends section 80 so that the offence under that section covers information provided in the statement of strategy under new section 221B. Paragraph 11 amends section 316 which governs Parliamentary control of subordinate legislation.

Climate change risk

Section 124: Climate change risk

627 Section 124 inserts new sections into Part 1 of the Pensions Act 1995 (Occupational Pensions). The new sections confer powers on the Secretary of State to make regulations with a view to securing that there is effective governance of occupational pension schemes with respect to the effects of climate change, to require publication of information relating to the effects of climate change, and to secure compliance with the governance and publication requirements imposed in regulations.

41A Climate change risk

628 Subsection (1) of new section 41A enables the Secretary of State to make regulations imposing requirements on trustees or managers of occupational pension schemes, of a description to be prescribed in the regulations, with a view to securing that there is effective governance of the scheme with respect to the effects of climate change.

629 Subsection (2) makes clear that the effects of climate change in relation to which requirements may be imposed include risks arising from steps taken because of climate change and opportunities relating to climate change.

630 Subsection (3) lists particular types of requirements that may be imposed on trustees or managers by the regulations. For example, these may include requirements about reviewing the scheme's exposure to risks of a description to be prescribed in regulations (subsection (3)(a)) and requirements about assessing the scheme's assets in a manner to be prescribed in regulations (subsection (3)(b)).

631 Subsection (4) makes further provision as to the requirements which may be imposed under subsection (3)(b) about assessing the assets of a scheme. It provides that regulations may, in particular, include a requirement to assess the exposure of a scheme's assets by reference to risks of a description to be prescribed in regulations. It also makes clear that regulations may include a requirement to determine the contribution of the scheme's assets to climate change.

632 Subsection (5) provides that regulations may require trustees or managers to take into account the ways in which the climate might change and the steps that might be taken because of such changes.

633 Subsection (6) enables regulations made under subsection (5) to require trustees or managers to adopt assumptions as to future events, as prescribed in the regulations. These may include assumptions about the steps that might be taken for the purpose of achieving climate change goals - including the "Paris Agreement goal" - and assumptions about achievement of the goals themselves.

634 Subsection (7) requires trustees or managers to have regard to guidance prepared by the Secretary of State from time to time when complying with requirements in regulations made under section 41A.

635 Subsection (8) defines the meaning of "Paris Agreement goal" by reference to Article 2(1)(a) of the Paris Agreement.

41B Climate change risk: publication of information

- 636 Subsection (1) of new section 41B enables the Secretary of State to make regulations to require trustees or managers of occupational pension schemes, of a description to be prescribed in regulations, to publish information relating to the effects of climate change on the scheme. The details of the information that must be published and how it must be published are to be prescribed in the regulations.
- 637 Subsection (2) provides a non-exhaustive list of the types of requirements that may be included within the regulations.
- 638 Subsection (3) requires trustees or managers to have regard to guidance prepared by the Secretary of State from time to time when complying with requirements in regulations made under section 41B.

41C Sections 41A and 41B: compliance

- 639 Subsection (1) enables the Secretary of State to make regulations with a view to ensuring that trustees and managers comply with requirements in regulations made under new sections 41A and 41B. References to “the Authority” are to the Pensions Regulator – see section 124(1) of the Pensions Act 1995.
- 640 Subsection (2) sets out various provisions that may, in particular, be included in the regulations such as provisions enabling the Pensions Regulator to issue compliance notices and penalty notices. Subsection (2)(d) enables provision to be made in regulations for references to the First-tier Tribunal or Upper Tribunal in respect of disputes about a penalty notice or the amount of a penalty.
- 641 Subsection (3) enables provisions for determining the amount, or maximum amount, of a penalty issued by the Pensions Regulator to be made in regulations. This is subject to the limit, set out in subsection (4), of £5,000 in the case of an individual, and £50,000 in any other case.

Other provisions

- 642 Section 124(3) makes a consequential change to section 116 of the Pensions Act 1995 to ensure that a person who pays a penalty in accordance with regulations made under new section 41C cannot also be convicted of a criminal offence in relation to the same breach, and *vice versa*.
- 643 Section 124(4) amends section 175 of the Pensions Act 1995 to include a new subsection (2A), which provides that the first regulations made under new sections 41A and 41B are subject to the affirmative resolution procedure.

Transfer rights

Section 125: Exercise of right to cash equivalent

- 644 Section 125 places conditions on the right of a member to transfer their accrued pension rights to a different pension scheme and to protect members falling victims to pension scams. This right is set out in Chapter 1 of Part 4ZA and Chapter II of Part IVA of the Pension Schemes Act 1993 (sections 93-101P).
- 645 Subsection (2) amends section 95 of the Act by inserting new subsections (6ZA), (6ZB) and (67C). New subsection (6ZA) provides a power to make regulations so that a member will only have a right to transfer if certain conditions prescribed in regulations are met. These conditions can be applied to transfers of accrued pension rights from personal pension schemes, unfunded public service schemes and other pension arrangements.

- 646 New subsection (6ZB) provides a list of conditions that the regulations may prescribe including (but not limited to), under paragraph (a), a member's employment or residency. Under paragraph (b), the regulations can make it a condition to provide the trustees or managers of the occupational pension schemes with information or evidence about the member's employment or residence. Under paragraph (c), the regulations can prescribe the circumstances where it is a condition that the member obtains information or guidance from a prescribed person. Under paragraph (d), the regulations can make it a condition for the member to provide the trustees or managers with prescribed evidence that demonstrates they have obtained information or guidance from a prescribed person, or evidence that demonstrates they are exempt from these conditions.
- 647 Evidence relating to the member's employment may include (but may not be limited to) payslips, which will help establish a genuine employment link between the member and the employer of the scheme the member wants their pension benefits to be transferred into. New subsection (6ZC) enables the Secretary of State to make regulations requiring the trustees or managers of the occupational pension scheme to notify a member of the conditions which have been prescribed in regulations made under new section 95(6ZA).
- 648 Subsections (3), (4) and (5) make provision in relation to situations where conditions under new subsection (6ZA) or section 95 or (5A) of section 101F have not been satisfied.
- 649 Subsection (3) amends section 98 by inserting a reference to new section 99(2ZA) into subsection (2) so that the member loses the right to take a cash equivalent where the duty on the trustees is extinguished because a condition prescribed under new section 95(6ZA) is not met.
- 650 Subsections (4) and (5) insert new subsections (2ZA) and (2ZB) respectively into section 99. Subsection (2ZA) exempts the trustees or managers of the occupational pension scheme from having to comply with the time period for facilitating a member's request to transfer their pension benefits to another scheme if a condition prescribed under new subsection (6ZA) of section 95 is not met. Subsection (2ZB) exempts the trustees or managers of the occupational pension scheme from having to comply with the time period for facilitating a member's request to transfer their pension benefits to another scheme (where the member was required by section 96(4) to give a transfer notice under section 101F(1) in addition to making a transfer application) because the conditions prescribed in regulations made under new subsection (5A) of section 101F have not been met.
- 651 Section 101F (power to give transfer notice) sets when a trustee or manager of a qualifying scheme must facilitate a member's request to transfer their pension credit benefit. Subsection (6) amends section 101F by inserting new subsections (5A), (5B) and (5C). New subsection (5A) provides a power to make regulations so that a member will only have the right to transfer their pension credit benefit if certain conditions prescribed in regulations are met. New subsection (5B) provides examples of the conditions which the regulations may prescribe. They include, but are not limited to, conditions about employment, place of residence and obtaining information or guidance in prescribed circumstances. New subsection (5C) enables the Secretary of State to make regulations requiring the trustees or managers to notify a member of the conditions which have been prescribed in regulations made under new section 101F(5A).
- 652 Section 101J (time for compliance with transfer notice) deals with the time period within which trustees or managers must facilitate a member's request to transfer their pension credit benefit. Subsections (7) and (8) amend section 101J by inserting new subsection (2AA) and (2AB) respectively. New subsection (2AA) exempts trustees or managers from having to comply with the time period for facilitating a member's request to transfer their pension credit benefit if a condition prescribed under new subsection (5A) of section 101F is not met.

653 Subsection (7) inserts new subsection (2AB) in section 101J to exempt the trustees or managers from having to comply with the time period for facilitating a member's request to transfer their pension credit benefit if the conditions prescribed in regulations made under section 95(6ZA) have not been met, where the member was required by section 101G(4) to make an application under section 95(1) in addition to giving a transfer notice.

The Pension Protection Fund

Section 126: Modification of provisions relating to pensionable service

654 The compensation to which an individual is entitled from the Pension Protection Fund is determined in accordance with Schedule 7 to the 2004 Pensions Act and regulations made under it. "Pensionable service" (see paragraph 36 of Schedule 7) is fundamental to the calculation of pension compensation. Amongst other things, it governs the compensation payable to those under their scheme's normal pension age, the total benefits which are subject to the compensation cap and the payment of survivors' benefits indexation and revaluation.

655 The policy intent, and the Pension Protection Fund practice, is, and has always been, that a pension which arose by virtue of a transfer payment to the scheme, where the initial amount of the pension was determined at the time of the transfer payment, is treated as attributable to the person's pensionable service. But, in the case *Anthony Beaton v the Pension Protection Fund* [[2017] EWHC 2623], the High Court decided that, when applying the compensation cap (see paragraph 26 of Schedule 7), benefits derived from such a transfer-in could not be said to be attributable to pensionable service and could not be aggregated.

656 The amendments made to the Pension Protection Fund (Compensation) Regulations 2005 (S.I. 2005/607) and the Pension Protection Fund Multi-employer Regulations 2005 (S.I. 2005/441) by the Pension Protection Fund (Pensionable Service) and Occupational Pension Schemes (Investment and Disclosure) Amendment and Modification Regulations 2018 (S.I. 2018/988) ("the 2018 Regulations") restore the policy intent prospectively. They enable a fixed pension to be treated as pensionable service for the purposes of calculating Pension Protection Fund compensation, except when aggregating benefits for the compensation cap. The Regulations do not apply to the cap following the CJEU decision in the case of the *Grenville Hampshire v the Board of the Pension Protection Fund* (C-17/17). This provided that individuals are entitled to receive compensation to at least 50% of the value of their accrued pension entitlement from the Pension Protection Fund (see the Explanatory Notes to the 2018 Regulations).

657 Subsection (1) remedies certain consequences of the *Beaton* judgement so that the legislation supports the policy intent and past practice. It does this by treating the amendments made to the Pension Protection Fund (Compensation) Regulations 2005 by the 2018 Regulations as if those amendments always had effect so far as they apply to the Pensions Protection Fund, thereby covering payments which have already been made since the Pension Protection Fund was established.

658 Sub-section (2) makes similar provision in relation to the definition of pensionable service in the Pension Protection Fund Multi-employer Regulations 2005 (It achieves this by treating the amendment made to those Regulations by the 2018 Regulations 2018 as if that amendment always had effect).

659 The amendments made by subsection (1) form part of the law of Great Britain and also apply to Great Britain. The amendment in subsection (2) forms part of the law of the United Kingdom but its territorial application is to Great Britain. This is consistent with the territorial application of the Pension Protection Fund Multi-employer Regulations 2005.

Administration charges

Section 127: Administration charges

660 Schedule 18 to the Pensions Act 2014 allows the Secretary of State to make regulations which limit or prohibit particular types of administration charges in relation to pension schemes specified in the regulations. Section 1 of the Welfare Reform and Pensions Act 1999 (“the 1999 Act”) sets out the conditions that must be met by a stakeholder pension scheme. These include that the scheme complies with such requirements as are set out in regulations concerning deductions from members’ pension funds in respect of charges and expenses.

661 “Administration charge” is defined in Schedule 18 to the Pension Act 2014. Subsection (2) of this section amends the definition to make it clearer which charges are in scope of the definition. The effect of the amendments is that an “administration charge”, in relation to a member of a pension scheme, means any use of the scheme’s assets to meet the administrative expenses of the scheme, to pay commission or in any other way, that does not constitute the member drawing their pension benefits, or moving their savings to acquire pension rights in in a different scheme. Subsection (1) makes similar amendments in relation to the description of administration charges in subsection (5) of section 1 of the 1999 Act (meaning of “stakeholder pension scheme”).

662 Subsection (3) amends subsections (6)(b) and (7) of Section 113 of the Pension Schemes Act 1993 (disclosure of information about schemes to members) and subsection (4) amends subsections (3)(b), (4) and (7) of Section 137FA of the Financial Services and Markets Act 2000 (FCA general rules: disclosure of information about pension scheme transaction costs etc) to make clear that transaction costs are a type of administration charge.

Categories of pension schemes

Section 128: Pension Schemes Act 2015: repeals

663 This section repeals uncommenced sections of the Pension Schemes Act 2015 which have been superseded by the provisions in Part 1 of the Act.

Northern Ireland

Section 129: Further provision relating to pension schemes: Northern Ireland

664 This section introduces Schedule 11 which contains provision for Northern Ireland corresponding to provision made for England, Wales and Scotland set out in sections 124 to section 128 and Schedule 10.

Schedule 11: Further provision relating to pension schemes: Northern Ireland

665 This Schedule makes provision for Northern Ireland similar to that made by Schedule 10 and Part 5.

Part 1: Funding of defined benefit schemes

666 Part 1 of the Schedule makes provision for Northern Ireland similar to that made by Parts 1 and 2 of Schedule 10.

667 The paragraphs in Part 1 of Schedule 11 correspond to the paragraphs of the same number in Schedule 10. The power to make regulations contained in amendments made by this paragraph vests in the Department for Communities in Northern Ireland.

Part 2: Other provision

668 Part 2 of the Schedule makes provision for Northern Ireland similar to that made by Part 5, sections 124 to section 128.

669 Paragraph 12 (climate change risk) corresponds to section 124.

670 Paragraph 13 (transfer rights: exercise of right to cash equivalent) corresponds to section 125. The power to make regulations contained in amendments made by this paragraph vests in the Department for Communities in Northern Ireland.

671 Paragraph 14 (the Pension Protection Fund: modification of provisions relating to pensionable service) corresponds to section 126.

672 Paragraph 15 (administration charges) corresponds to section 127.

673 Paragraph 16 (categories of pension schemes: repeal of provisions of Pension Schemes Act (Northern Ireland) 2016) corresponds to section 128.

674 This paragraph repeals uncommenced provisions of the Pension Schemes Act (Northern Ireland) 2016 which have been superseded by the provisions in Part 2 of the Act.

Part 6: Final

Section 130: Extent

675 This section sets out the extent of the Act. More detail is given on page 12 of these notes. Subsection (4) provides that amendments or repeals made by this Act to other enactments have the same extent as the enactment concerned.

Section 131: Commencement

676 This section makes provision for the coming into force of the Act. Subsection (3) sets out the provisions which will come into force on the day the Act is passed. Subsection (2) sets out the provisions which will come into force on the day that the Department for Communities in Northern Ireland will appoint by order. The remainder of the Act will come into force on the day appointed in regulations made by the Secretary of State (subsection 1). Subsections (4) to (8) make further provision regarding regulations and orders under this section.

Section 132: Short title

677 This section states that the Act may be cited as the Pension Schemes Act 2021.

Commencement

678 The Act comes into force on the day appointed by the Secretary of State, subject to subsections (2) and (3).

679 Subsections (2) and (3) provide as follows:

- a. Subsection (2) lists provisions that come into force on a day appointed by order by the Department for Communities in Northern Ireland.
- b. Subsection (3) lists provisions that come into force on the day on which this Act is passed.

Related documents

680 The following documents are relevant to the Act and can be read at the stated locations:

- Delegated Powers and Regulatory Reform Committee: 4th / 7th / 8th / 16th Reports:
<https://committees.parliament.uk/committee/173/delegated-powers-and-regulatory-reform-committee/publications/reports/>
- House of Lords Select Committee on the Constitution: 2nd Report:
<https://committees.parliament.uk/publications/25/documents/553/default/>
- Bill Summary Impact Assessment (and individual Impact Assessments):
<https://services.parliament.uk/Bills/2019-21/pensionschemes/documents.html>
- Protecting defined benefit pension schemes March 2018:
<https://www.gov.uk/government/publications/protecting-defined-benefit-pension-schemes>
- Protecting Defined Benefit Pension Schemes – A Stronger Pensions Regulator - June 2018:
<https://www.gov.uk/government/consultations/protecting-defined-benefit-pension-schemes-a-stronger-pensions-regulator>
- Green Paper – Security and Sustainability in Defined Benefit Pension Schemes – February 2017:
<https://www.gov.uk/government/consultations/defined-benefit-pension-schemes-security-and-sustainability>
- Delivering collective defined contribution pension scheme March 2019:
<https://www.gov.uk/government/consultations/delivering-collective-defined-contribution-pension-schemes>
- Pensions dashboards: feasibility report and consultation:
<https://www.gov.uk/government/consultations/pensions-dashboards-feasibility-report-and-consultation>
- Pension scams August 2017:
<https://www.gov.uk/government/consultations/pension-scams>

Annex A – Hansard References

681 The following table sets out the dates and Hansard references for each stage of the Act's passage through Parliament.

Stage	Date	Hansard Reference
<i>House of Lords</i>		
Introduction	07 January 2020	Vol.801 Col.38
Second Reading	28 January 2020	Vol.801 Col.1351
Grand Committee		
First session	24 February 2020	Vol.802 Col.1GC
Second session	26 February 2020	Vol.802 Col.129GC
Third session	02 March 2020	Vol.802 Col.191GC
Fourth session	04 March 2020	Vol.802 Col.311GC
Report	30 June 2020	Vol.804 Col.577
Third Reading	15 July 2020	Vol.804 Col.1667
<i>House of Commons</i>		
Introduction	16 July 2020	Not referenced
Second Reading	07 October 2020	Vol.681 Col.909
Public Bill Committee		
First session	03 November 2020	Col.1
Second session	03 November 2020	Col.35
Third session	05 November 2020	Col.77
Fourth session	05 November 2020	Col.103
Report & Third Reading	16 November 2020	Vol.684 Col.55
Lords Consideration of Commons Amendments	19 January 2021	Vol.809 Col.1093
Royal Assent	11 February 2021	House of Commons: Vol.689 Col.504
		House of Lords: Vol.810 Col.477

Annex B – Progress of Bill Table

682 This Annex shows how each section and Schedule of the Act was numbered during the passage of the Bill through Parliament.

Section of the Act	Bill as Introduced in the Lords	Bill as amended in Committee in the Lords	Bill as introduced in the Commons	Bill as amended in Committee in the Commons	Bill as amended on Report in the Commons
Sections 1-123	Clauses 1 - 123	Clauses 1 - 123	Clauses 1 - 123	Clauses 1 - 123	Clauses 1 - 123
Section 124	-	Clause 124	Clause 124	Clause 124	Clause 124
Sections 125-132	Clauses 124 - 131	Clauses 125 - 132	Clauses 125 - 132	Clauses 125 - 132	Clauses 125 - 132

© Crown copyright 2021

Printed and published in the UK by The Stationery Office Limited under the authority and superintendence of Jeff James, Controller of Her Majesty's Stationery Office and Queen's Printer of Acts of Parliament.



a Williams Lea company

Published by TSO (The Stationery Office), a Williams Lea company,
and available from:

Online

www.tsoshop.co.uk

Mail, Telephone, Fax & E-mail

TSO

PO Box 29, Norwich, NR3 1GN

Telephone orders/General enquiries: 0333 202 5070

Fax orders: 0333 202 5080

E-mail: customer.services@tso.co.uk

Textphone: 0333 202 5077

TSO@Blackwell and other Accredited Agents

ISBN 978-0-10-560191-3



9 780105 601913