

2021 No. 950 (C. 51)

PENSIONS

**The Pension Schemes Act 2021 (Commencement No. 3 and
Transitional and Saving Provisions) Regulations 2021**

Made - - - -

24th August 2021

The Secretary of State for Work and Pensions, in exercise of the powers conferred by section 131(1), (4) and (5) of the Pension Schemes Act 2021(a), makes the following Regulations.

PART 1

Preliminary

Citation, interpretation and extent

1.—(1) These Regulations may be cited as the Pension Schemes Act 2021 (Commencement No. 3 and Transitional and Saving Provisions) Regulations 2021.

(2) In these Regulations—

“the Act” means the Pension Schemes Act 2021;

“the 2004 Act” means the Pensions Act 2004(b);

“the Regulator” means the Pensions Regulator.

(3) Subject to paragraph (4), these Regulations extend to England and Wales and Scotland.

(4) An amendment or repeal brought into force by regulation 2 has the same extent as the provision to which it relates.

PART 2

Appointed day

Commencement of provisions

2.—(1) The following provisions of the Act come into force on the day appointed by this regulation.

(2) The day appointed for the coming into force of section 127(2) of the Act (administration charges) for the purpose of making regulations only is 31st August 2021, and for all other purposes is immediately before 1st October 2021.

(a) 2021 c. 1.

(b) 2004 c. 35.

(3) The day appointed for the coming into force of the following provisions of the Act is 1st October 2021—

- (a) section 104 (reasonableness of issuing a contribution notice) except—
 - (i) section 104(1) so far as it relates to section 104(2); and
 - (ii) section 104(2);
- (b) section 105 (determination of sum specified in a contribution notice);
- (c) section 106 (sanctions for failure to comply with a contribution notice);
- (d) section 107 (sanctions for avoidance of employer debt etc);
- (e) section 108 (duty to notify the Regulator of certain events);
- (f) section 111 (inspection of premises) except—
 - (i) section 111(2)(a) so far as it inserts paragraph (dc) into section 73(2) of the 2004 Act^(a);
 - (ii) section 111(2)(b); and
 - (iii) section 111(1) so far as it relates to the amendments excepted by sub-paragraphs (i) and (ii);
- (g) section 113 (provision of false or misleading information to Regulator) except for the following provisions of the inserted section 80A of the 2004 Act^(b) (financial penalty for providing false or misleading information to Regulator)—
 - (i) paragraph (2)(a)(iv); and
 - (ii) paragraph (2)(c)(vi);
- (h) section 114 (provision of false or misleading information to trustees or managers);
- (i) section 115 (financial penalties); and
- (j) section 127(3) and (4).

(4) The day appointed for the coming into force of the following provisions in Schedule 7 to the Act (the Pensions Regulator: minor and consequential amendments) is 1st October 2021—

- (a) paragraph 1;
- (b) paragraph 2 except so far as it relates to the following provisions of Schedule 7—
 - (i) the reference in the amendment made by paragraph 7(3) to Part 1 of the Pension Schemes Act 2021;
 - (ii) paragraph 8(a); and
 - (iii) paragraph 12(2);
- (c) paragraphs 3 to 6;
- (d) paragraph 7 except for the reference in the amendment made by paragraph 7(3) to Part 1 of the Pension Schemes Act 2021;
- (e) paragraph 8 except for paragraph 8(a);
- (f) paragraphs 9 to 11; and
- (g) paragraph 12 except for paragraph 12(2).

(5) The day appointed for the coming into force of the following provisions of the Act for all remaining purposes is 1st October 2021—

- (a) section 103 (grounds for issuing a section 38 contribution notice);
- (b) section 110 (interviews); and
- (c) section 112 (fixed penalty notices and escalating penalty notices).

(a) Section 73 of the Pensions Act 2004 (c. 35) is amended by section 111 of the Pension Schemes Act 2021 (c. 1). There are other amendments made by other legislation but none is relevant.

(b) Section 80A of the Pensions Act 2004 is inserted by section 113 of the Pension Schemes Act 2021.

PART 3

Transitional and saving provisions

Transitional provision in respect of the Regulator's powers to impose contribution notices and sanctions for avoidance of employer debt and financial penalties

3.—(1) Paragraphs (2) to (5) apply where—

- (a) an act, failure to act or course of conduct occurred before 1st October 2021;
- (b) in the case of acts, failures to act or courses of conduct which form part of a series, any series where the first act, failure to act or instance of course of conduct occurred before 1st October 2021; or
- (c) in the case of a continuing failure, the failure first occurred before 1st October 2021.

(2) Sections 38 (contribution notices where avoidance of employer debt), 39 (the sum specified in a section 38 contribution notice), 40 (content and effect of a section 38 contribution notice) and 41 (section 38 contribution notice: relationship with employer debt) of the 2004 Act^(a) continue to apply as if the amendments made by sections 103 to 106 of the Act have not been brought into force.

(3) The amendments made by section 106(4) and (5) do not apply.

(4) The amendments made by section 107 of the Act do not apply.

(5) The amendments made by section 115 of the Act do not apply, but where a penalty notice is issued under section 88A of the 2004 Act^(b) (financial penalties) after 1st October 2021, section 88B of the 2004 Act^(c) (financial penalties: time for recovery) applies to contribution notices issued under section 38 of the 2004 Act before 1st October 2021.

Transitional provision in respect of the duty to notify the Regulator of certain events

4. Where a duty to notify the Regulator of any notifiable event under section 69 of the 2004 Act^(d) (duty to notify the Regulator of certain events) arises before 1st October 2021, sections 69 and 80^(e) of the 2004 Act (offences of providing false or misleading information) continue to apply as if the amendments made by section 108 of the Act have not been brought into force.

Transitional provision in respect of the Regulator's power to impose fixed and escalating penalty notices

5. The amendments made by section 112 of the Act do not apply in relation to—

- (a) a duty to comply with—
 - (i) a notice issued under section 72 of the 2004 Act^(f) (provision of information); or
 - (ii) a requirement under section 75 of the 2004 Act^(g) (inspection of premises: powers of inspectors),arising before 1st October 2021; or

(a) Sections 38 to 41 of the Pensions Act 2004 are amended by sections 103 to 106 of the Pension Schemes Act 2021. There are other amendments made by other legislation but none is relevant.

(b) Section 88A of the Pensions Act 2004 is inserted by section 115 of the Pension Schemes Act 2021.

(c) Section 88B of the Pensions Act 2004 is inserted by section 115 of the Pension Schemes Act 2021.

(d) Section 69 of the Pensions Act 2004 is amended by section 108 of the Pension Schemes Act 2021.

(e) Section 80 of the Pensions Act 2004 is amended by sections 108 and 116 of, and Schedule 7, to the Pension Schemes Act 2021.

(f) Section 72(1A) and (1B) of the Pensions Act 2004 is omitted by section 110 of the Pension Schemes Act 2021. There are other amendments made by other legislation but none is relevant.

(g) Section 75 of the Pensions Act 2004 is amended by section 116 of, and Schedule 7 to, the Pension Schemes Act 2021. There are other amendments made by other legislation but none is relevant.

- (b) any act occurring before 1st October 2021 which prevented or hindered an inspector exercising any power under section 73 (inspection of premises), section 74(a) (inspection of premises in respect of employers' obligations) or section 75 of the 2004 Act.

Transitional provision in respect of provision of false or misleading information to the Regulator

6. The amendments made by section 113 of the Act do not apply so far as they relate to information provided to the Regulator under the circumstances mentioned at section 80A(2)(a), (b) or (c) of the 2004 Act (financial penalty for providing false or misleading information to Regulator) before 1st October 2021.

Transitional provision in respect of provision of false or misleading information to trustees or managers

7. The amendments made by section 114 of the Act do not apply so far as they relate to information provided to a trustee or manager of a scheme under the circumstances mentioned at section 80B(3)(a) or (b) of the 2004 Act(b) (financial penalty for providing false or misleading information to trustees or managers) before 1st October 2021.

Saving provision in respect of the duty to notify the Regulator of certain events before 1st October 2021

8. Section 69 of the 2004 Act continues to have effect as if the amendments made by section 108(2) of the Act have not been brought into force, so far as it relates to any duty to notify the Regulator arising before 1st October 2021.

Saving provision in respect of interview notices issued before 1st October 2021

9. Section 72(1A) and (1B) of the 2004 Act continues to have effect, as if the amendments made by section 110(2) and (3) of the Act have not been brought into force where—

- (a) a notice has been issued under section 72(1A) of the 2004 Act before 1st October 2021; and
- (b) the duty imposed on the recipient of such a notice has yet to be discharged.

Saving provision in respect of the definition of “administration charge”

10.—(1) Subject to paragraph (2), the meaning given to “administration charge” in section 39 of the Pension Schemes Act 2017(c) (interpretation of Part 1) has effect as if the amendments made by section 127(2) of the Act have not been brought into force.

(2) The saving in paragraph (1) ceases to have effect on 5th April 2022.

Signed by the authority of the Secretary of State for Work and Pensions

Mims Davies
Parliamentary Under Secretary of State
Department for Work and Pensions

24th August 2021

(a) Section 74 of the Pensions Act 2004 is amended by section 61 of the Pensions Act 2008 (c. 30).
(b) Section 80B of the Pensions Act 2004 is inserted by section 114 of the Pension Schemes Act 2021.
(c) 2017 c. 17.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations bring into force provisions of the Pension Schemes Act 2021 (c. 1) (“the Act”). They are the third commencement regulations to be made under the Act. These Regulations also contain transitional and saving provisions in relation to certain provisions of the Act being brought into force by these Regulations.

Regulation 2 appoints the day for the coming into force of section 127(2) of the Act (administration charges) for the purpose only of making regulations by the Secretary of State as 31st August 2021 and for all other purposes as immediately before 1st October 2021.

In addition, regulation 2 appoints the day for the coming into force of the following provisions of the Act as 1st October 2021 subject to the prescribed exceptions: section 104 (reasonableness of issuing a contribution notice), section 105 (determination of sum specified in a contribution notice), section 106 (sanctions for failure to comply with a contribution notice), section 107 (sanctions for avoidance of employer debt etc), section 108 (duty to notify the Regulator of certain events), section 111 (inspection of premises), section 113 (provision of false or misleading information to Regulator), section 114 (provision of false or misleading information to trustees or managers), section 115 (financial penalties), section 127(3) and (4) and Schedule 7 (the Pensions Regulator: minor and consequential amendments). It also commences section 103 (grounds for issuing a section 38 contribution notice), section 110 (interviews) and section 112 (fixed penalty notices and escalating penalty notices) of the Act for all remaining purposes.

Section 103 of the Act amends section 38 of the Pensions Act 2004 (c. 35) (“the 2004 Act”) (contribution notices where avoidance of employer debt) and inserts new sections 38C to 38F which introduce the new employer insolvency test and employer resources test in connection with the contribution notice regime set out at sections 38 to 42 of the 2004 Act.

Section 104 of the Act amends section 38 of the 2004 Act by inserting additional matters the Pensions Regulator (“the Regulator”) can consider when deciding whether to impose a liability on a person to pay a contribution notice issued under section 38 of the 2004 Act (“contribution notice”).

Section 105 of the Act amends section 39 of the 2004 Act (the sum specified in a section 38 contribution notice) by substituting the relevant time for the purpose of determining the sum specified in a contribution notice.

Section 106 of the Act amends sections 40 (content and effect of a section 38 contribution notice) and 41 (section 38 contribution notice: relationship with employer debt) of the 2004 Act and inserts new sections 42A (offence for failing to comply with a section 38 contribution notice) and 42B (financial penalty for failure to comply with a section 38 contribution notice) which introduce a new offence and financial penalty for failure to comply with a contribution notice.

Section 107 of the Act inserts new sections 58A (offence of avoidance of employer debt), 58B (offence of conduct risking accrued scheme benefits), 58C (financial penalty for avoidance of employer debt) and 58D (financial penalty for conduct risking accrued scheme benefits) into the 2004 Act which introduce two new offences and two new financial penalties for avoidance of employer debt and conduct risking accrued scheme benefits.

Section 108 of the Act amends section 69 of the 2004 Act (duty to notify the Regulator of certain events) and substitutes the existing financial penalty the Regulator may issue under section 10 of the Pensions Act 1995 (c. 26) (civil penalties) with the new financial penalty at section 88A of the 2004 Act (financial penalties). It also amends section 80 of the 2004 Act (offences of providing false or misleading information to the Regulator) to create an offence for providing false or misleading information to the Regulator in relation to the duty to notify the Regulator under section 69 of the 2004 Act.

Section 110 of the Act inserts new section 72A into the 2004 Act (interviews) and introduces a power to enable the Regulator to require individuals to attend an interview. It also repeals the

existing section 72(1A) and (1B) of the 2004 Act (provision of information) which enables the Regulator to require persons to provide information or attend an interview in relation to matters relating to automatic enrolment or Master Trusts. It also amends section 77 of the 2004 Act (penalties relating to sections 72 to 75) to create an offence for neglecting or refusing to attend an interview before the Regulator without a reasonable excuse.

Section 111 of the Act amends section 73 of the 2004 Act (inspection of premises) to enable the Regulator to inspect premises, including the premises of a sponsoring employer of a pension scheme, for a wider range of purposes.

Section 112 of the Act inserts new sections 77A (fixed penalty notices) and 77B (escalating penalty notices) into the 2004 Act, which introduce powers to enable the Regulator to impose fixed penalty notices and escalating penalty notices for failures to comply with any of the obligations under section 72, 72A, 73, 74 (inspection of premises in respect of employer's obligations) or 75 (inspection of premises: powers of inspectors) of the 2004 Act.

Section 113 of the Act inserts new section 80A (financial penalty for providing false or misleading information to Regulator) into the 2004 Act which introduces a new financial penalty for providing false or misleading information to the Regulator where the information is provided in purported compliance with a specified requirement.

Section 114 of the Act inserts new section 80B (financial penalty for providing false or misleading information to trustees or managers) into the 2004 Act which introduces a new financial penalty for providing false or misleading information to the trustees or managers of a scheme where the information is provided in purported compliance in specified circumstances.

Section 115 of the Act inserts new sections 88A, 88B (financial penalties: time for recovery) and 88C (financial penalties: recovery) into the 2004 Act which introduce a power for the Regulator to impose a financial penalty. It also provides that where a financial penalty is issued under section 88A and at that time, the person on which the penalty is being imposed is also subject to one or more contribution notices, the Regulator may not seek to recover the financial penalty until such time as when the contribution notice has been paid, the specified date for payment of the contribution notice has past or, if earlier, the date on which the recipient of the financial penalty experiences a qualifying insolvency event.

Section 127(2) of the Act amends the definition of "administration charge" in paragraph 1(5) of Schedule 18 to the Pensions Act 2014 (c. 19) (power to restrict charges or impose requirements in relation to schemes) to clarify its scope. Section 127(3) and (4), respectively, amends section 113 of the Pension Schemes Act 1993 (c. 48) (disclosure of information about schemes to members etc) and section 137FA of the Financial Services and Markets Act 2000 (c. 8) (FCA general rules: disclosure of information about pension scheme transaction costs etc) to make it clear that transaction costs are a form of administration charge.

Schedule 7 to the Act (the Pensions Regulator: minor and consequential amendments) makes minor and consequential amendments to other legislation.

Regulations 3 to 7 make transitional provisions setting out how sections 38 to 41, sections 58A to 58D, section 69, sections 77A and 77B, sections 88A to 88C and sections 113 and 114 of the Act apply where the act, failure to act or course of conduct in question occurred before 1st October 2021.

Regulation 8 contains a saving measure to enable section 10 of the Pensions Act 1995 to continue to apply in relation to any non-compliance with the duty to notify the Regulator of any notifiable events pursuant to section 69 of the 2004 Act arising before 1st October 2021.

Regulation 9 contains a saving measure to enable section 72(1A) and (1B) of the 2004 Act to continue to have effect after the repeal of these provisions where a notice to attend an interview has been issued and the duty imposed has not yet been discharged.

Regulation 10 contains a saving measure to ensure that the meaning of "administration charge" in section 39 of the Pension Schemes Act 2017 (c. 17) (prior to the commencement of the

amendments made by section 127(2) of the Act) continues to have effect. This measure will cease to have effect on 5th April 2022.

An impact assessment has been produced in relation to the provisions of the Pension Schemes Act 2021 and a copy is available at www.legislation.gov.uk. A hard copy of this impact assessment can be obtained from the Department for Work and Pensions, First Floor, Caxton House, Tothill Street, London SW1H 9NA.

NOTE AS TO EARLIER COMMENCEMENT REGULATIONS

(This note is not part of the Regulations)

The following provisions of the Pension Schemes Act 2021 (c. 1) have been brought into force by commencement regulations made before the date of these Regulations:

<i>Provision</i>	<i>Date of Commencement</i>	<i>S.I. No.</i>
Section 103(4) (partially)	31.05.2021	2021/620
Section 109(2) (partially)	31.05.2021	2021/620
Section 110(2) (partially)	31.05.2021	2021/620
Section 112 (partially)	31.05.2021	2021/620
Section 116 (partially)	31.05.2021	2021/620
Section 116 (partially)	25.06.2021	2021/752
Section 124	31.05.2021	2021/620
Section 125(2) and (6) (partially)	31.05.2021	2021/620
Section 126	31.05.2021	2021/620
Paragraph 2 of Schedule 7 (partially)	31.05.2021	2021/620
Paragraphs 2 and 12(1) of Schedule 7 (partially)	25.06.2021	2021/752
Paragraph 8(a) of Schedule 7	31.05.2021	2021/620
Paragraph 12(2) of Schedule 7	25.06.2021	2021/752

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