

# Pensions Bill

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## EXPLANATORY NOTES

Explanatory notes to the Bill, prepared by the Department for Work and Pensions, are published separately as EN – 57.

## EUROPEAN CONVENTION ON HUMAN RIGHTS

Mr Secretary Smith has made the following statement under section 19(1)(a) of the Human Rights Act 1998:

In my view the provisions of the Pensions Bill are compatible with the Convention rights.

# Pensions Bill

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Make provision relating to pensions and financial planning for retirement and provision relating to entitlement to bereavement payments, and for connected purposes.

**B**E IT ENACTED by the Queen’s most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

**PART 1**

THE PENSIONS REGULATOR

*Establishment*

**1 The Pensions Regulator**

There shall be a body corporate called the Pensions Regulator (in this Act referred to as “the Regulator”). 5

**2 Membership of the Regulator**

- (1) The Regulator is to consist of the following members—
- (a) a chairman appointed by the Secretary of State,
  - (b) the Chief Executive of the Regulator, and 10
  - (c) at least five other persons appointed by the Secretary of State after consulting the chairman.
- (2) The chairman must not be appointed from the staff of the Regulator or be the chairman of the Board of the Pension Protection Fund (see section 82).
- (3) At least two of the members appointed under subsection (1)(c) must be appointed from the staff of the Regulator. 15
- (4) In appointing persons under subsection (1)(c) the Secretary of State must secure that a majority of the members of the Regulator are non-executive members.

- (5) No member of the staff of the Board of the Pension Protection Fund is eligible for appointment as a member of the Regulator.
- (6) In this Part—
- (a) references to executive members of the Regulator are to—
    - (i) the Chief Executive, and 5
    - (ii) the members appointed under subsection (1)(c) from the staff of the Regulator, and
  - (b) references to non-executive members of the Regulator are to members who are not executive members.
- 3 Further provision about the Regulator 10**
- Schedule 1 makes further provision about the Regulator, including provision as to—
- the terms of appointment, tenure and remuneration of members,
  - the appointment of the Chief Executive and other staff,
  - the proceedings of the Regulator, 15
  - its funding and accounts, and
  - the status and liability of the Regulator, its members and staff.
- General provisions about functions*
- 4 Regulator’s functions**
- (1) The Regulator has— 20
- (a) the functions transferred to it from the Occupational Pensions Regulatory Authority by virtue of this Act or any provisions in force in Northern Ireland corresponding to this Act, and
  - (b) any other functions conferred by, or by virtue of, this or any other enactment. 25
- (2) As regards the exercise of the Regulator’s functions—
- (a) the non-executive functions listed in section 9(3) must be discharged by the Non-Executive Committee by virtue of section 9(2),
  - (b) the functions mentioned in the following provisions are exercisable only by the Determinations Panel— 30
    - (i) section 11(1) (the power in certain circumstances to determine whether to exercise the functions listed in Schedule 2 and to exercise them), and
    - (ii) section 73(8) (the functions concerning the compulsory review of certain determinations), and 35
  - (c) the exercise of other functions of the Regulator may be delegated by the Regulator under paragraph 20 of Schedule 1.
- (3) Subsection (2) is subject to any regulations made by the Secretary of State under paragraph 21 of Schedule 1 (power to limit or permit delegation of functions). 40
- 5 Regulator’s objectives**
- (1) The main objectives of the Regulator in exercising its functions are—

- (a) to protect the benefits under occupational pension schemes of, or in respect of, members of such schemes,
  - (b) to protect the benefits under personal pension schemes of, or in respect of, members of such schemes within subsection (2),
  - (c) to reduce the risk of situations arising which may lead to compensation being payable from the Pension Protection Fund (see Part 2), and 5
  - (d) to promote, and to improve understanding of, the good administration of work-based pension schemes.
- (2) For the purposes of subsection (1)(b) the members of personal pension schemes within this subsection are – 10
- (a) the members who are employees in respect of whom direct payment arrangements exist, and
  - (b) where the scheme is a stakeholder pension scheme, any other members.
- (3) In this section –
- “stakeholder pension scheme” means a personal pension scheme which – 15
    - (a) in the case of a scheme established under a trust, is or has been registered under section 2 of the Welfare Reform and Pensions Act 1999 (c. 30) (stakeholder pension schemes), or
    - (b) in any other case, is registered under that section, and
  - “work-based pension scheme” means – 20
    - (a) an occupational pension scheme,
    - (b) a personal pension scheme where direct payment arrangements exist in respect of one or more members of the scheme who are employees, or
    - (c) a stakeholder pension scheme. 25

## 6 Supplementary powers

The Regulator may do anything (except borrow money) which –

- (a) is calculated to facilitate the exercise of its functions, or
- (b) is incidental or conducive to their exercise.

## 7 Transfer of OPRA’s functions to the Regulator 30

- (1) Subject to the provisions of this Act, the functions of the Occupational Pensions Regulatory Authority (“OPRA”) conferred by or by virtue of –
- (a) the Pension Schemes Act 1993 (c. 48),
  - (b) the Pensions Act 1995 (c. 26), and
  - (c) the Welfare Reform and Pensions Act 1999, 35
- are hereby transferred to the Regulator.
- (2) Accordingly –
- (a) in section 181(1) of the Pension Schemes Act 1993 (which defines “the Regulatory Authority” to mean OPRA), for the definition of “the Regulatory Authority” substitute – 40
    - ““the Regulatory Authority” means the Pensions Regulator;”
  - (b) in section 124(1) of the Pensions Act 1995 (which defines “the Authority”, in Part 1 of that Act, to mean OPRA), for the definition of “the Authority” substitute – 45
    - ““the Authority” means the Pensions Regulator;”

- (c) in section 8 of the Welfare Reform and Pensions Act 1999 (c. 30) (which defines “the Authority”, in Part 1 of that Act to mean OPRA), for the definition of “the Authority” substitute –  
     ““the Authority” means the Pensions Regulator;”, and
- (d) in section 33 of that Act (time for discharge of pension credit liability), in subsection (5) for “the Occupational Pensions Regulatory Authority” substitute “the Pensions Regulator”. 5

*The Non-Executive Committee and the Determinations Panel*

**8 The Non-Executive Committee**

- (1) The Regulator must establish and maintain a committee consisting of – 10  
     (a) the chairman of the Regulator, and  
     (b) the other non-executive members of the Regulator,  
 (in this Part referred to as “the Non-Executive Committee”).
- (2) The chairman of the Regulator is to be the chairman of the Non-Executive Committee. 15
- (3) The Non-Executive Committee may establish sub-committees.
- (4) The members of any such sub-committee –  
     (a) may include persons who are not members of the Non-Executive Committee or of the Regulator, but  
     (b) must not include persons who are executive members or other staff of the Regulator. 20

**9 Functions exercisable by the Non-Executive Committee**

- (1) The functions listed in subsection (3) (in this Part referred to as “the non-executive functions”) are functions of the Regulator.
- (2) The non-executive functions must be discharged on behalf of the Regulator by the Non-Executive Committee (and are not otherwise dischargeable by or on behalf of the Regulator). 25
- (3) The non-executive functions are –  
     (a) the duty to contribute to and keep under review the strategic direction of the Regulator; 30  
     (b) the duty to scrutinise the performance of the Chief Executive in securing that the functions of the Regulator are exercised efficiently and effectively;  
     (c) the duty to monitor the extent to which the Regulator is meeting its objectives and targets (including its main objectives as set out in section 5 or in any corresponding provision in force in Northern Ireland); 35  
     (d) the duty to monitor the Regulator’s reporting of its activities to the Secretary of State under section 12;  
     (e) the duty to keep under review the question whether the Regulator’s internal financial controls secure the proper conduct of its financial affairs; 40  
     (f) the duty to determine under paragraph 8(4)(b) of Schedule 1, subject to the approval of the Secretary of State, the terms and conditions as to

remuneration of any Chief Executive appointed under paragraph 8(4)(a) of that Schedule.

- (4) The Non-Executive Committee must prepare a report on the discharge of the non-executive functions for inclusion in the Regulator’s annual report to the Secretary of State under section 12. 5
- (5) The Non-Executive Committee’s report must relate to the same period as that covered by the Regulator’s report.
- (6) The Non-Executive Committee may authorise any of its members or any of its sub-committees to discharge on its behalf – 10
  - (a) any of the non-executive functions;
  - (b) the duty to prepare a report under subsection (4).
- (7) The Non-Executive Committee (or any of its sub-committees) may be authorised under paragraph 20(1) of Schedule 1 to exercise further functions of the Regulator.
- (8) This section is subject to any regulations made by the Secretary of State under paragraph 21 of Schedule 1 (power to limit or permit delegation of functions). 15

## 10 The Determinations Panel

- (1) The Regulator must establish and maintain a committee consisting of – 20
  - (a) a chairman, and
  - (b) at least six other persons,(in this Part referred to as “the Determinations Panel”).
- (2) The Regulator must appoint as the chairman of the Panel the person nominated in accordance with paragraph 11 of Schedule 1 (nomination by a committee established by the chairman of the Regulator).
- (3) The chairman of the Panel must – 25
  - (a) decide the number of persons to be appointed as the other members of the Panel, and
  - (b) nominate a person suitable for each of those appointments.
- (4) The Regulator must then appoint as the other members of the Panel the persons nominated by the chairman of the Panel. 30
- (5) The following are ineligible for appointment as members of the Panel – 35
  - (a) any member of the Regulator;
  - (b) any member of the staff of the Regulator;
  - (c) any member of the Board of the Pension Protection Fund;
  - (d) any member of the staff of that Board.
- (6) The Panel may establish sub-committees consisting of members of the Panel.
- (7) Further provision about the Panel is made in Schedule 1 including provision as to the terms of appointment, tenure and remuneration of members and as to its procedure.

## 11 Functions exercisable by the Determinations Panel 40

- (1) The Determinations Panel is to exercise on behalf of the Regulator –

- 
- (a) the power to determine, in the circumstances described in subsection (2), whether to exercise a reserved regulatory function, and
- (b) where it so determines to exercise a reserved regulatory function, the power to exercise the function in question.
- (2) Those circumstances are— 5
- (a) where the Regulator considers that the exercise of the reserved regulatory function may be appropriate, or
- (b) where an application is made under or by virtue of any of the provisions listed in subsection (6) for the Regulator to exercise the reserved regulatory function. 10
- (3) Where subsection (1) applies, the powers mentioned in that subsection are not otherwise exercisable by or on behalf of the Regulator.
- (4) For the purposes of this Part, a function of the Regulator is a “reserved regulatory function” if it is a function listed in Schedule 2.
- (5) Regulations may amend Schedule 2 by— 15
- (a) adding any function of the Regulator conferred by, or by virtue of, this or any other enactment,
- (b) omitting any such function, or
- (c) altering the description of any such function contained in that Schedule. 20
- (6) The provisions referred to in subsection (2)(b) are—
- (a) section 23(2) (application for order validating action taken in contravention of freezing order);
- (b) section 3(3) of the Pensions Act 1995 (c. 26) (application for revocation of prohibition order); 25
- (c) section 4(5) of that Act (application for revocation of a suspension order);
- (d) section 7(5A) of that Act (application for appointment of a trustee under section 7(3)(a) or (c) of that Act);
- (e) section 29(5) of that Act (application for waiver of disqualification); 30
- (f) section 69(1) of that Act (application for order authorising modification or modifying a scheme);
- (g) section 71A(2) of that Act (application for modifying a scheme to secure winding up);
- (h) section 99(4A) of the Pension Schemes Act 1993 (application for extension under section 99(4) of that Act of a period for compliance); 35
- (i) section 101J(6)(a) of that Act (application for extension under section 101J(2) of that Act of a period for compliance).
- (7) The Panel may be authorised under paragraph 20(4) or (6) of Schedule 1 to exercise further functions of the Regulator on behalf of the Regulator. 40
- (8) The Panel may authorise any of its members or any of its sub-committees to exercise on its behalf—
- (a) any of the functions of the Regulator which are exercisable by the Panel on behalf of the Regulator, or
- (b) the functions of the Panel under section 67(3), section 73(9) and paragraph 18(2) of Schedule 1 (procedure). 45

- (9) This section is subject to any regulations made by the Secretary of State under paragraph 21 of Schedule 1 (power to limit or permit delegation of functions).

*Annual report*

**12 Annual reports to Secretary of State**

- (1) The Regulator must prepare a report for each financial year. 5
- (2) Each report –
- (a) must deal with the activities of the Regulator in the financial year for which it is prepared, and
  - (b) must include the report prepared by the Non-Executive Committee under section 9(4). 10
- (3) The Regulator must send each report to the Secretary of State as soon as practicable after the end of the financial year for which it is prepared.
- (4) The Secretary of State must lay before each House of Parliament a copy of every report received by him under this section.
- (5) In this section “financial year” means – 15
- (a) the period beginning with the date on which the Regulator is established and ending with the next following 31st March, and
  - (b) each successive period of 12 months.

*Provision of information, education and assistance*

**13 Provision of information, education and assistance** 20

- (1) The Regulator may provide such information, education and assistance as it considers appropriate to those involved in –
- (a) the administration of work-based pension schemes, or
  - (b) advising the trustees or managers in relation to such schemes as to their operation. 25
- (2) To the extent that it is not authorised to do so under subsection (1), the Regulator may also provide such information, education and assistance as it considers appropriate to –
- (a) employers in relation to work-based pension schemes,
  - (b) persons involved in advising such employers as to the operation of such schemes, or 30
  - (c) persons upon whom duties are imposed by or by virtue of section 195 (information and advice to employees).
- (3) For the purposes of subsection (2), “employers in relation to work-based pension schemes” means, in the case of stakeholder pension schemes, the persons upon whom duties are imposed by or by virtue of section 3 of the Welfare Reform and Pensions Act 1999 (c. 30) (duty of employers to facilitate access to stakeholder pension schemes). 35
- (4) In this section –
- “assistance” does not include financial assistance, and 40

“stakeholder pension scheme” and “work-based pension scheme” have the same meaning as in section 5 (Regulator’s objectives).

*New regulatory powers of the Regulator*

**14 Improvement notices**

- |     |  |    |
|-----|--|----|
| (1) | If the Regulator is of the opinion that a person –   | 5  |
|     | (a) is contravening one or more provisions of the pensions legislation, or   |    |
|     | (b) has contravened one or more of those provisions in circumstances that make it likely that the contravention will continue or be repeated,  |    |
|     | it may issue a notice (an “improvement notice”) to that person directing him to take such steps as are specified in the notice to remedy or prevent a recurrence of the contravention.   | 10 |
| (2) | An improvement notice must –   |    |
|     | (a) state that the Regulator is of that opinion and specify the provision or provisions of the pensions legislation in question,   |    |
|     | (b) contain a statement of the matters which it is asserted constitute the contravention and of the evidence on which that opinion is based, and   | 15 |
|     | (c) in respect of each step specified in the notice, state the period (being a period of not less than 21 days beginning with the date of the notice) within which it must be complied with.   |    |
| (3) | Directions in an improvement notice –  | 20 |
|     | (a) may be framed to any extent by reference to a code of practice issued by the Regulator under section 64, and   |    |
|     | (b) may be framed so as to afford the person in respect of whom the notice is given a choice between different ways of remedying or preventing the recurrence of the contravention.  | 25 |
| (4) | Directions in an improvement notice may be expressed to be conditional on compliance by a third party with a specified direction, or specified directions, contained in a notice under section 15 (third party notices).   |    |
| (5) | An improvement notice may direct the person in respect of whom it is issued to inform the Regulator, within such period as may be specified in the notice, of the steps that he has taken, or is taking, in pursuance of the notice.   | 30 |
| (6) | Where a contravention of a provision of the pensions legislation consists of a failure to take action within a time limit, for the purposes of this section the contravention continues until such time as the action is taken.  |    |
| (7) | In this section “pensions legislation” means any enactment contained in or made by virtue of –   | 35 |
|     | (a) the Pension Schemes Act 1993 (c. 48),  |    |
|     | (b) Part 1 of the Pensions Act 1995 (c. 26), other than sections 62 to 66A of that Act (equal treatment),  |    |
|     | (c) Part 1 of the Welfare Reform and Pensions Act 1999 (c. 30), or   | 40 |
|     | (d) this Act.  |    |
| (8) | If the trustees or managers of an occupational or personal pension scheme fail to comply with an improvement notice issued to them, section 10 of the Pensions Act 1995 (civil penalties) applies to any trustee or manager who has failed to take all reasonable steps to secure such compliance. | 45 |

- (9) That section also applies to any other person who, without reasonable excuse, fails to comply with an improvement notice issued to him.

## 15 Third party notices

- (1) Where the Regulator is of the opinion that –
- (a) a person – 5
    - (i) is contravening one or more provisions of the pensions legislation, or
    - (ii) has contravened one or more of those provisions in circumstances that make it likely that the contravention will continue or be repeated, 10
  - (b) the contravention is or was, wholly or partly, a result of a failure of another person (“the third party”) to do any thing, and
  - (c) that failure is not itself a contravention of the pensions legislation, the Regulator may issue a notice (a “third party notice”) directing the third party to take such steps as are specified in the notice to remedy or prevent a recurrence of his failure. 15
- (2) A third party notice must –
- (a) state that the Regulator is of that opinion and specify the provision or provisions of the pensions legislation in question,
  - (b) contain a statement of – 20
    - (i) the matters which it is asserted constitute the contravention of the provision or provisions, and
    - (ii) the matters which it is asserted constitute the failure by the third party, and the evidence on which that opinion is based, and 25
  - (c) in respect of each step specified in the notice, state the period (being a period of not less than 21 days beginning with the date of the notice) within which it must be complied with.
- (3) Directions in a third party notice may be framed so as to afford the third party a choice between different ways of remedying or preventing the recurrence of his failure. 30
- (4) A third party notice may direct the third party to inform the Regulator, within such period as may be specified in the notice, of the steps that he has taken, or is taking, in pursuance of the notice.
- (5) Where a contravention of a provision of the pensions legislation consists of a failure to do any thing within a time limit, for the purposes of this section the contravention continues until such time as the action is taken. 35
- (6) Section 10 of the Pensions Act 1995 (c. 26) (civil penalties) applies to a person who, without reasonable excuse, fails to comply with a third party notice issued to him. 40
- (7) No duty to which a person is subject is to be regarded as contravened merely because of anything required to be done in compliance with a third party notice.  
This is subject to section 234 (protected items).
- (8) In this section “pensions legislation” has the same meaning as in section 14. 45

**16 Injunctions and interdicts**

- (1) If, on the application of the Regulator, the court is satisfied that –
- (a) there is a reasonable likelihood that a particular person will do any act which constitutes a misuse or misappropriation of any of the assets of an occupational or personal pension scheme, or 5
  - (b) that a particular person has done any such act and that there is a reasonable likelihood that he will continue or repeat the act in question or do a similar act,
- the court may grant an injunction restraining him from doing so or, in Scotland, an interdict prohibiting him from doing so. 10
- (2) The jurisdiction conferred by this section is exercisable by the High Court or the Court of Session.

**17 Restitution**

- (1) If, on the application of the Regulator, the court is satisfied that there has been a misuse or misappropriation of any of the assets of an occupational or personal pension scheme, it may order any person involved to take such steps as the court may direct for restoring the parties to the position in which they were before the misuse or misappropriation occurred. 15
- (2) For this purpose a person is “involved” if he appears to the court to have been knowingly concerned in the misuse or misappropriation of the assets. 20
- (3) The jurisdiction conferred by this section is exercisable by the High Court or the Court of Session.

**18 Power of the Regulator to recover unpaid contributions**

- (1) Where any employer contribution payable towards an occupational or personal pension scheme is not paid on or before its due date, the Regulator may, on behalf of the trustees or managers of the scheme, exercise such powers as the trustees or managers have to recover that contribution. 25
- (2) For the purposes of subsection (1), any employer contribution payable towards a personal pension scheme which is not paid on or before its due date is, if not a debt due from the employer to the trustees or managers apart from this subsection, to be treated as if it were such a debt. 30
- (3) In this section –
- “due date” –
  - (a) in relation to employer contributions payable towards an occupational pension scheme in accordance with a schedule of contributions under section 184, has the same meaning as in section 185, 35
  - (b) in relation to employer contributions payable in accordance with a payment schedule under section 87 of the Pensions Act 1995 (c. 26) (schedules of payments to money purchase schemes), has the meaning given in subsection (2)(c) of that section, and 40
  - (c) in relation to contributions within subsection (2) above, has the same meaning as in section 111A of the Pension Schemes Act 1993 (c. 48) (monitoring of employer payments to personal pension schemes); 45

“employer contribution” –

- (a) in relation to an occupational pension scheme, means any contribution payable by or on behalf of the employer towards the scheme in accordance with a schedule of contributions under section 184 of this Act or a payment schedule under section 87 of the Pensions Act 1995 (c. 26) (schedules of payments to money purchase schemes) whether –
  - (i) on the employer’s own account (but in respect of one or more employees), or
  - (ii) on behalf of an employee out of deductions from the employee’s earnings, and
- (b) in relation to a personal pension scheme, means any contribution payable towards the scheme under direct payment arrangements.

*Powers in relation to winding up of occupational pension schemes* 15

## 19 Powers to wind up occupational pension schemes

In section 11 of the Pensions Act 1995 (powers to wind up occupational pension schemes) –

- (a) omit subsection (3),
- (b) before subsection (4) insert – 20

“(3A) The Authority may, during an assessment period (within the meaning of section 104 of the Pensions Act 2004 (Board of the Pension Protection Fund)) in relation to an occupational pension scheme, by order direct the scheme to be wound up if they are satisfied that it is necessary to do so in order – 25

- (a) to ensure that the scheme’s protected liabilities do not exceed its assets, or
- (b) if those liabilities do exceed its assets, to keep the excess to a minimum.

(3B) In subsection (3A) – 30

- (a) “protected liabilities” has the meaning given in section 103 of the Pensions Act 2004, and
- (b) references to the assets of the scheme are references to those assets excluding any assets representing the value of any rights in respect of money purchase benefits (within the meaning of that Act) under the scheme.” 35

- (c) at the end of subsection (4) insert –

“This subsection is subject to sections 24 and 107, of the Pensions Act 2004 (winding up order made when freezing order has effect in relation to scheme or during assessment period under Part 2 of that Act).”, and 40

- (d) after subsection (6) insert –

“(6A) Subsection (6) does not have effect to authorise the Authority to make an order as mentioned in paragraph (a) or (b) of that subsection, if their doing so would be unlawful as a result of section 6(1) of the Human Rights Act 1998 (unlawful for public authority to act in contravention of a Convention right).” 45

**20 Freezing order**

- (1) This section applies to an occupational pension scheme which is not a money purchase scheme.
- (2) The Regulator may make a freezing order in relation to such a scheme if and only if – 5
- (a) the order is made pending consideration being given to the making of an order in relation to the scheme under section 11(1)(c) of the Pensions Act 1995 (c. 26) (power to wind up schemes where necessary to protect the generality of members), and
  - (b) the Regulator is satisfied that – 10
    - (i) there is, or is likely to be if the order is not made, an immediate risk to the interests of members under the scheme or the assets of the scheme, and
    - (ii) it is necessary to make the freezing order to protect the interests of the generality of the members of the scheme. 15
- But no freezing order may be made in relation to a scheme during an assessment period (within the meaning of section 104) (see section 107(7)).
- (3) A freezing order is an order directing that during the period for which it has effect –
- (a) no benefits are to accrue under the scheme to, or in respect of, members of the scheme, and 20
  - (b) winding up of the scheme may not begin.
- (4) A freezing order may also contain one or more of the following directions which have effect during the period for which the order has effect –
- (a) a direction that no new members, or no specified classes of new member, are to be admitted to the scheme; 25
  - (b) a direction that –
    - (i) no further contributions or payments, or
    - (ii) no further specified contributions or payments,
 are to be paid towards the scheme by or on behalf of any members or any specified members of the scheme; 30
  - (c) a direction that, any amount or any specified amount which –
    - (i) corresponds to any contribution which would be due to be paid towards the scheme on behalf of a member but for a direction under paragraph (b), and 35
    - (ii) has been deducted from a payment of any earnings in respect of an employment,
 is to be repaid to the member in question by the employer;
  - (d) a direction that no benefits, or no specified benefits, are to be paid to or in respect of any members or any specified members under the scheme; 40
  - (e) a direction that payments of all benefits or specified benefits under the scheme to or in respect of all the members or specified members may only be made from the scheme if they are reduced in a specified manner or by a specified amount;
  - (f) a direction that – 45
    - (i) no transfers or no specified transfers of, or no transfer payments or no specified transfer payments in respect of, any member's rights under the scheme are to be made from the scheme, or

- (ii) transfers or specified transfers of, or transfer payments or specified transfer payments in respect of, any member’s rights under the scheme may only be made from the scheme if they are determined in a specified manner and satisfy such other conditions as may be specified; 5
    - (g) a direction that no statements of entitlement are to be provided to members of the scheme under section 93A of the Pension Schemes Act 1993 (c. 48) (salary related schemes: right to statement of entitlement).
- (5) For the purposes of subsection (4)(b)–
  - (a) the references to contributions do not include contributions due to be paid before the order takes effect, and 10
  - (b) the references to payments towards a scheme include payments in respect of pension credits where the person entitled to the credit is a member of the scheme.
- (6) A freezing order may not contain a direction under subsection (4)(d) or (e) which reduces the benefits payable to or in respect of a member, for the period during which the order has effect, below the level to which the trustees or managers of the scheme would have power to reduce them if a winding up of the scheme had begun at the time when the freezing order took effect. 15
- (7) A freezing order may also require the trustees or managers of the scheme to obtain an actuarial valuation within a specified period. 20
- (8) A freezing order containing such a requirement must specify –
  - (a) the date by reference to which the assets and liabilities are to be valued,
  - (b) the assets and liabilities which are to be taken into account,
  - (c) the manner in which the valuation must be prepared, 25
  - (d) the information and statements which it must contain, and
  - (e) any other requirements that the valuation must satisfy.
- (9) For the purposes of subsection (7) –
  - “an actuarial valuation” means a written valuation of the scheme’s assets and liabilities prepared and signed by the actuary, and 30
  - “the actuary” means –
    - (a) the actuary appointed under section 47(1)(b) of the Pensions Act 1995 (c. 26) (professional advisers) in relation to the scheme, or
    - (b) if no such actuary has been appointed –
      - (i) a person with prescribed qualifications or experience, or 35
      - (ii) a person approved by the Secretary of State.
- (10) In this section “specified” means specified in the freezing order.

## 21 Consequences of freezing order

- (1) If a freezing order is made in relation to a scheme any action taken in contravention of the order is void except to the extent that the action is validated by an order under section 23. 40
- (2) A freezing order in relation to a scheme does not prevent any increase in a benefit which is an increase which would otherwise accrue, in accordance with the scheme or any enactment, during the period for which the order has effect unless the order contains a direction to the contrary. 45

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- (3) A freezing order in relation to a scheme does not prevent the scheme being wound up in pursuance of an order under section 11 of the Pensions Act 1995 (c. 26) (power to wind up occupational pension schemes).
- (4) If a freezing order contains a direction under section 20(4)(b) that no further contributions, or no further specified contributions, are to be paid towards a scheme during the period for which the order has effect – 5
- (a) any contributions which are the subject of the direction and which would otherwise be due to be paid towards the scheme during that period are to be treated as if they do not fall due, and
- (b) any obligation to pay those contributions (including any obligation under section 49(8) of the Pensions Act 1995 to pay amounts deducted corresponding to such contributions) is to be treated as if it does not arise. 10
- (5) If a freezing order contains a direction under section 20(4)(f) (no transfers of member’s rights etc from the scheme) it does not prevent giving effect to – 15
- (a) a pension sharing order or provision, or
- (b) a pension earmarking order.
- (6) For the purposes of subsection (5) –
- “pension sharing order or provision” means an order or provision falling within section 28(1) of the Welfare Reform and Pensions Act 1999 (c. 30) (activation of pension sharing), and 20
- “pension earmarking order” means –
- (a) an order under section 23 of the Matrimonial Causes Act 1973 (c. 18) (financial provision orders in connection with divorce etc) so far as it includes provision made by virtue of section 25B or 25C of that Act (powers to include provision about pensions), 25
- (b) an order under section 12A(2) or (3) of the Family Law (Scotland) Act 1985 (c. 37) (powers in relation to pension lump sums when making a capital sum order), or
- (c) an order under Article 25 of the Matrimonial Causes (Northern Ireland) Order 1978 (S.I. 1978/1045 (N.I.15)) so far as it includes provision made by virtue of Article 27B or 27C of that Order (Northern Ireland powers corresponding to those mentioned in paragraph (a)). 30
- (7) Regulations may modify any provisions of Chapter 4 of Part 4 of the Pension Schemes Act 1993 (c. 48) (protection for early leavers: transfer values) in their application to an occupational pension scheme in relation to which a freezing order is made containing a direction under section 20(4)(f) (no transfers of member’s rights etc from the scheme). 35
- (8) Disregarding subsection (1), if a freezing order made in relation to a scheme is not complied with, section 10 of the Pensions Act 1995 (civil penalties) applies to any trustee or manager of the scheme who has failed to take all reasonable steps to secure compliance. 40
- (9) Subsection (8) does not apply in the case of non-compliance with a direction under section 20(4)(c) (direction that certain deducted contributions are to be repaid by the employer). 45
- (10) In such a case, section 10 of the Pensions Act 1995 (civil penalties) applies to an employer who, without reasonable excuse, fails to repay an amount as required by the direction.

## **22 Period of effect etc of freezing order**

- (1) A freezing order must specify the period for which it has effect.
- (2) The period specified must not exceed three months.
- (3) The Regulator may on one or more occasions by order extend the period for which the order has effect. 5
- (4) But the total period for which the order has effect must not exceed six months.
- (5) This section is subject to sections 24 and 25 (effect of winding up and assessment period on freezing orders).

## **23 Validation of action in contravention of freezing order**

- (1) If a freezing order is made in relation to a scheme, the Regulator may by order validate action taken in contravention of the order. 10
- (2) Any of the following persons may apply to the Regulator for an order under this section validating particular action –
  - (a) the trustees or managers of the scheme;
  - (b) any person directly affected by the action. 15

## **24 Effect of winding up of scheme on freezing order**

- (1) This section applies where –
  - (a) an order is made under section 11 of the Pensions Act 1995 (c. 26) (“the 1995 Act”) (power to wind up occupational pension schemes) in relation to a scheme, and 20
  - (b) the order is made during the period for which a freezing order has effect in relation to the scheme.
- (2) In such a case –
  - (a) the winding up of the scheme in pursuance of the order under section 11 of the 1995 Act is to be taken as beginning at the time when the freezing order took effect, and 25
  - (b) the freezing order ceases to have effect from the time when the order under section 11 of the 1995 Act is made.
- (3) The Regulator may by order direct any specified person –
  - (a) to take such specified steps as it considers are necessary as a result of the winding up of the scheme being deemed under subsection (2)(a) to have begun at the time when the freezing order took effect, and 30
  - (b) to take those steps within a specified period.
- (4) Section 10 of the 1995 Act (civil penalties) applies to a person who, without reasonable excuse, fails to comply with a direction to him contained in an order under this section. 35
- (5) In this section “specified” means specified in an order under this section.

## **25 Effect of assessment period under Part 2 on freezing order**

Where an assessment period (within the meaning of section 104) begins in relation to a scheme, any freezing order in relation to the scheme ceases to have effect when the assessment period begins. 40

**26 Power to give a direction where freezing order ceases to have effect**

- (1) This section applies where –
- (a) the Regulator revokes a freezing order in relation to a scheme or it otherwise ceases to have effect, and
  - (b) at the time when the freezing order ceases to have effect, the Regulator has not made an order under section 11 of the Pensions Act 1995 (c. 26) (“the 1995 Act”) in relation to the scheme. 5
- (2) In such a case the Regulator may make an order under this section in relation to the scheme containing a direction that, if specified conditions are met, specified benefits are to accrue under the scheme to, or in respect of, specified members of the scheme in respect of specified periods of service being service in employment which but for the freezing order would have qualified the member in question for those benefits under the scheme. 10
- (3) The conditions mentioned in subsection (2) may include –
- (a) a requirement that specified benefits do not accrue to, or in respect of, a member or a specified member unless an election is made by or on behalf of the member that they are to accrue; 15
  - (b) a requirement that specified benefits do not accrue to, or in respect of, a member or a specified member unless a contribution of a specified amount is paid by or on behalf of the member towards the scheme within a specified period; 20
  - (c) a requirement that a contribution of a specified amount must be paid by or on behalf of the employer within a specified period;
  - (d) a requirement that such contributions as are specified under paragraph (b) or (c) are to be accepted for the period for which the freezing order had effect or any part of that period. 25
- (4) Where the freezing order contained a direction under section 20(4)(d) or (e) and any amount of any benefit under the scheme was not paid as a result of the direction –
- (a) the direction does not affect any entitlement to that benefit, and 30
  - (b) any benefit to which a member, or a person in respect of a member, remains entitled at the end of the period for which the freezing order had effect is an amount which falls due to the member or, as the case may be, the person at the end of that period.
- (5) If an order made under this section in relation to a scheme is not complied with, section 10 of the 1995 Act (civil penalties) applies to a trustee or a manager of the scheme who has failed to take all reasonable steps to secure compliance. 35
- (6) Subsection (7) applies if –
- (a) an order is made under this section in relation to a scheme,
  - (b) the order contains a requirement as described in subsection (3)(c) that a contribution of a specified amount must be paid by or on behalf of the employer within a specified period, and 40
  - (c) the contribution is not paid within that period.
- (7) In such a case –
- (a) section 10 of the 1995 Act applies to the employer if he has failed, without reasonable excuse, to secure compliance, 45

- (b) the amount which for the time being remains unpaid after the end of the specified period is to be treated as a debt due from the employer to the trustees or managers of the scheme, and
  - (c) except in prescribed circumstances, the trustees or managers must, within a prescribed period, give notice of the failure to pay to the Regulator and to the member. 5
- (8) If in any case subsection (7)(c) is not complied with, section 10 of the 1995 Act applies to any trustee or manager who has failed to take all reasonable steps to secure compliance.
- (9) In this section “specified” means specified in an order under this section. 10

## 27 Notification of trustees, managers, employers and members

- (1) This section applies where –
- (a) a freezing order is made in relation to a scheme,
  - (b) an order is made under section 23 validating action taken in contravention of a freezing order made in relation to a scheme, 15
  - (c) an order is made under section 24(3) directing specified steps to be taken following the winding up of a scheme, or
  - (d) an order is made under section 26 in relation to a scheme where a freezing order ceases to have effect.
- (2) The Regulator must, as soon as reasonably practicable after the order has been made, notify – 20
- (a) the trustees or managers of the scheme, and
  - (b) the employer in relation to the scheme,
- of the fact that the order has been made and of its effect.
- (3) The Regulator may by order direct the trustees or managers of the scheme to notify – 25
- (a) all the members of the scheme, or
  - (b) the members of the scheme specified in the order,
- of the fact that the order mentioned in subsection (1) has been made and of its effect. 30
- (4) Notification is to be within the period and in the manner specified in the order under subsection (3).
- (5) If an order made under subsection (3) is not complied with, section 10 of the Pensions Act 1995 (c. 26) (civil penalties) applies to a trustee or manager to whom the order is directed who has failed to take all reasonable steps to secure compliance. 35

## 28 Supplementary provision relating to orders under sections 20 to 27

- (1) An order may be made in relation to a scheme under any of sections 20, 22, 23, 24, 26 and 27 –
- (a) in spite of any enactment or rule of law, or any rule of the scheme, which would otherwise operate to prevent the order being made, and 40
  - (b) without regard to any such enactment, rule of law or rule of the scheme as would otherwise require, or might otherwise be taken to require, the implementation of any procedure or the obtaining of any consent, with a view to the making of the order. 45

- (2) Subsection (1) does not have effect to authorise the Regulator to make an order as mentioned in that subsection if its doing so would be unlawful as a result of section 6(1) of the Human Rights Act 1998 (c. 42) (unlawful for public authority to act in contravention of a Convention right).

*Trustees of occupational pension schemes* 5

## 29 Prohibition orders

For section 3 of the Pensions Act 1995 (c. 26) (prohibition orders) substitute –

### “3 Prohibition orders

- (1) The Authority may by order prohibit a person from being a trustee of – 10
- (a) a particular trust scheme,
  - (b) a particular description of trust schemes, or
  - (c) trust schemes in general,
- if they are satisfied that he is not a fit and proper person to be a trustee of the scheme or schemes to which the order relates.
- (2) Where a prohibition order is made under subsection (1) against a person in respect of one or more schemes of which he is a trustee, the order has the effect of removing him. 15
- (3) The Authority may, on the application of any person prohibited under this section, by order revoke the order either generally or in relation to a particular scheme or description of schemes. 20
- (4) An application under subsection (3) may not be made –
- (a) during the period within which the determination to exercise the power to make the prohibition order may be referred to the Tribunal under section 70(3) or 73(7) of the Pensions Act 2004, and 25
  - (b) if the determination is so referred, until the reference, and any appeal against the Tribunal’s determination, has been finally disposed of.
- (5) A revocation made at any time under this section cannot affect anything done before that time. 30
- (6) The Authority must prepare and publish a statement of the policies they intend to adopt in relation to the exercise of their powers under this section.
- (7) The Authority may revise any statement published under subsection (6) and must publish any revised statement. 35
- (8) In this section “the Tribunal” means the Pensions Regulator Tribunal established under section 76 of the Pensions Act 2004.”

## 30 Suspension orders

In section 4 of the Pensions Act 1995 (suspension orders) –

- (a) for subsection (1)(b) substitute – 40
- “(b) pending consideration being given to the institution of proceedings against him for an offence involving

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	dishonesty or deception or where such proceedings have been instituted and have not been concluded,”	
(b)	in subsection (2) –	
	(i) omit “and” at the end of paragraph (a) and insert –	
	“(aa) if made by virtue of paragraph (b), has effect –	5
	(i) for an initial period of twelve months, if proceedings are not instituted within that period, and	
	(ii) in any other case, until the proceedings in question are concluded,”	10
	(ii) after “effect” insert “in relation to a trust scheme”, and	
	(iii) after “section 3(1)” insert “in relation to that scheme”,	
(c)	after subsection (5) insert –	
	“(5A) An application under subsection (5) may not be made –	
	(a) during the period within which the determination to exercise the power to make an order under subsection (1) may be referred to the Tribunal under section 70(3) or 73(7) of the Pensions Act 2004, and	15
	(b) if the determination is so referred, until the reference, and any appeal against the Tribunal’s determination, has been finally disposed of.”, and	20
(d)	After subsection (6) insert –	
	“(7) In this section “the Tribunal” means the Pensions Regulator Tribunal established under section 76 of the Pensions Act 2004.”	
<b>31</b>	<b>Appointments by Regulator</b>	25
(1)	In section 7 of the Pensions Act 1995 (c. 26) (appointment of trustees) –	
	(a) omit subsection (4), and	
	(b) after subsection (5) insert –	
	“(5A) An application may be made to the Regulator in relation to a trust scheme by –	30
	(a) the trustees of the scheme,	
	(b) the employer, or	
	(c) any member of the scheme,	
	for the appointment of a trustee of the scheme under subsection (3)(a) or (c).”	35
(2)	In section 8 of that Act (consequences of appointment of trustees under section 7), for subsections (1) and (2) substitute –	
	“(1) An order under section 7 appointing a trustee may provide for any fees and expenses of trustees appointed under the order to be paid –	
	(a) by the employer,	40
	(b) out of the resources of the scheme, or	
	(c) partly by the employer and partly out of those resources.	
(2)	Such an order may also provide that an amount equal to the amount (if any) paid out of the resources of the scheme by virtue of subsection (1)(b) or (c) is to be treated for all purposes as a debt due from the employer to the trustees of the scheme.”	45

**32 Disqualification**

In section 30 of the Pensions Act 1995 (c. 26) (consequences of disqualification under section 29), for subsection (1) substitute –

- “(1) Where a person who is a trustee of a trust scheme becomes disqualified under section 29 in relation to the scheme, his becoming so disqualified has the effect of removing him as a trustee.” 5

*Applications under the Insolvency Act 1986***33 Regulator’s right to apply under section 423 of Insolvency Act 1986**

- (1) In this section “section 423” means section 423 of the Insolvency Act 1986 (c. 45) (transactions defrauding creditors). 10
- (2) The Regulator may apply for an order under section 423 in relation to a debtor if –
- (a) the debtor is for the purposes of Part 1 of the Pensions Act 1995 the employer in relation to an occupational pension scheme, and
- (b) condition A or condition B is met in relation to the scheme. 15
- (3) Condition A is that an actuarial valuation under section 112 obtained by the Board in respect of the scheme indicates that the value of the assets of the scheme at the relevant time, as defined by that section, was less than the amount of the protected liabilities, as defined by section 103, at that time.
- (4) Condition B is that an actuarial valuation, as defined by section 181(2), obtained by the trustees or managers of the scheme indicates that the statutory funding objective in section 179 is not met. 20
- (5) In a case where the debtor has been adjudged bankrupt or is a body corporate which is being wound up or in relation to which an administration order is in force, subsection (2) does not enable an application to be made under section 423 except with the permission of the court. 25
- (6) An application made under this section is to be treated as made on behalf of every victim of the transaction who is –
- (a) a trustee or member of the scheme, or
- (b) the Board of the Pension Protection Fund. 30
- (7) This section does not apply where the valuation mentioned in subsection (3) or (4) is made by reference to a date that falls before the commencement of this section.
- (8) Expressions which are defined by section 423 for the purposes of that section have the same meaning when used in this section. 35

*Register of schemes***34 Register of occupational and personal pension schemes**

- (1) The Regulator must compile and maintain a register of occupational pension schemes and personal pension schemes which are, or have been, registrable schemes (referred to in this Act as “the register”). 40

- (2) In this section and sections 37 to 40 “registrable scheme” means an occupational pension scheme, or a personal pension scheme, of a prescribed description.
- (3) In respect of each registrable scheme, the Regulator must record in the register – 5
- (a) the registrable information most recently provided to it in respect of the scheme, and
  - (b) if the Regulator has received –
    - (i) a copy of a notice under section 122 (transfer notice),
    - (ii) a notice under section 37(5) (scheme which is wound up or ceases to be registrable), or 10
    - (iii) any copy of a notice, or notice, under any provision in force in Northern Ireland corresponding to a provision mentioned in sub-paragraph (i) or (ii),  
that fact. 15
- (4) In respect of each scheme which has been a registrable scheme, but
  - (a) has been, or is treated as having been, wound up, or
  - (b) has ceased to be a registrable scheme,the Regulator must maintain in the register the registrable information last provided to it in respect of the scheme. 20
- (5) Information recorded in the register must be so recorded in such manner as the Regulator considers appropriate.
- (6) In particular, the register may consist of more than one part.
- (7) In this section –
  - (a) references to an occupational pension scheme or a personal pension scheme include such a scheme within the meaning of the Pension Schemes (Northern Ireland) Act 1993 (c. 49), and 25
  - (b) references to “registrable information”, in relation to a scheme to which any provision in force in Northern Ireland corresponding to section 35(2) (“the corresponding Northern Ireland provision”) applies, are to information of any description within the corresponding Northern Ireland provision. 30

### 35 Registrable information

- (1) For the purposes of sections 34 to 40 “registrable information”, in relation to an occupational or personal pension scheme, means information within subsection (2). 35
- (2) That information is –
  - (a) the name of the scheme;
  - (b) the address of the scheme;
  - (c) the full names and addresses of each of the trustees or managers of the scheme; 40
  - (d) the status of the scheme with respect to the following matters –
    - (i) whether new members may be admitted to the scheme;
    - (ii) whether further benefits may accrue to, or in respect of, members under the scheme; 45
    - (iii) whether further contributions may be paid towards the scheme;

- (iv) whether any members of the scheme are active members;
  - (e) the categories of benefits provided by the scheme;
  - (f) in the case of an occupational pension scheme –
    - (i) the name and address of each relevant employer, and
    - (ii) any other name by which any relevant employer has been known at any time on or after the relevant date; 5
  - (g) in the case of an occupational pension scheme, the number of members of the scheme on the later of –
    - (i) the last day of the scheme year which ended most recently, and
    - (ii) the day on which the scheme became a registrable scheme; and 10
  - (h) such other information as may be prescribed.
- (3) Regulations may make provision about the interpretation of any of the descriptions in subsection (2).
- (4) For the purposes of subsection (2)(f) –
- “relevant employer” means any person – 15
    - (a) who is, or
    - (b) who, at any time on or after 6th April 1975, has been, the employer in relation to the scheme; and
  - “relevant date”, in relation to a relevant employer, means –
    - (a) 6th April 1975, or 20
    - (b) if later, the date on which the relevant employer first became the employer in relation to the scheme.

### 36 The register: inspection, provision of information and reports etc

- (1) Regulations may provide –
- (a) for – 25
    - (i) information recorded in the register,
    - (ii) extracts from the register, or
    - (iii) copies of the register or of extracts from it,
 to be provided to prescribed persons in prescribed circumstances, and
  - (b) for the inspection of – 30
    - (i) the register,
    - (ii) extracts from the register, or
    - (iii) copies of the register or of extracts from it,
 by prescribed persons in prescribed circumstances.
- (2) Regulations under subsection (1) may, in particular – 35
- (a) confer functions on –
    - (i) the Secretary of State, or
    - (ii) a person authorised by him for the purposes of the regulations;
  - (b) make provision with respect to the disclosure of information obtained by virtue of the regulations. 40
- (3) Regulations which contain any provision made by virtue of subsection (2)(b) may, in particular, modify section 56 (restricted information).
- (4) The Secretary of State may direct the Regulator to submit to him statistical and other reports concerning –
- (a) information recorded in the register, and 45

- (b) the operation of the Regulator’s functions in relation to the register.
- (5) A direction under subsection (4) may specify –
  - (a) the form in which, and
  - (b) the times at which, reports required by the direction are to be submitted. 5
- (6) The Secretary of State may publish any report submitted to him by virtue of a direction under subsection (4) in such manner as he considers appropriate.

### **37 The register: duties of trustees or managers**

- (1) Subsection (2) applies where –
  - (a) a registrable scheme is established, or 10
  - (b) an occupational or personal pension scheme otherwise becomes a registrable scheme.
- (2) The trustees or managers of the scheme must, before the end of the initial notification period –
  - (a) notify the Regulator that the scheme is a registrable scheme, and 15
  - (b) provide to the Regulator all the registrable information with respect to the scheme.
- (3) In subsection (2), the “initial notification period” means the period of three months beginning with –
  - (a) the date on which the scheme is established, or 20
  - (b) if later, the date on which it becomes a registrable scheme.
- (4) Where there is a change in any registrable information in respect of a registrable scheme, the trustees or managers of the scheme must as soon as reasonably practicable, notify the Regulator –
  - (a) of that fact, and 25
  - (b) of the new registrable information.
- (5) Where a registrable scheme –
  - (a) ceases to be a registrable scheme, or
  - (b) is wound up (otherwise than under section 123(2) (effect of Board assuming responsibility for scheme)), 30the trustees or managers of the scheme must as soon as reasonably practicable, notify the Regulator of that fact.
- (6) If subsection (2), (4) or (5) is not complied with, section 10 of the Pensions Act 1995 (c. 26) (civil penalties) applies to any trustee or manager who has failed to take all reasonable steps to secure compliance. 35

### **38 Duty of the Regulator to issue scheme return notices**

- (1) The Regulator must issue scheme return notices in accordance with this section requiring scheme returns to be provided in respect of registrable schemes.
- (2) In respect of each registrable scheme, the Regulator –
  - (a) must issue the first scheme return notice in accordance with subsection (3), and 40
  - (b) must issue subsequent scheme return notices in accordance with subsection (4).

- (3) The return date specified in a scheme return notice issued in respect of a scheme under subsection (2)(a)–
- (a) must fall within the period of three years beginning with–
    - (i) the date on which the Regulator receives a notice under section 37(2)(a) in respect of the scheme, or 5
    - (ii) if earlier, the date on which the Regulator first becomes aware that the scheme is a registrable scheme, and
  - (b) if the trustees or managers have complied with paragraph (b) of section 37(2), must fall after the end of the period of one year beginning with the date on which they provided the information required by that paragraph to the Regulator. 10
- (4) The return date specified in a scheme return notice issued in respect of a scheme under subsection (2)(b) must fall–
- (a) within the period of three years, but
  - (b) after the end of the period of one year, 15
- beginning with the return date specified in the previous scheme return notice issued in respect of the scheme.

### 39 Duty of trustees or managers to provide scheme return

- (1) The trustees or managers of a registrable scheme in respect of which a scheme return notice is issued must, on or before the return date, provide a scheme return to the Regulator. 20
- (2) If a scheme return in respect of a scheme is not provided in compliance with subsection (1), section 10 of the Pensions Act 1995 (c. 26) (civil penalties) applies to any trustee or manager of the scheme who has failed to take all reasonable steps to secure compliance. 25

### 40 Scheme returns: supplementary

- (1) This section has effect for the purposes of sections 38 and 39.
- (2) In those sections and this section, in relation to a scheme return notice –
- “return date” means the date specified under subsection (3)(b) in the scheme return notice; 30
  - “scheme return” means a document in the form (if any) specified in the scheme return notice, containing the information required by the notice.
- (3) A scheme return notice must specify –
- (a) the descriptions of information required by it, and 35
  - (b) the return date,
- and may specify the form in which that information is to be provided.
- (4) A scheme return notice in respect of a registrable scheme –
- (a) must require all registrable information in relation to the scheme, and
  - (b) may require other information which the Regulator reasonably requires for the purposes of the exercise of its functions in relation to the scheme. 40
- (5) The return date specified in a scheme return notice must fall after the end of the period of 28 days beginning with the date on which the notice is issued.

- (6) A scheme return notice must be in writing and is treated as issued in respect of a registrable scheme when it is sent to the trustees or managers of the scheme.

*Register of prohibited trustees*

**41 Register of prohibited trustees**

- (1) The Regulator must keep in such manner as it thinks fit a register of all persons who are prohibited under section 3 of the Pensions Act 1995 (c. 26) (“the prohibition register”). 5
- (2) Arrangements made by the Regulator for the prohibition register must secure that the contents of the register are not disclosed or otherwise made available to members of the public except in accordance with section 42. 10
- (3) Nothing in subsection (2) requires the Regulator to exclude any matter from a report published under section 63 (reports of Regulator’s consideration of cases).

**42 Accessibility of register of prohibited trustees**

- (1) The Regulator must make arrangements to secure that the prohibition register is open, during its normal working hours, for inspection in person and without notice at – 15
- (a) the principal office used by it for the carrying out of its functions, and
  - (b) such other of its offices (if any) as it considers to be places where it would be reasonable for a copy of the register to be kept open for inspection. 20
- (2) If a request is made to the Regulator –
- (a) to state whether a particular person identified in the request is a person appearing in the prohibition register as prohibited in respect of a scheme specified in the request, 25
  - (b) to state whether a particular person so identified is a person appearing in that register as prohibited in respect of a particular description of occupational trust scheme so specified, or
  - (c) to state whether a particular person so identified is a person appearing in that register as prohibited in respect of all occupational trust schemes, 30
- the Regulator must promptly comply with the request in such manner as it considers reasonable.
- (3) The Regulator may, in such manner as it considers appropriate, publish a summary of the prohibition register if (subject to subsections (6) to (8)) the summary – 35
- (a) contains all the information described in subsection (4),
  - (b) arranges that information in the manner described in subsection (5),
  - (c) does not (except by identifying a person as prohibited in respect of all occupational trust schemes, in respect of a particular description of such schemes or in respect of a particular such scheme) identify any of the schemes in respect of which persons named in the summary are prohibited, and 40
  - (d) does not disclose any other information contained in the register.

- 
- (4) That information is—
- (a) the full names and titles, so far as the Regulator has a record of them, of all the persons appearing in the register as persons who are prohibited,
  - (b) the dates of birth of such of those persons as are persons whose dates of birth are matters of which the Regulator has a record, and 5
  - (c) in the case of each person whose name is included in the published summary, whether that person appears in the register—
    - (i) as prohibited in respect of only one occupational trust scheme,
    - (ii) as prohibited in respect of one or more particular descriptions of such scheme, but not in respect of all such schemes, or 10
    - (iii) as prohibited in respect of all such schemes.
- (5) For the purposes of paragraph (c) of subsection (4), the information in the published register must be arranged in three separate lists, one for each of the descriptions of prohibition specified in the sub-paragraphs of that paragraph.
- (6) The Regulator must ensure, in the case of any published summary, that a person is not identified in the summary as a prohibited person if it appears to the Regulator that the determination by virtue of which that person appears in the register— 15
- (a) is the subject of any pending reference, review, appeal or legal proceedings which could result in that person’s removal from the register, or 20
  - (b) is a determination which might still become the subject of any such reference, review, appeal or proceedings.
- (7) The Regulator must ensure, in the case of any published summary, that the particulars relating to a person do not appear in a particular list mentioned in subsection (5) if it appears to the Regulator that a determination by virtue of which that person’s particulars would appear in that list— 25
- (a) is the subject of any pending reference, review, appeal or legal proceedings which could result in such a revocation or other overturning of a prohibition of that person as would require his particulars to appear in a different list, or 30
  - (b) is a determination which might still become the subject of any such reference, review, appeal or proceedings.
- (8) Where subsection (7) prevents a person’s particulars from being included in a particular list in the published summary, they must be included, instead, in the list (if any) in which they would have been included if the prohibition to which the reference, review, appeal or proceedings relate or might relate had already been revoked or otherwise overturned. 35
- (9) For the purposes of this section a determination is one which might still become the subject of a reference, review, appeal or proceedings if, and only if, in the case of that determination— 40
- (a) the time for the making of an application for a review or reference, or for the bringing of an appeal or other proceedings, has not expired, and
  - (b) there is a reasonable likelihood that such an application might yet be made, or that such an appeal or such proceedings might yet be brought. 45
- (10) In this section—
- “name”, in relation to a person any of whose names is recorded by the Regulator as an initial, means that initial;

“occupational trust scheme” means an occupational pension scheme established under a trust.

*Collecting information relevant to the Board of the Pension Protection Fund*

**43 Information relevant to the Board**

The Regulator may collect any information which appears to it to be relevant to the exercise of the functions of the Board of the Pension Protection Fund. 5

**44 Duty to notify the Regulator of certain events**

- (1) Except where the Regulator otherwise directs, the appropriate person must give notice of any notifiable event to the Regulator.
- (2) In subsection (1) “notifiable event” means – 10
  - (a) a prescribed event in respect of an eligible scheme, or
  - (b) a prescribed event in respect of the employer in relation to an eligible scheme.
- (3) For the purposes of subsection (1) – 15
  - (a) in the case of an event within subsection (2)(a), each of the following is “the appropriate person” –
    - (i) the trustees or managers of the scheme,
    - (ii) a person of a prescribed description, and
  - (b) in relation to an event within subsection (2)(b), each of the following is “the appropriate person” – 20
    - (i) the employer in relation to the scheme,
    - (ii) a person of a prescribed description.
- (4) A notice under subsection (1) –
  - (a) must be in writing, and
  - (b) subject to subsection (5), must be given as soon as reasonably practicable after the person making it becomes aware of the notifiable event. 25
- (5) Regulations may require a notice under subsection (1) to be given before the beginning of the prescribed period ending with the notifiable event in question. 30
- (6) No duty to which a person is subject is to be regarded as contravened merely because of any information or opinion contained in a notice under this section. This is subject to section 234 (protected items).
- (7) Where the trustees or managers of a scheme fail to comply with an obligation imposed on them by subsection (1), section 10 of the Pensions Act 1995 (c. 26) (civil penalties) applies in relation to any trustee or manager who has failed to take all reasonable steps to secure compliance with that subsection. 35
- (8) That section also applies to any other person who, without reasonable excuse, fails to comply with an obligation imposed on him by subsection (1).
- (9) In this section “eligible scheme” has the same meaning as in Part 2 (see section 98). 40

*Reporting breaches of the law***45 Duty to report breaches of the law**

- (1) Subsection (2) imposes a reporting requirement on the following persons –
- (a) a trustee or manager of an occupational or personal pension scheme;
  - (b) a person who is otherwise involved in the administration of such a scheme; 5
  - (c) the employer in relation to an occupational pension scheme;
  - (d) a professional adviser in relation to such a scheme;
  - (e) a person who is otherwise involved in advising the trustees or managers of an occupational or personal pension scheme in relation to the scheme. 10
- (2) Where the person has reasonable cause to believe that –
- (a) a duty which is relevant to the administration of the scheme in question, and is imposed by or by virtue of an enactment or rule of law, has not been or is not being complied with, and 15
  - (b) the failure to comply is likely to be of material significance to the Regulator in the exercise of any of its functions,
- he must give a written report of the matter to the Regulator as soon as reasonably practicable.
- (3) No duty to which a person is subject is to be regarded as contravened merely because of any information or opinion contained in a written report under this section. 20  
This is subject to section 234 (protected items).
- (4) Section 10 of the Pensions Act 1995 (c. 26) (civil penalties) applies to any person who, without reasonable excuse, fails to comply with an obligation imposed on him by this section. 25

*Gathering information***46 Provision of information**

- (1) The Regulator may, by notice in writing, require any person to whom subsection (2) applies to produce any document, or provide any other information, which is – 30
- (a) of a description specified in the notice, and
  - (b) relevant to the exercise of the Regulator’s functions.
- (2) This subsection applies to –
- (a) a trustee or manager of an occupational or personal pension scheme, 35
  - (b) a professional adviser in relation to an occupational pension scheme,
  - (c) the employer in relation to –
    - (i) an occupational pension scheme, or
    - (ii) a personal pension scheme where direct payment arrangements exist in respect of one or more members of the scheme who are employees, and 40
  - (d) any other person appearing to the Regulator to be a person who holds, or is likely to hold, information relevant to the exercise of the Regulator’s functions.

- (3) Where the production of a document, or the provision of information, is required by a notice given under subsection (1), the document must be produced, or information must be provided, in such a manner, at such a place and within such a period as may be specified in the notice.

**47 Inspection of premises** 5

- (1) An inspector may, for the purposes of investigating whether, in the case of any occupational pension scheme, the occupational scheme provisions are being, or have been, complied with, at any reasonable time enter premises liable to inspection.
- (2) In subsection (1), the “occupational scheme provisions” means provisions contained in or made by virtue of—
- (a) any of the following provisions of this Act—
    - this Part;
    - Part 3 (scheme funding);
    - sections 196 to 198 (member-nominated trustees and directors); 15
    - sections 200 to 202 (requirement for knowledge and familiarity);
    - Part 7 (miscellaneous and supplementary);
  - (b) either of the following provisions of the Welfare Reform and Pensions Act 1999 (c. 30)—
    - section 33 (time for discharge of pension credit liability); 20
    - section 45 (information);
  - (c) any of the provisions of Part 1 of the Pensions Act 1995 (c. 26) (occupational pension schemes), other than—
    - (i) sections 51 to 54 (indexation), and
    - (ii) sections 62 to 65 (equal treatment); 25
  - (d) any of the following provisions of the Pension Schemes Act 1993 (c. 48)—
    - Chapter 4 of Part 4 (transfer values);
    - Chapter 2 of Part 4A (pension credit transfer values);
    - section 113 (information); 30
    - section 175 (levy);
  - (e) any provisions in force in Northern Ireland corresponding to any provisions within paragraphs (a) to (d).
- (3) An inspector may, for the purposes of investigating whether, in the case of a stakeholder scheme—
- (a) sections 1 and 2(4) of the Welfare Reform and Pensions Act 1999 (stakeholder pension schemes: registration etc), or
  - (b) any corresponding provisions in force in Northern Ireland,
- are being, or have been, complied with, at any reasonable time enter premises liable to inspection. 40
- (4) An inspector may, for the purposes of investigating whether, in the case of any trust-based personal stakeholder scheme, the trust-based scheme provisions are being, or have been, complied with, at any reasonable time enter premises liable to inspection.
- (5) In subsection (4)—
- “trust-based personal stakeholder scheme” means a personal pension scheme which— 45

- (a) is a stakeholder scheme, and  
 (b) is established under a trust; and  
 the “trust-based scheme provisions” means any provisions contained in or made by virtue of—
- (a) any provision which applies in relation to trust-based personal stakeholder schemes by virtue of paragraph 1 of Schedule 1 to the Welfare Reform and Pensions Act 1999 (c. 30), as the provision applies by virtue of that paragraph, or 5  
 (b) any corresponding provision in force in Northern Ireland.
- (6) Premises are liable to inspection for the purposes of this section if the inspector has reasonable grounds to believe that— 10  
 (a) members of the scheme are employed there,  
 (b) documents relevant to the administration of the scheme are being kept there, or  
 (c) the administration of the scheme, or work connected with that administration, is being carried out there. 15
- (7) In this section, “stakeholder scheme” means an occupational pension scheme or a personal pension scheme which is or has been registered under—  
 (a) section 2 of the Welfare Reform and Pensions Act 1999 (register of stakeholder schemes), or 20  
 (b) any corresponding provision in force in Northern Ireland.

#### 48 Inspection of premises in respect of employers’ obligations

- (1) An inspector may, for the purposes of investigating whether an employer is complying, or has complied, with the requirements under—  
 (a) section 3 of the Welfare Reform and Pensions Act 1999 (duty of employers to facilitate access to stakeholder pension schemes), or 25  
 (b) any corresponding provision in force in Northern Ireland,  
 at any reasonable time enter premises liable to inspection.
- (2) Premises are liable to inspection for the purposes of subsection (1) if the inspector has reasonable grounds to believe that— 30  
 (a) employees of the employer are employed there,  
 (b) documents relevant to the administration of the employer’s business are being kept there, or  
 (c) the administration of the employer’s business, or work connected with that administration, is being carried out there. 35
- (3) In subsections (1) and (2), “employer” has the meaning given in section 3(9) of the Welfare Reform and Pensions Act 1999 (or, where subsection (1)(b) applies, in any corresponding provision in force in Northern Ireland).
- (4) An inspector may, for the purposes of investigating whether, in the case of any direct payment arrangements relating to a personal pension scheme— 40  
 (a) section 111A of the Pension Schemes Act 1993 (c. 48) (monitoring of employers’ payments to personal pension schemes), or  
 (b) any corresponding provision in force in Northern Ireland,  
 is being, or has been, complied with, at any reasonable time enter premises liable to inspection. 45
- (5) Premises are liable to inspection for the purposes of subsection (4) if—

- (a) employees of the employer are employed there,
  - (b) documents relevant to the administration of –
    - (i) the employer’s business,
    - (ii) the direct payment arrangements, or
    - (iii) the scheme to which those arrangements relate,are being kept there, or 5
  - (c) either of the following is being carried out there –
    - (i) the administration of the employer’s business, the arrangements or the scheme;
    - (ii) work connected with that administration. 10
  - (6) In the application of subsections (4) and (5) in relation to any provision mentioned in subsection (4)(b) (a “corresponding Northern Ireland provision”), references in those subsections to –
    - direct payment arrangements,
    - a personal pension scheme, 15
    - the employer, or
    - employees of the employer,are to be read as having the meanings that they have for the purposes of the corresponding Northern Ireland provision.
- 49 Inspection of premises: powers of inspectors 20**
- (1) Subsection (2) applies where, for a purpose mentioned in subsection (1), (3) or (4) of section 47 or subsection (1) or (4) of section 48, an inspector enters premises which are liable to inspection for the purposes of that provision.
  - (2) While there, the inspector –
    - (a) may make such examination and inquiry as may be necessary for the purpose for which he entered the premises, 25
    - (b) may require any person on the premises to produce, or secure the production of, any document relevant to compliance with the regulatory provisions for his inspection, and
    - (c) may take copies of any such document, 30
    - (d) may take possession of any document appearing to be a document relevant to compliance with the regulatory provisions or take in relation to any such document any other steps which appear necessary for preserving it or preventing interference with it,
    - (e) may, in the case of any such document which consists of information which is stored in electronic form and is on, or accessible from, the premises, require the information to be produced in a form –
      - (i) in which it can be taken away, and
      - (ii) in which it is legible or from which it can readily be produced in a legible form, and 35
    - (f) may, as to any matter relevant to compliance with the regulatory provisions, examine, or require to be examined, either alone or in the presence of another person, any person on the premises whom he has reasonable cause to believe to be able to give information relevant to that matter. 40
- 45

**50 Inspection of premises: supplementary**

- (1) This section applies for the purposes of sections 47 to 49.
- (2) Premises which are a private dwelling-house not used by, or by permission of, the occupier for the purposes of a trade or business are not liable to inspection.
- (3) Any question whether – 5  
 (a) anything is being or has been done or omitted which might by virtue of any of the regulatory provisions give rise to a liability for a civil penalty under or by virtue of section 10 of the Pensions Act 1995 (c. 26) or section 168(4) of the Pension Schemes Act 1993 (c. 48) (or under or by virtue of any provision in force in Northern Ireland corresponding to either of them), or 10  
 (b) an offence is being or has been committed under any of the regulatory provisions,  
 is to be treated as a question whether the regulatory provision is being, or has been, complied with. 15
- (4) An inspector applying for admission to any premises for the purposes of section 47 or 48 must, if so required, produce his certificate of appointment.
- (5) When exercising a power under section 47, 48 or 49 an inspector may be accompanied by such persons as he considers appropriate.
- (6) Any document of which possession is taken under section 49 may be retained – 20  
 (a) if the document is relevant to proceedings against any person for any offence which are commenced before the end of the retention period, until the conclusion of those proceedings, and  
 (b) otherwise, until the end of the retention period. 25
- (7) In subsection (6), “the retention period” means the period comprising –  
 (a) the period of 12 months beginning with the date on which possession was taken of the document, and  
 (b) any extension of that period under subsection (8).
- (8) The Regulator may, by a direction made before the end of the retention period (including any extension of it under this subsection), extend it by such period not exceeding 12 months as the Regulator considers appropriate. 30
- (9) “The regulatory provisions”, in relation to an inspection under subsection (1), (3) or (4) of section 47 or subsection (1) or (4) of section 48, means the provision or provisions referred to in that subsection. 35

**51 Penalties relating to sections 46 to 49**

- (1) A person who, without reasonable excuse, neglects or refuses to provide information or produce a document when required to do so under section 46 is guilty of an offence.
- (2) A person who without reasonable excuse – 40  
 (a) intentionally delays or obstructs an inspector exercising any power under section 47, 48 or 49,  
 (b) neglects or refuses to produce, or secure the production of, any document when required to do so under section 49, or

- (c) neglects or refuses to answer a question or to provide information when so required,  
is guilty of an offence.
- (3) A person guilty of an offence under subsection (1) or (2) is liable on summary conviction to a fine not exceeding level 5 on the standard scale. 5
- (4) An offence under subsection (1) or (2)(b) or (c) may be charged by reference to any day or longer period of time; and a person may be convicted of a second or subsequent offence by reference to any period of time following the preceding conviction of the offence.
- (5) Any person who intentionally and without reasonable excuse alters, suppresses, conceals or destroys any document which he is or is liable to be required under section 46 or 49 to produce to the Regulator is guilty of an offence. 10
- (6) Any person guilty of an offence under subsection (5) is liable –
  - (a) on summary conviction, to a fine not exceeding the statutory maximum; 15
  - (b) on conviction on indictment, to a fine or imprisonment for a term not exceeding two years, or both.

## 52 Warrants

- (1) A justice of the peace may issue a warrant under this section if satisfied on information on oath given by or on behalf of the Regulator that there are reasonable grounds for believing –
  - (a) that there is on, or accessible from, any premises any document –
    - (i) whose production has been required under section 46 or 49, or any corresponding provision in force in Northern Ireland, and 25
    - (ii) which has not been produced in compliance with that requirement,
  - (b) that there is on, or accessible from, any premises any document whose production could be so required and, if its production were so required, the document –
    - (i) would not be produced, but
    - (ii) would be removed, or made inaccessible, from the premises, hidden, tampered with or destroyed, or 30
  - (c) that –
    - (i) an offence has been committed, 35
    - (ii) a person will do any act which constitutes a misuse or misappropriation of the assets of an occupational pension scheme or a personal pension scheme,
    - (iii) a person is liable to pay a penalty under or by virtue of section 10 of the Pensions Act 1995 (c. 26) (civil penalties) or section 168(4) of the Pension Schemes Act 1993 (c. 48) (civil penalties for breach of regulations), or under or by virtue of any provision in force in Northern Ireland corresponding to either of them, or 40
    - (iv) a person is liable to be prohibited from being a trustee of an occupational or personal pension scheme under section 3 of the Pensions Act 1995 (prohibition orders), including that section as it applies by virtue of paragraph 1 of Schedule 1 to the Welfare Reform and Pensions Act 1999 (c. 30) (stakeholder schemes), or 45

- under or by virtue of any corresponding provisions in force in Northern Ireland,
- and that there is on, or accessible from, any premises any document which relates to whether the offence has been committed, whether the act will be done or whether the person is so liable, and whose production could be required under section 46 or 49 or any corresponding provision in force in Northern Ireland. 5
- (2) A warrant under this section shall authorise an inspector –
- (a) to enter the premises specified in the information, using such force as is reasonably necessary for the purpose, 10
  - (b) to search the premises and –
    - (i) take possession of any document appearing to be such a document as is mentioned in subsection (1), or
    - (ii) take in relation to such a document any other steps which appear necessary for preserving it or preventing interference with it, 15
  - (c) to take copies of any such document,
  - (d) to require any person named in the warrant to provide an explanation of any such document or to state where it may be found or how access to it may be obtained, and 20
  - (e) in the case of any such document which consists of information which is stored in electronic form and is on, or accessible from, the premises, to require the information to be produced in a form –
    - (i) in which it can be taken away, and
    - (ii) in which it is legible or from which it can readily be produced in a legible form. 25
- (3) In subsection (1) –
- (a) any reference in paragraph (a) or (b) to a document does not include any document which –
    - (i) is relevant to whether a person has complied with subsection (3) of section 195 (information and advice to employees) or regulations under subsection (4) of that section, and 30
    - (ii) is not relevant to the exercise of the Regulator’s functions for any other reason, and
  - (b) any liability to pay a penalty under section 10 of the Pensions Act 1995 (c. 26) which might arise out of a failure to comply with subsection (3) of section 195 or regulations under subsection (4) of that section is to be disregarded for the purposes of paragraph (c)(iii); 35
- and the references in subsection (2) to such a document as is mentioned in subsection (1) are to be read accordingly. 40
- (4) When executing a warrant under this section, an inspector may be accompanied by such persons as he considers appropriate.
- (5) A warrant under this section continues in force until the end of the period of one month beginning with the day on which it is issued.
- (6) Any document of which possession is taken under this section may be retained – 45
- (a) if the document is relevant to proceedings against any person for any offence which are commenced before the end of the retention period, until the conclusion of those proceedings, and

- (b) otherwise, until the end of the retention period.
- (7) In subsection (6), “the retention period” means the period comprising—
  - (a) the period of 12 months beginning with the date on which possession was taken of the document, and
  - (b) any extension of that period under subsection (8). 5
- (8) The Regulator may, by a direction made before the end of the retention period (including any extension of it under this subsection), extend it by such period not exceeding 12 months as the Regulator considers appropriate.
- (9) In the application of this section in Scotland—
  - (a) the reference to a justice of the peace is to be read as a reference to a justice within the meaning of the Criminal Procedure (Scotland) Act 1995 (c. 46), and 10
  - (b) the references in subsections (1) and (2)(a) to information are to be read as references to evidence.

**53 Sections 46 to 52: interpretation 15**

- (1) This section applies for the purposes of sections 46 to 52.
- (2) “Document” includes information recorded in any form, and any reference to production of a document, in relation to information recorded otherwise than in a legible form, is to producing a copy of the information—
  - (a) in a legible form, or 20
  - (b) in a form from which it can readily be produced in a legible form.
- (3) “Inspector” means a person appointed by the Regulator as an inspector.

*Provision of false or misleading information*

**54 Offences of providing false or misleading information**

- (1) Any person who knowingly or recklessly provides the Regulator with information which is false or misleading in a material particular is guilty of an offence if the information— 25
  - (a) is provided in purported compliance with a requirement under—
    - (i) section 37 (the register: duties of trustees or managers),
    - (ii) section 39 (duty of trustees or managers to provide scheme return), 30
    - (iii) section 46 (provision of information), or
    - (iv) section 49 (inspection of premises: powers of inspectors),
  - (b) is provided in applying for registration of a pension scheme under section 2 of the Welfare Reform and Pensions Act 1999 (c. 30) (registration of stakeholder pension schemes), or 35
  - (c) is provided otherwise than as mentioned in paragraph (a) or (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 this Act or the Pensions Act 1995 (c. 26). 40
- (2) Any person guilty of an offence under subsection (1) is liable—

- (a) on summary conviction, to a fine not exceeding the statutory maximum;
- (b) on conviction on indictment, to a fine or imprisonment for a term not exceeding two years, or both.

*Use of information*

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**55 Use of information**

Information –

- (a) contained in the register, or
  - (b) otherwise held by the Regulator in the exercise of any of its functions,
- may be used by the Regulator for the purposes of, or for any purpose connected with or incidental to, the exercise of its functions. 10

*Disclosure of information***56 Restricted information**

- (1) Except as provided by sections 58 to 61 and 192, restricted information must not be disclosed – 15
  - (a) by the Regulator, or
  - (b) by any person who receives the information directly or indirectly from the Regulator,

except with the consent of the person to whom it relates and (if different) the person from whom the Regulator obtained it. 20
- (2) For the purposes of this section and sections 57 to 61, “restricted information” means any information obtained by the Regulator in the exercise of its functions which relates to the business or other affairs of any person, except for information –
  - (a) which at the time of the disclosure is or has already been made available to the public from other sources, or 25
  - (b) which is in the form of a summary or collection of information so framed as not to enable information relating to any particular person to be ascertained from it.
- (3) Any person who discloses information in contravention of this section is guilty of an offence and liable – 30
  - (a) on summary conviction, to a fine not exceeding the statutory maximum;
  - (b) on conviction on indictment, to a fine or imprisonment for a term not exceeding two years, or both. 35

**57 Information supplied to the Regulator by corresponding overseas authorities**

- (1) Subject to subsection (2), for the purposes of section 56, “restricted information” includes information which has been supplied to the Regulator, for the purposes of its functions, by an authority which exercises functions corresponding to the functions of the Regulator in a country or territory outside the United Kingdom. 40

- (2) Sections 58 to 61 do not apply to such information as is mentioned in subsection (1), and such information must not be disclosed except –
- (a) as provided in section 56,
  - (b) for the purpose of enabling or assisting the Regulator to discharge its functions, or
  - (c) with a view to the institution of, or otherwise for the purposes of, any criminal proceedings.

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**58 Disclosure for facilitating exercise of functions by the Regulator**

- (1) Section 56 does not preclude the disclosure of restricted information in any case in which disclosure is for the purpose of enabling or assisting the Regulator to exercise its functions.
- (2) Subsection (3) applies where, in order to enable or assist the Regulator properly to exercise any of its functions, the Regulator considers it necessary to seek advice from any qualified person on any matter of law, accountancy, valuation or other matter requiring the exercise of professional skill.
- (3) Section 56 does not preclude the disclosure by the Regulator to a person qualified to provide that advice of such information as appears to the Regulator to be necessary to ensure that he is properly informed with respect to the matters on which his advice is sought.

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**59 Disclosure for facilitating exercise of functions by the Board**

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Section 56 does not preclude the disclosure of restricted information in any case in which disclosure is for the purpose of enabling or assisting the Board of the Pension Protection Fund to exercise its functions.

**60 Disclosure for facilitating exercise of functions by other supervisory authorities**

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- (1) Section 56 does not preclude the disclosure by the Regulator of restricted information to any person specified in the first column of Schedule 3 if the Regulator considers that the disclosure would enable or assist that person to exercise the functions specified in relation to him in the second column of that Schedule.
- (2) The Secretary of State may after consultation with the Regulator –
- (a) by order amend Schedule 3 by –
    - (i) adding any person exercising regulatory functions and specifying functions in relation to that person,
    - (ii) removing any person for the time being specified in the Schedule, or
    - (iii) altering the functions for the time being specified in the Schedule in relation to any person, or
  - (b) by order restrict the circumstances in which, or impose conditions subject to which, disclosure may be made to any person for the time being specified in the Schedule.

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**61 Other permitted disclosures**

- (1) Section 56 does not preclude the disclosure by the Regulator of restricted information to –
- (a) the Secretary of State,
  - (b) the Commissioners of Inland Revenue or their officers, or 5
  - (c) the Department for Social Development in Northern Ireland,
- if the disclosure appears to the Regulator to be desirable or expedient in the interests of members of occupational pension schemes or personal pension schemes or in the public interest.
- (2) Section 56 does not preclude the disclosure of restricted information – 10
- (a) with a view to the institution of, or otherwise for the purposes of, any criminal proceedings,
  - (b) in connection with any other proceedings arising out of –
    - (i) this Act,
    - (ii) the Welfare Reform and Pensions Act 1999 (c. 30), 15
    - (iii) the Pensions Act 1995 (c. 26), or
    - (iv) the Pension Schemes Act 1993 (c. 48),
 or any corresponding enactment in force in Northern Ireland, or any proceedings for breach of trust in relation to an occupational pension scheme, 20
  - (c) with a view to the institution of, or otherwise for the purposes of, proceedings under –
    - (i) section 7 or 8 of the Company Directors Disqualification Act 1986 (c. 46), or
    - (ii) Article 10 or 11 of the Companies (Northern Ireland) Order 1989 (S.I. 1989/2404 (N.I. 18)), 25
  - (d) in connection with any proceedings under –
    - (i) the Insolvency Act 1986 (c. 45), or
    - (ii) the Insolvency (Northern Ireland) Order 1989 (S.I. 1989/2405 (N.I. 19)), 30
 which the Regulator has instituted or in which it has a right to be heard,
  - (e) with a view to the institution of, or otherwise for the purposes of, any disciplinary proceedings relating to the exercise of his professional duties by a solicitor, an actuary, an accountant or an insolvency practitioner, 35
  - (f) with a view to the institution of, or otherwise for the purposes of, any disciplinary proceedings relating to the exercise by a public servant of his functions,
  - (g) for the purpose of enabling or assisting an authority in a country outside the United Kingdom to exercise functions corresponding to those of the Regulator under this Act, the Welfare Reform and Pensions Act 1999, the Pensions Act 1995 or the Pension Schemes Act 1993, or 40
  - (h) in pursuance of a Community obligation.
- (3) In subsection (2)(f), “public servant” means an officer or servant of the Crown or of any prescribed authority. 45
- (4) Section 56 does not preclude the disclosure by the Regulator of restricted information to –
- (a) the Director of Public Prosecutions,

- (b) the Director of Public Prosecutions for Northern Ireland,
  - (c) the Lord Advocate,
  - (d) a procurator fiscal, or
  - (e) a constable.
- (5) Section 56 does not preclude the disclosure of restricted information in any case where the disclosure is required by or by virtue of an enactment. 5
- (6) Section 56 does not preclude the disclosure of restricted information in any case where the disclosure is to a Regulator-appointed trustee of an occupational pension scheme for the purpose of enabling or assisting him to exercise his functions in relation to the scheme. 10
- (7) In subsection (6), “Regulator-appointed trustee” means a trustee appointed by the Regulator under section 7 of the Pensions Act 1995 (c. 26) or any corresponding provision in force in Northern Ireland.
- (8) Section 56 does not preclude the disclosure by any person mentioned in subsection (1) or (4) of restricted information obtained by the person by virtue of that subsection, if the disclosure is made with the consent of the Regulator. 15
- (9) Section 56 does not preclude the disclosure by any person specified in the first column of Schedule 3 of restricted information obtained by the person by virtue of section 60(1), if the disclosure is made – 20
- (a) with the consent of the Regulator, and
  - (b) for the purpose of enabling or assisting the person to exercise any functions specified in relation to him in the second column of the Schedule.
- (10) Before deciding whether to give its consent to such a disclosure as is mentioned in subsection (8) or (9), the Regulator must take account of any representations made to it, by the person seeking to make the disclosure, as to the desirability of the disclosure or the necessity for it. 25

## 62 Disclosure of information by the Inland Revenue

- (1) This section applies to information held by any person in the exercise of tax functions about any matter which is relevant, for the purposes of those functions, to tax or duty in the case of an identifiable person (in this section referred to as “tax information”). 30
- (2) No obligation as to secrecy imposed by section 182 of the Finance Act 1989 (c. 26) or otherwise shall prevent the disclosure of tax information to the Regulator for the purpose of enabling or assisting the Regulator to discharge its functions. 35
- (3) Where tax information is disclosed to the Regulator by virtue of subsection (2), it must, subject to subsection (4), be treated for the purposes of section 56 as restricted information.
- (4) Sections 58 to 61 do not apply to tax information, and such information must not be disclosed except – 40
- (a) to, or in accordance with authority given by, the Commissioners of Inland Revenue or the Commissioners of Customs and Excise, or
  - (b) with a view to the institution of, or otherwise for the purposes of, any criminal proceedings. 45

- (5) In this section “tax functions” has the same meaning as in section 182 of the Finance Act 1989 (c. 26).

### *Reports*

#### **63 Publishing reports**

- (1) The Regulator may, if it considers it appropriate to do so in any particular case, publish a report of the consideration given by it to the exercise of its functions in relation to that case and the results of that consideration. 5
- (2) The publication of a report under subsection (1) may be in such form and manner as the Regulator considers appropriate.
- (3) For the purposes of the law of defamation, the publication of any matter by the Regulator shall be absolutely privileged. 10

### *Codes of practice*

#### **64 Codes of practice**

- (1) The Regulator may issue codes of practice –
- (a) containing practical guidance in relation to the exercise of functions under the pensions legislation, and 15
  - (b) regarding the standards of conduct and practice expected from those who exercise such functions.
- (2) The Regulator must issue one or more such codes of practice relating to following matters – 20
- (a) what constitutes a “reasonable” period for the purposes of any provision of the pensions legislation which requires any action to be taken within such a period;
  - (b) the discharge of the duty imposed by section 44 (duty to notify Regulator of certain events); 25
  - (c) the discharge of the duty imposed by section 45 (duty to report breaches of the law);
  - (d) the discharge of duties imposed by sections 180 and 184 (duties of trustees or managers to prepare, review and revise, a statement of funding principles and a schedule of contributions); 30
  - (e) the discharge of the duty imposed by section 185(2) or (3) of this Act (duties of trustees or managers of occupational pension schemes to report failures to pay employer contributions timeously);
  - (f) the discharge of the duties imposed by sections 196 and 197 (member-nominated trustees and directors); 35
  - (g) the obligations imposed by sections 200 and 201 (requirements for knowledge and understanding: individual and corporate trustees);
  - (h) the discharge of the duty imposed by section 49(9)(b) of the Pensions Act 1995 (c. 26) (duty of trustees or managers of occupational pension schemes to report material failures by employers to pay contributions deducted from employee’s earnings timeously); 40
  - (i) the discharge of the duty imposed by section 88(1) of that Act (duties of trustees and managers of money purchase schemes to report failures to pay employer contributions timeously);

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- (j) the discharge of the duty imposed by section 111A(7A) of the Pension Schemes Act 1993 (c. 48) (duty of trustees or managers of personal pension schemes to report material failures to pay employer contributions timeously);
- (k) such other matters as are prescribed for the purposes of this section. 5
- (3) The Regulator may from time to time revise the whole or any part of a code of practice issued under this section and issue that revised code.
- (4) The Regulator may revoke a code of practice issued under this section.
- (5) A failure on the part of any person to observe any provision of a code of practice does not of itself render that person liable to any legal proceedings. 10  
This is subject to section 14(3)(a) and (7) (power for improvement notice to direct that person complies with code of practice and civil penalties for failure to comply).
- (6) A code of practice issued under this section is admissible in evidence in any legal proceedings and, if any provision of such a code appears to the court or tribunal concerned to be relevant to any question arising in the proceedings, it must be taken into account in determining that question. 15
- (7) In this section –  
“legal proceedings” includes proceedings of the Pensions Ombudsman; and 20  
“the pensions legislation” means any enactment contained in or made by virtue of –  
(a) the Pension Schemes Act 1993,  
(b) Part 1, and section 33, of the Pensions Act 1995 (c. 26), other than sections 62 to 66A of that Act (equal treatment), 25  
(c) Part 1 of the Welfare Reform and Pensions Act 1999 (c. 30), or  
(d) this Act.
- (8) Sections 65 and 66 make provision about the procedure to be followed when a code of practice is issued or revoked.
- 65 Procedure for issue and publication of codes of practice 30**
- (1) Where the Regulator proposes to issue a code of practice it must prepare and publish a draft of the code.
- (2) Where the Regulator publishes a draft under subsection (1), it must consult –  
(a) such persons as it considers appropriate, and  
(b) any other persons the Secretary of State requires it to consult. 35
- (3) Having considered any representations made on the draft, the Regulator must make such modifications to it as it considers appropriate.
- (4) Subsections (2) and (3) do not apply –  
(a) to a code made for the purpose only of consolidating other codes issued under section 64, or  
(b) to a code if the Secretary of State considers consultation inexpedient by reason of urgency. 40
- (5) If the Regulator determines to proceed with a draft, it must send it to the Secretary of State who –

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- (a) if he approves of it, must lay it before Parliament, and
- (b) if he does not approve of it, must publish details of his reasons for withholding approval.
- (6) Where a draft is laid before Parliament under subsection (5)(a)–
- (a) if within the period mentioned in subsection (7) either House so resolves, no further proceedings may be taken on the draft code, 5
- (b) if no such resolution is passed, the Regulator must issue the code in the form of the draft.
- (7) The period referred to in subsection (6)(a) is the period of 40 days–
- (a) beginning with the day on which the draft is laid before Parliament (or, if it is laid before the two Houses on different days, with the later of the two days), and 10
- (b) ignoring any period during which Parliament is dissolved or prorogued or during which both Houses are adjourned for more than four days. 15
- (8) The fact that no further proceedings may be taken on a draft code in accordance with subsection (6)(a) does not prevent the laying of a new draft.
- (9) A code issued in accordance with subsection (6)(b) shall come into effect on such day as the Secretary of State may by order appoint. 20  
Without prejudice to section 238, such an order may contain such transitional provisions or savings as appear to the Secretary of State to be necessary or expedient in connection with the code of practice brought into operation.
- (10) The Regulator must arrange for any code issued by it under section 64 to be published in the way appearing to it to be appropriate.
- (11) The Regulator may charge a reasonable fee for providing a person with a copy of a code published under this section. 25
- (12) This section applies to a revised code as it applies to the first issue of a code.
- 66 Revocation of codes of practice**
- (1) A code of practice may be revoked by the Secretary of State by order.
- (2) An order under this section may be made only with the consent of the Regulator. 30
- (3) Without prejudice to section 238, an order under this section may contain such savings as appear to the Secretary of State to be necessary or expedient in connection with the revocation of the code.
- Exercise of regulatory functions* 35
- 67 The Regulator’s procedure in relation to its regulatory functions**
- (1) The Regulator must determine the procedure that it proposes to follow in relation to the exercise of its regulatory functions.
- (2) For the purposes of this Part the “regulatory functions” of the Regulator are– 40
- (a) the power to issue an improvement notice under section 14,
- (b) the power to issue a third party notice under section 15,

- (c) the reserved regulatory functions (see Schedule 2),
  - (d) the power to vary or revoke under section 75 (to the extent that it does not fall within paragraph (c)),
  - (e) the power under section 2(3)(a) of the Welfare Reform and Pensions Act 1999 (c. 30) to refuse to register a scheme under section 2 of that Act, 5
  - (f) the power to make an order under section 7 of the Pensions Act 1995 (c. 26) appointing a trustee (to the extent that it does not fall within paragraph (c)),
  - (g) the power to give directions under section 72B of that Act (directions facilitating winding up), and 10
  - (h) such other functions of the Regulator as may be prescribed.
- (3) The Determinations Panel must determine the procedure to be followed by it in relation to any exercise by it on behalf of the Regulator of –
- (a) the power to determine whether to exercise a regulatory function, and
  - (b) where the Panel so determines to exercise a regulatory function, the power to exercise the function in question. 15
- (4) The procedure determined under this section –
- (a) must provide for the procedure required under –
    - (i) section 70 (standard procedure), and
    - (ii) section 72 (special procedure), and 20
  - (b) may include such other procedural requirements as the Regulator or, as the case may be, the Panel considers appropriate.
- (5) This section is subject to –
- (a) sections 73 to 78 (the remaining provisions concerning the procedure in relation to the regulatory functions), and 25
  - (b) any regulations made by the Secretary of State under paragraph 19 of Schedule 1.

## **68 Publication of procedure in relation to regulatory functions**

- (1) The Regulator must issue a statement of the procedure determined under section 67. 30
- (2) The Regulator must arrange for the statement to be published in the way appearing to it to be appropriate.
- (3) The Regulator may charge a reasonable fee for providing a person with a copy of the statement.
- (4) If the procedure determined under section 67 is changed in a material way, the Regulator must publish a revised statement. 35
- (5) The Regulator must, without delay, give the Secretary of State a copy of any statement which it issues under this section.

## **69 Application of standard and special procedure**

- (1) The Regulator must comply with the standard procedure (see section 70) or, where section 71 applies, the special procedure (see section 72) in a case where – 40
  - (a) the Regulator considers that the exercise of one or more of the regulatory functions may be appropriate, or

- (b) an application is made under or by virtue of any of the provisions listed in section 11(6) for the Regulator to exercise a reserved regulatory function.
- (2) For the purposes of section 70, references to the regulatory action under consideration in a particular case are – 5
- (a) in a case falling within subsection (1)(a), references to the exercise of the one or more regulatory functions which the Regulator considers that it may be appropriate to exercise, and
- (b) in a case falling within subsection (1)(b), references to the exercise of the reserved regulatory function which is the subject-matter of the application. 10
- (3) Neither section 70 (standard procedure) nor section 72 (special procedure) apply in relation to a determination whether to exercise a regulatory function on a review under section 73 (compulsory review of regulatory action).
- 70 Standard procedure** 15
- (1) The procedure determined under section 67 must make provision for the standard procedure.
- (2) The “standard procedure” is a procedure which provides for –
- (a) the giving of notice to such persons as it appears to the Regulator would be directly affected by the regulatory action under consideration (“a warning notice”), 20
- (b) those persons to have an opportunity to make representations,
- (c) the consideration of any such representations and the determination whether to take the regulatory action under consideration,
- (d) the giving of notice of the determination to such persons as appear to the Regulator to be directly affected by it (“a determination notice”), 25
- (e) the determination notice to contain details of the right of referral to the Tribunal under subsection (3),
- (f) the form and further content of warning notices and determination notices and the manner in which they are to be given, and 30
- (g) the time limits to be applied at any stage of the procedure.
- (3) Where the standard procedure applies, the determination which is the subject-matter of the determination notice may be referred to the Tribunal (see section 76) by –
- (a) any person to whom the determination notice is given as required under subsection (2)(d), and 35
- (b) any other person who appears to the Tribunal to be directly affected by the determination.
- (4) Where that determination was a determination to exercise a regulatory function, the Regulator must not exercise the function – 40
- (a) during the period within which the determination may be referred to the Tribunal (see section 77(1)), and
- (b) if the determination is so referred, until the reference, and any appeal against the Tribunal’s determination, has been finally disposed of.
- (5) Subsection (4) does not apply where the determination is a determination to exercise any of the following functions – 45

- (a) the power to make a direction under section 50(8) extending the retention period for documents taken into possession under section 49;
- (b) the power to make a direction under section 52(8) extending the retention period for documents taken into possession under that section; 5
- (c) the power to make an order under section 3 of the Pensions Act 1995 (c. 26) prohibiting a person from being a trustee;
- (d) the power to make an order under section 3(3) of that Act revoking such an order;
- (e) the power to make an order under section 4 of that Act suspending a trustee; 10
- (f) the power to make an order under section 4(5) of that Act revoking such an order;
- (g) the power to make an order under section 7 of that Act appointing a trustee; 15
- (h) the power under section 29(5) of that Act to give a notice waiving a disqualification under section 29 of that Act;
- (i) the power to give directions under section 72B of that Act facilitating a winding up;
- (j) the power under section 99(4) of the Pension Schemes Act 1993 (c. 48) to grant an extension of the period within which the trustees or managers of a scheme are to carry out certain duties; 20
- (k) the power under section 101J(2) of that Act to extend the period for compliance with a transfer notice;
- (l) such other regulatory functions as may be prescribed; 25
- (m) the power under section 75 to vary or revoke any order, notice or direction made or given in the exercise of any of the regulatory functions mentioned in paragraphs (a) to (c), (e) and (g) to (l).

## 71 Special procedure: applicable cases

- (1) The special procedure in section 72 (and not the standard procedure) applies to – 30
  - (a) a case falling within subsection (2), and
  - (b) a case falling within subsection (3).
- (2) A case falls within this subsection if – 35
  - (a) the Regulator considers that it may be necessary to exercise a regulatory function listed in subsection (4) immediately because there is, or the Regulator considers it likely that if a warning notice were to be given there would be, an immediate risk to –
    - (i) the interests of members under an occupational or personal pension scheme, or 40
    - (ii) the assets of such a scheme,
  - (b) the Regulator accordingly dispenses with the giving of a warning notice and an opportunity to make representations as described in section 70(2)(a) and (b), and
  - (c) the Regulator determines to exercise the function immediately on the basis that it is necessary to do so because there is, or the Regulator considers it likely that if the function were not exercised immediately there would be, an immediate risk to – 45

- 
- (i) the interests of members under an occupational or personal pension scheme, or
    - (ii) the assets of such a scheme.
  - (3) A case falls within this subsection if –
    - (a) the Regulator gives a warning notice as described in section 70(2)(a) in relation to a determination whether to exercise a regulatory function listed in subsection (4), and 5
    - (b) before it has considered the representations of those persons to whom the warning notice is given, the Regulator determines to exercise the function immediately on the basis that it is necessary to do so because there is, or the Regulator considers it likely that if the function were not exercised immediately there would be, an immediate risk to – 10
      - (i) the interests of members under an occupational or personal pension scheme, or
      - (ii) the assets of such a scheme. 15
  - (4) The regulatory functions referred to in subsections (2) and (3) are –
    - (a) the power to make a freezing order under section 20;
    - (b) the power to make an order under section 22(3) extending the period for which a freezing order has effect;
    - (c) the power to make an order under section 23 validating action taken in contravention of a freezing order; 20
    - (d) the power to make an order under section 24 directing that specified steps are taken;
    - (e) the power to make an order under section 26 giving a direction where a freezing order ceases to have effect; 25
    - (f) the power to make an order under section 27(3) directing the notification of members;
    - (g) the power to make an order under section 188 modifying a scheme, giving directions or imposing a schedule of contributions;
    - (h) the power to make an order under section 3 of the Pensions Act 1995 (c. 26) prohibiting a person from being a trustee; 30
    - (i) the power to make an order under section 3(3) of that Act revoking such an order;
    - (j) the power to make an order under section 4 of that Act suspending a trustee; 35
    - (k) the power to make an order under section 4(5) of that Act revoking such an order;
    - (l) the power to make an order under section 7 of that Act appointing a trustee;
    - (m) the power to make an order under section 11 of that Act directing or authorising an occupational pension scheme to be wound up; 40
    - (n) the power under section 29(5) of that Act to give a notice waiving a disqualification under section 29 of that Act;
    - (o) such other regulatory functions as may be prescribed;
    - (p) the power under section 75 to vary or revoke any order, notice or direction made, issued or given in the exercise of any of the regulatory functions mentioned in paragraphs (a) to (h), (j), or (l) to (o). 45

## 72 Special procedure

- (1) The procedure determined under section 67 must make provision for the special procedure.
- (2) The “special procedure” is a procedure which provides for –
  - (a) the giving of notice of the determination to exercise the regulatory function to such persons as appear to the Regulator to be directly affected by it (“a determination notice”), 5
  - (b) the determination notice to contain details of the requirement for the Regulator to review the determination under section 73(1) and of any subsequent right of referral to the Tribunal under section 73(7), 10
  - (c) the persons to whom the determination notice was given (as required under paragraph (a)) to have an opportunity to make representations in relation to the determination before it is reviewed under section 73(1),
  - (d) the consideration of any such representations before the determination on the review, 15
  - (e) the giving of a notice in accordance with section 73(4) of the determination on the review (“a final notice”),
  - (f) the final notice to contain details of the right of referral to the Tribunal under section 73(7), 20
  - (g) the form and further content of determination notices and final notices and the manner in which they are to be given, and
  - (h) the time limits to be applied at any stage of the procedure.

## 73 Compulsory review

- (1) In a case where the special procedure applies, the Regulator must review the determination to exercise the regulatory function. 25
- (2) The review must be determined as soon as reasonably practicable.
- (3) The Regulator’s powers on a review under this section include power to –
  - (a) confirm, vary or revoke the determination,
  - (b) confirm, vary or revoke any order, notice or direction made, issued or given as a result of the determination, 30
  - (c) substitute a different determination, order, notice or direction,
  - (d) deal with the matters arising on the review as if they had arisen on the original determination, and
  - (e) make savings and transitional provision. 35
- (4) When the Regulator has completed a review under this section a notice of its determination on the review must be given to such persons as appear to it to be directly affected by its determination on the review.
- (5) If the final notice contains a determination to exercise a different regulatory function to the function which was the subject-matter of the determination notice, then the final notice may not be given unless –
  - (a) such persons as appear to the Regulator to be directly affected by the exercise of the regulatory function have been given an opportunity to make representations, and
  - (b) the Regulator has considered any such representations before it makes its determination on the review. 40 45

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- (6) Subsection (5) does not apply if the regulatory function is listed in section 71(4) and the Regulator determines to exercise it immediately on the basis that it is necessary to do so because there is, or the Regulator considers it likely that if the function were not exercised immediately there would be, an immediate risk to – 5
- (a) the interests of members under an occupational or personal pension scheme, or
  - (b) the assets of such a scheme.
- (7) The determination which is the subject-matter of a final notice may be referred to the Tribunal (see section 76) by – 10
- (a) any person to whom the final notice is given as required under subsection (4), and
  - (b) any other person who appears to the Tribunal to be directly affected by the determination.
- (8) The functions of the Regulator under this section are exercisable on behalf of the Regulator by the Determinations Panel (and are not otherwise exercisable by or on behalf of the Regulator). 15
- (9) The Panel must determine the procedure that it proposes to follow in relation to the exercise of those functions.
- (10) Section 68 (publication of Regulator’s procedure) applies in relation to the procedure determined under subsection (9) as it applies to the procedure determined under section 67 (procedure in relation to the regulatory functions). 20
- 74 Duty to have regard to the interests of members etc**
- (1) The Regulator must have regard to the matters mentioned in subsection (2) – 25
- (a) when determining whether to exercise a regulatory function –
    - (i) in a case where the requirements of the standard or special procedure apply, or
    - (ii) on a review under section 73, and
  - (b) when exercising the regulatory function in question. 30
- (2) Those matters are –
- (a) the interests of the generality of the members of the scheme to which the exercise of the function relates, and
  - (b) the interests of such persons as appear to the Regulator to be directly affected by the exercise. 35
- 75 Powers to vary or revoke orders, notices or directions etc**
- (1) The Regulator may vary or revoke –
- (a) any determination by the Regulator whether to exercise a regulatory function, or
  - (b) any order, notice or direction made, issued or given by the Regulator in the exercise of a regulatory function. 40
- (2) Subsection (1)(b) does not apply to –
- (a) an order under section 3(3) of the Pensions Act 1995 (c. 26) revoking a prohibition order under that section, or

- (b) an order under section 4(5) of that Act revoking a suspension order under that section.
- (3) A variation or revocation of an order, a notice or a direction must be made by an order, notice or direction (as the case may be).
- (4) A variation or revocation made under this section must take effect from a specified time which must not be a time earlier than the time when the variation or revocation is made. 5
- (5) The power to vary or revoke under this section –
  - (a) is not to be treated for the purposes of subsection (1) as a regulatory function, and 10
  - (b) is in addition to any such power which is conferred on the Regulator by, or by virtue of, this or any other enactment.

*The Pensions Regulator Tribunal*

**76 The Pensions Regulator Tribunal**

- (1) There shall be a tribunal to be known as the Pensions Regulator Tribunal (in this Act referred to as “the Tribunal”). 15
- (2) The Tribunal is to have the functions conferred on it by this Act or any provision in force in Northern Ireland corresponding to this Act.
- (3) The Lord Chancellor may by rules make such provision as appears to him to be necessary or expedient in respect of the conduct of proceedings before the Tribunal. 20
- (4) Schedule 4 (which makes provision as respects the Tribunal and its proceedings) has effect.
- (5) But that Schedule does not limit the Lord Chancellor’s powers under this section. 25

**77 References to the Tribunal**

- (1) A reference to the Tribunal under this Act must be made –
  - (a) in the case of a referral under section 70(3) (referral following determination under standard procedure), during the period of 28 days beginning with the day on which the determination notice in question is given, 30
  - (b) in the case of a referral under section 73(7) (referral following determination under special procedure), during the period of 28 days beginning with the day on which the final notice in question is given, or
  - (c) during such other period as may be specified in rules made under section 76. 35
- (2) Subject to rules made under section 76, the Tribunal may allow a reference to be made after the end of the relevant period specified in or under subsection (1).
- (3) On a reference, the Tribunal may consider any evidence relating to the subject-matter of the reference, whether or not it was available to the Regulator at the material time. 40

- 
- (4) On a reference, the Tribunal must determine what (if any) is the appropriate action for the Regulator to take in relation to the matter referred to the Tribunal.
- (5) On determining a reference, the Tribunal must remit the matter to the Regulator with such directions (if any) as the Tribunal considers appropriate for giving effect to its determination. 5
- (6) Those directions may include directions to the Regulator –
- (a) confirming the Regulator’s determination and any order, notice or direction made, issued or given as a result of it;
  - (b) to vary or revoke the Regulator’s determination, and any order, notice or direction made, issued or given as a result of it; 10
  - (c) to substitute a different determination, order, notice or direction;
  - (d) to make such savings and transitional provision as the Tribunal considers appropriate.
- (7) The Regulator must act in accordance with the determination of, and any direction given by, the Tribunal (and accordingly sections 70 to 73 (standard and special procedure) do not apply). 15
- (8) The Tribunal may, on determining a reference, make recommendations as to the procedure followed by the Regulator or the Determinations Panel.
- (9) An order of the Tribunal may be enforced – 20
- (a) as if it were an order of a county court, or
  - (b) in Scotland, as if it were an order of the Court of Session.

## 78 Appeal on a point of law

- (1) A party to a reference to the Tribunal may with permission appeal – 25
- (a) to the Court of Appeal, or
  - (b) in Scotland, to the Court of Session,
- on a point of law arising from a decision of the Tribunal disposing of the reference.
- (2) “Permission” means permission given by – 30
- (a) the Tribunal, or
  - (b) if it is refused by the Tribunal, by the Court of Appeal or, in Scotland, the Court of Session.
- (3) If, on an appeal under subsection (1), the court considers that the decision of the Tribunal was wrong in law, it may – 35
- (a) remit the matter to the Tribunal for rehearing and determination by it under section 77, or
  - (b) itself make a determination.
- (4) An appeal may not be brought from a decision of the Court of Appeal under subsection (3) except with the leave of – 40
- (a) the Court of Appeal, or
  - (b) the House of Lords.
- (5) An appeal lies, with the leave of the Court of Session or the House of Lords, from any decision of the Court of Session under this section, and such leave

may be given on such terms as to costs, expenses or otherwise as the Court of Session or the House of Lords may determine.

- (6) The Lord Chancellor may by rules make provision for regulating or prescribing any matters incidental to or consequential on an appeal under this section.

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## 79 Redetermination etc by the Tribunal

- (1) This section applies where an application is made to the Tribunal for permission to appeal under section 78(2)(a) from a decision of the Tribunal disposing of a reference.

- (2) If the person who constitutes, or is the chairman of, the Tribunal for the purposes of dealing with that application considers that the decision of the Tribunal disposing of the reference was wrong in law, he may set aside the decision and refer the matter –

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- (a) for rehearing and redetermination by the Tribunal under section 77, or  
(b) for rehearing and determination under that section by a differently constituted Tribunal.

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## 80 Legal assistance scheme

- (1) The Lord Chancellor may by regulations establish a scheme governing the provision of legal assistance in connection with proceedings before the Tribunal.

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- (2) The legal assistance scheme may, in particular, make provision as to –

- (a) the kinds of legal assistance that may be provided;  
(b) the persons by whom legal assistance may be provided;  
(c) the manner in which applications for legal assistance are to be made;  
(d) the criteria on which eligibility for legal assistance is to be determined;  
(e) the persons or bodies by whom applications are to be determined;  
(f) appeals against refusals of applications;  
(g) the revocation or variation of decisions;  
(h) its administration and the enforcement of its provisions.

25

- (3) Legal assistance under the scheme may be provided subject to conditions or restrictions.

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- (4) Those conditions may include conditions as to the making of contributions by the person to whom the assistance is provided.

- (5) *The Lord Chancellor must fund, out of money provided by Parliament, the costs of the scheme including the costs of legal assistance provided under it.*

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- (6) In this Part “the legal assistance scheme” means any scheme in force by virtue of subsection (1).

**PART 2**

THE BOARD OF THE PENSION PROTECTION FUND

**CHAPTER 1**

THE BOARD

*Establishment* 5

**81 The Board of the Pension Protection Fund**

There shall be a body corporate called the Board of the Pension Protection Fund (in this Act referred to as “the Board”).

**82 Membership of the Board**

- |   |    |
|---|----|
| (1) The Board is to consist of the following members –  | 10 |
| (a) a chairman,   |    |
| (b) the Chief Executive of the Board, and   |    |
| (c) at least five other persons (“ordinary members”).   |    |
| (2) The chairman must not be appointed from the staff of the Board or be the chairman of the Regulator.   | 15 |
| (3) The number of ordinary members must not exceed any maximum number which may be prescribed.  |    |
| (4) At least two ordinary members must be appointed from the staff of the Board.  |    |
| (5) No member of the Determinations Panel established by the Regulator under section 10, or member of the staff of the Regulator, is eligible for appointment as a member of the Board. | 20 |
| (6) Any power to appoint ordinary members must be exercised so as to secure that a majority of the members of the Board are non-executive members.                                      |    |
| (7) In this Part –  |    |
| (a) references to executive members of the Board are to –   | 25 |
| (i) the Chief Executive, and  |    |
| (ii) the ordinary members appointed from the staff of the Board, and  |    |
| (b) references to non-executive members of the Board are to members who are not executive members.  | 30 |

**83 Further provision about the Board**

Schedule 5 makes further provision about the Board, including provision as to –

- |   |    |
|---|----|
| the appointment of members,                                   |    |
| the terms of appointment, tenure and remuneration of members, | 35 |
| the appointment of the Chief Executive and other staff,       |    |
| the proceedings of the Board,                                 |    |
| its accounts, and   |    |

the status and liability of the Board, its members and staff.

*General provision about functions*

**84 Board’s functions**

- (1) The Board must hold, manage and apply, in accordance with this Part –
  - (a) a fund to be known as the Pension Protection Fund, and 5
  - (b) a fund to be known as the Fraud Compensation Fund.
- (2) Sections 137 and 151 make provision for contributions to those funds to be levied by the Board.
- (3) The Board also has such other functions as are conferred on it by, or by virtue of, this or any other enactment. 10

**85 Supplementary powers**

- The Board may do anything which –
- (a) is calculated to facilitate the exercise of its functions, or
  - (b) is incidental or conducive to their exercise.

*The Non-Executive Committee* 15

**86 The Non-Executive Committee**

- (1) The Board must establish and maintain a committee consisting of –
  - (a) the chairman of the Board, and
  - (b) the other non-executive members of the Board,(in this Part referred to as “the Non-Executive Committee”). 20
- (2) The chairman of the Board is to be the chairman of the Non-Executive Committee.
- (3) The functions listed in subsection (5) (in this Part referred to as “the non-executive functions”) are functions of the Board.
- (4) The non-executive functions must be discharged on behalf of the Board by the Non-Executive Committee (and are not otherwise dischargeable by or on behalf of the Board). 25
- (5) The non-executive functions are –
  - (a) the duty to contribute to and keep under review the strategic direction of the Board; 30
  - (b) the duty to scrutinise the performance of the Chief Executive in securing that the functions of the Board are discharged efficiently and effectively;
  - (c) the duty to monitor the extent to which the Board is meeting its objectives and targets; 35
  - (d) the duty to monitor the Board’s reporting of its activities to the Secretary of State under section 93;
  - (e) the duty to keep under review the question whether the Board’s internal financial controls secure the proper conduct of its financial affairs; 40

- 
- (f) the duty to determine under sub-paragraph (5)(a) of paragraph 12 of Schedule 5, subject to the approval of the Secretary of State, the terms and conditions as to remuneration of any Chief Executive appointed under sub-paragraph (4) of that paragraph;
  - (g) the duty to determine under paragraph 13(3)(a) of that Schedule, subject to the approval of the Secretary of State, the terms and conditions as to remuneration of any member of the staff who is also to be an executive member of the Board; 5
  - (h) the duty to determine under paragraph 13(3)(b) of that Schedule, the terms and conditions as to remuneration of any member of the staff of a description prescribed for the purposes of that provision. 10
- (6) The Non-Executive Committee must prepare a report on the discharge of the non-executive functions for inclusion in the Board’s annual report to the Secretary of State under section 93.
  - (7) The Non-Executive Committee’s report must relate to the same period as that covered by the Board’s report. 15
  - (8) The Non-Executive Committee may authorise any of its sub-committees to discharge on its behalf –
    - (a) any of the non-executive functions;
    - (b) the duty to prepare a report under subsection (6). 20

*Financial matters*

**87 Investment of funds**

- (1) The Board may invest for the purposes of the prudent management of its financial affairs.
- (2) For the purposes of subsection (1) there must be two fund managers. 25
- (3) For this purpose “fund manager” means an individual who or firm which is appointed by the Board to manage the fund maintained under section 135 (the Pension Protection Fund) and the fund maintained under any corresponding provision in force in Northern Ireland.
- (4) The Board must not appoint an individual or firm as a fund manager unless it is satisfied – 30
  - (a) in the case of an individual, that the individual has the appropriate knowledge and experience for managing the investments of the Pension Protection Fund, or
  - (b) in the case of a firm, that arrangements are in place to secure that any individual who will exercise functions which the firm has as fund manager will, at the time he exercises those functions, have the appropriate knowledge and experience for managing the investments of that Fund. 35

**88 Investment principles**

- (1) The Board must secure – 40
  - (a) that a statement of investment principles is prepared and maintained, and

- 
- (b) that the statement is reviewed at such intervals, and on such occasions, as may be prescribed and, if necessary, revised.
- (2) In this section “statement of investment principles” means a written statement of the investment principles governing determinations made by the Board about investments. 5
- (3) Before preparing or revising a statement of investment principles, the Board must comply with any prescribed requirements.
- (4) A statement of investment principles must be in the prescribed form and cover, amongst other things, the prescribed matters.
- 89 Borrowing** 10
- (1) The Board may –
- (a) borrow from a deposit-taker such sums as it may from time to time require for exercising any of its functions;
  - (b) give security for any money borrowed by it.
- (2) The Board may not borrow if the effect would be – 15
- (a) to take the aggregate amount outstanding in respect of the principal of sums borrowed by it over its borrowing limit, or
  - (b) to increase the amount by which the aggregate amount so outstanding exceeds that limit.
- (3) In this section – 20
- “borrowing limit” means such limit as the Secretary of State may specify by order;
  - “deposit-taker” means –
- (a) a person who has permission under Part 4 of the Financial Services and Markets Act 2000 (c. 8) to accept deposits, or 25
  - (b) an EEA firm of the kind mentioned in paragraph 5(b) of Schedule 3 to that Act which has permission under paragraph 15 of that Schedule (as a result of qualifying for authorisation under paragraph 12 of that Schedule) to accept deposits.
- (4) The definition of “deposit-taker” in subsection (3) must be read with – 30
- (a) section 22 of the Financial Services and Markets Act 2000,
  - (b) any relevant order under that section, and
  - (c) Schedule 2 to that Act.
- 90 Grants**
- The Secretary of State may pay the Board out of money provided by Parliament such sums as he may determine towards any of its expenses, other than expenditure which by virtue of section 135(3) or 150(3) is payable out of –* 35
- (a) *the Pension Protection Fund, or*
  - (b) *the Fraud Compensation Fund.*
- 91 Administration levy** 40
- (1) *Regulations may provide for the imposition of a levy (“administration levy”) in respect of eligible schemes (see section 98) for the purpose of meeting –*

- 
- (a) *the expenditure of the Secretary of State relating to the establishment of the Board;*
  - (b) *any expenditure of the Secretary of State under section 90.*
  - (2) *An administration levy is payable to the Secretary of State by or on behalf of –*
    - (a) *the trustees or managers of an eligible scheme, or* 5
    - (b) *any other prescribed person.*
  - (3) *An administration levy is payable at the prescribed rate and at prescribed times.*
  - (4) *Before prescribing a rate under subsection (3), the Secretary of State must consult the Board.*
  - (5) *An amount payable by a person on account of an administration levy is a debt due from him to the Secretary of State.* 10
  - (6) *An amount so payable is recoverable by the Secretary of State or, if he so determines, by the Regulator on his behalf.*
  - (7) *Without prejudice to the generality of subsections (1), (5) and (6), regulations under this section may include provision relating to –* 15
    - (a) *the collection and recovery of amounts payable by way of levy under this section;*
    - (b) *the circumstances in which any such amount may be waived.*

**92 Fees**

- (1) Regulations may authorise the Board – 20
  - (a) to charge prescribed fees;
  - (b) to charge fees sufficient to meet prescribed costs.
- (2) Regulations under subsection (1) may prescribe, or authorise the Board to determine, the time at which any fee is due.
- (3) Any fee which is owed to the Board by virtue of regulations under this subsection may be recovered as a debt due to the Board. 25

*Annual reports***93 Annual reports to Secretary of State**

- (1) The Board must prepare a report for each financial year.
- (2) Each report – 30
  - (a) must deal with the activities of the Board in the financial year for which it is prepared, and
  - (b) must include the report prepared by the Non-Executive Committee under section 86(6).
- (3) The Board must send each report to the Secretary of State as soon as practicable after the end of the financial year for which it is prepared. 35
- (4) The Secretary of State must lay before each House of Parliament a copy of every report received by him under this section.
- (5) In this section “financial year” means –

- (a) the period beginning with the date on which the Board is established and ending with the next following 31st March, and
- (b) each successive period of 12 months.

## CHAPTER 2

### INFORMATION RELATING TO EMPLOYER'S INSOLVENCY ETC

5

#### *Insolvency events*

#### **94 Duty to notify insolvency events in respect of employers**

- (1) This section applies where, in the case of an occupational pension scheme, an insolvency event occurs in relation to the employer.
- (2) The insolvency practitioner in relation to the employer must give a notice to that effect within the notification period to –
  - (a) the Board,
  - (b) the Regulator, and
  - (c) the trustees or managers of the scheme.
- (3) For the purposes of subsection (2) the “notification period” is the prescribed period beginning with the later of –
  - (a) the insolvency date, and
  - (b) the date the insolvency practitioner becomes aware of the existence of the scheme.
- (4) A notice under this section must be in such form and contain such information as may be prescribed.

#### **95 Insolvency event, insolvency date and insolvency practitioner**

- (1) In this Part each of the following expressions has the meaning given to it by this section –
  - “insolvency event”
  - “insolvency date”
  - “insolvency practitioner”.
- (2) An insolvency event occurs in relation to an individual where –
  - (a) he is adjudged bankrupt or sequestration of his estate has been awarded;
  - (b) the nominee in relation to a proposal for a voluntary arrangement under Part 8 of the Insolvency Act 1986 (c. 45) submits a report to the court under section 256(1) or 256A(3) of that Act which states that in his opinion a meeting of the individual's creditors should be summoned to consider the debtor's proposal;
  - (c) a deed of arrangement made by or in respect of the affairs of the individual is registered in accordance with the Deeds of Arrangement Act 1914 (c. 47);
  - (d) he executes a trust deed for his creditors or enters into a composition contract;
  - (e) he has died and –

- 
- (i) an insolvency administration order is made in respect of his estate in accordance with an order under section 421 of the Insolvency Act 1986 (c. 45), or
  - (ii) a judicial factor appointed under section 11A of the Judicial Factors (Scotland) Act 1889 (c. 39) is required by that section to divide the individual’s estate among his creditors. 5
- (3) An insolvency event occurs in relation to a company where –
- (a) the nominee in relation to a proposal for a voluntary arrangement under Part 1 of the Insolvency Act 1986 submits a report to the court under section 2 of that Act (procedure where nominee is not the liquidator or administrator) which states that in his opinion meetings of the company and its creditors should be summoned to consider the proposal; 10
  - (b) the directors of the company file (or in Scotland lodge) with the court documents and statements in accordance with paragraph 7(1) of Schedule A1 to that Act (moratorium where directors propose voluntary arrangement); 15
  - (c) an administrative receiver within the meaning of section 251 of that Act is appointed in relation to the company;
  - (d) the company enters administration within the meaning of paragraph 1(2)(b) of Schedule B1 to that Act; 20
  - (e) a resolution is passed for a voluntary winding up of the company without a declaration of solvency under section 89 of that Act;
  - (f) an order for the winding up of the company is made by the court under Part 4 or 5 of that Act. 25
- (4) An insolvency event occurs in relation to a partnership where –
- (a) an order for the winding up of the partnership is made by the court under any provision of the Insolvency Act 1986 (as applied by an order under section 420 of that Act (insolvent partnerships));
  - (b) sequestration is awarded on the estate of the partnership under section 12 of the Bankruptcy (Scotland) Act 1985 (c. 66) or the partnership grants a trust deed for its creditors; 30
  - (c) the nominee in relation to a proposal for a voluntary arrangement under Part 1 of the Insolvency Act 1986 (as applied by an order under section 420 of that Act) submits a report to the court under section 2 of that Act (procedure where nominee is not the liquidator or administrator) which states that in his opinion meetings of the members of the partnership and the partnership’s creditors should be summoned to consider the proposal; 35
  - (d) the members of the partnership file with the court documents and statements in accordance with paragraph 7(1) of Schedule A1 to that Act (moratorium where directors propose voluntary arrangement) (as applied by an order under section 420 of that Act); 40
  - (e) an administration order under Part 2 of the Insolvency Act 1986 (as applied by section 420 of that Act) is made in relation to the partnership. 45
- (5) An insolvency event also occurs in relation to a person where an event occurs which is a prescribed event in relation to such a person.
- (6) Except as provided by subsections (2) to (5), for the purposes of this Part an event is not to be regarded as an insolvency event in relation to a person. 50

- (7) The Secretary of State may by order amend subsection (4)(e) to make provision consequential upon any order under section 420 of the Insolvency Act 1986 (c. 45) (insolvent partnerships) applying the provisions of Part 2 of that Act (administration) as amended by the Enterprise Act 2002 (c. 40).
- (8) “Insolvency date”, in relation to an insolvency event, means the date on which the event occurs. 5
- (9) “Insolvency practitioner”, in relation to a person, means –
- (a) a person acting as an insolvency practitioner, in relation to that person, in accordance with section 388 of the Insolvency Act 1986,
- (b) in such circumstances as may be prescribed, a person of a prescribed description. 10
- (10) In this section –
- “company” means a company within the meaning given by section 735(1) of the Companies Act 1985 (c. 6) or a company which may be wound up under Part 5 of the Insolvency Act 1986 (unregistered companies); 15
- “person acting as an insolvency practitioner”, in relation to a person, includes the official receiver acting as receiver or manager of any property of that person.
- (11) In applying section 388 of the Insolvency Act 1986 under subsection (9) above – 20
- (a) the reference in section 388(2)(a) to a permanent or interim trustee in sequestration must be taken to include a reference to a trustee in sequestration, and
- (b) section 388(5) (which includes provision that nothing in the section applies to anything done by the official receiver or the Accountant in Bankruptcy) must be ignored. 25

*Status of scheme*

**96 Insolvency practitioner’s duty to issue notices confirming status of scheme**

- (1) This section applies where an insolvency event has occurred in relation to the employer in relation to an occupational pension scheme 30
- (2) If an insolvency practitioner in relation to the employer is able to confirm –
- (a) that a scheme rescue is not possible, or
- (b) that a scheme rescue has occurred,
- he must issue a notice to that effect.
- (3) Subsection (4) applies where – 35
- (a) in prescribed circumstances, insolvency proceedings in relation to the employer are stayed or come to an end, or
- (b) a prescribed event occurs.
- (4) If a person who was acting as an insolvency practitioner in relation to the employer immediately before this subsection applies has not been able to confirm in relation to the scheme – 40
- (a) that a scheme rescue is not possible, or
- (b) that a scheme rescue has occurred,
- he must issue a notice to that effect.

- 
- (5) For the purposes of this section –
- (a) a person is able to confirm that a scheme rescue has occurred in relation to an occupational pension scheme if, and only if, he is able to confirm such matters as are prescribed for the purposes of this paragraph, and
  - (b) a person is able to confirm that a scheme rescue is not possible, in relation to such a scheme if, and only if, he is able to confirm such matters as are prescribed for the purposes of this paragraph. 5
- (6) Where an insolvency practitioner or former insolvency practitioner in relation to the employer issues a notice under this section, he must give a copy of that notice to – 10
- (a) the Board,
  - (b) the Regulator, and
  - (c) the trustees or managers of the scheme.
- (7) A person must comply with an obligation imposed on him by subsection (2), (4) or (6) as soon as reasonably practicable. 15

*Board’s duties*

**97 Board’s duty where there is a failure to comply with section 96**

- (1) This section applies where, in relation to an occupational pension scheme, the Board is satisfied that an insolvency practitioner, or former insolvency practitioner, in relation to the employer has failed to issue a notice which he was required to issue under section 96. 20
- (2) The Board must issue a notice in the form in which it ought to have been issued.
- (3) Subject to subsections (4) and (5), a notice issued under subsection (2) has effect as if it were a notice issued under section 96 by an insolvency practitioner or, as the case may, former insolvency practitioner in relation to the employer. 25
- (4) Where a notice is issued under subsection (2), section 96(6) does not apply and the Board must, as soon as reasonably practicable, give a copy of the notice to –
- (a) the Regulator,
  - (b) the trustees or managers of the scheme, and
  - (c) any insolvency practitioner in relation to the employer, or if there is no such insolvency practitioner, the employer. 30
- (5) The issuing of a notice under subsection (2) does not have effect to prevent an insolvency event in relation to the employer being a qualifying insolvency event within the meaning of any provision of this Part or of section 75 of the Pensions Act 1995 (c. 26) if – 35
- (a) the event occurs after the failure mentioned in subsection (1), and
  - (b) had the insolvency practitioner issued the required notice under section 96, the event would have been a qualifying insolvency event for those purposes.

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CHAPTER 3

PENSION PROTECTION

*Eligible schemes*

**98 Eligible schemes**

- (1) In this Part references to an “eligible scheme” are to an occupational pension scheme which – 5
- (a) is not a money purchase scheme, and
  - (b) is not a prescribed scheme or a scheme of a prescribed description.
- (2) A scheme is not an eligible scheme if it is being wound up immediately before the day appointed by the Secretary of State by order for the purposes of this subsection. 10

*Circumstances in which Board assumes responsibility for eligible schemes*

**99 Duty to assume responsibility for schemes following insolvency event**

- (1) This section applies where a qualifying insolvency event has occurred in relation to the employer in relation to an eligible scheme. 15
- (2) The Board must assume responsibility for the scheme in accordance with this Chapter if –
- (a) the value of the assets of the scheme at the relevant time was less than the amount of the protected liabilities at that time (see sections 103 and 112), 20
  - (b) after the relevant time an insolvency practitioner in relation to the employer issues a notice under section 96 confirming that a scheme rescue is not possible in relation to the scheme, and
  - (c) the Board has not ceased to be involved with the scheme (see section 117) in the period beginning with the relevant time and ending with the issuing of that notice. 25
- (3) For the purposes of this section –
- (a) in relation to an eligible scheme, an insolvency event in relation to the employer is a qualifying insolvency event if the event does not fall within an assessment period (see section 104) in respect of the scheme which began before the event occurred, 30
  - (b) the reference in subsection (2)(a) to the assets of the scheme is a reference to those assets excluding any assets representing the value of any rights in respect of money purchase benefits under the scheme, and
  - (c) “the relevant time” means the time immediately before the qualifying insolvency event occurs. 35
- (4) This section is subject to sections 115 and 116 (cases where Board must refuse to assume responsibility for a scheme).

## **100 Duty to assume responsibility for schemes following application or notification**

- (1) This section applies where, in relation to an eligible scheme, the trustees or managers of the scheme –
  - (a) make an application under subsection (1) of section 101 (a “section 101 application”), or 5
  - (b) receive a notice from the Board under subsection (5)(a) of that section (a “section 101 notification”).
- (2) The Board must assume responsibility for the scheme in accordance with this Chapter if – 10
  - (a) the value of the assets of the scheme at the relevant time was less than the amount of the protected liabilities at that time (see sections 103 and 112),
  - (b) after the relevant time the Board issues a notice under section 102 confirming that a scheme rescue is not possible in relation to the scheme, and 15
  - (c) the Board has not ceased to be involved with the scheme (see section 117) in the period beginning with the relevant time and ending with the issuing of that notice.
- (3) In subsection (2) – 20
  - (a) the reference in paragraph (a) to the assets of the scheme is a reference to those assets excluding any assets representing the value of any rights in respect of money purchase benefits under the scheme, and
  - (b) “the relevant time” means the time immediately before the section 101 application was made or, as the case may be, the section 101 notification was received. 25
- (4) An application under section 101(1) or notification under section 101(5)(a) is to be disregarded for the purposes of subsection (1) if it is made or given during an assessment period (see section 104) in respect of the scheme which began before the application was made or notification was given. 30
- (5) This section is subject to sections 115 and 116 (cases where Board must refuse to assume responsibility for a scheme).

## **101 Applications and notifications for the purposes of section 100**

- (1) The trustees or managers of an eligible scheme must make an application to the Board for it to assume responsibility for the scheme under section 100 if it appears to them that – 35
  - (a) the employer in relation to the scheme is unlikely to continue as a going concern, and
  - (b) the prescribed requirements are met in relation to the employer.
- (2) Where the Board receives an application under subsection (1), it must give a copy of the application to – 40
  - (a) the Regulator, and
  - (b) the employer.
- (3) An application under subsection (1) must –
  - (a) be in the prescribed form and contain the prescribed information, and 45
  - (b) be made within the prescribed period.

- (4) Where the Regulator becomes aware that –
  - (a) the employer in relation to an eligible scheme is unlikely to continue as a going concern, and
  - (b) the requirements mentioned in subsection (1)(b) are met in relation to the employer,it must give the Board a notice to that effect. 5
- (5) Where the Board receives a notice under subsection (4), it must –
  - (a) give the trustees or managers of the scheme a notice to that effect, and
  - (b) give the employer a copy of that notice.
- (6) Regulations may require notices under this section to be in the prescribed form and contain the prescribed information. 10

## **102 Board’s duty where application or notification received under section 101**

- (1) This section applies where the Board –
  - (a) receives an application under subsection (1) of section 101 and is satisfied that paragraph (a) and (b) of that subsection are satisfied in relation to the application, or
  - (b) is notified by the Regulator under section 101(4).15
- (2) If the Board is able to confirm that a scheme rescue is not possible, it must as soon as reasonably practicable issue a notice to that effect.
- (3) If the Board is able to confirm that a scheme rescue has occurred, it must as soon as reasonably practicable issue a withdrawal notice. 20
- (4) The Board must, as soon as reasonably practicable, give a copy of any notice issued under subsection (2) or (3) to –
  - (a) the Regulator,
  - (b) the trustees or managers of the scheme, and
  - (c) the employer.25
- (5) For the purposes of this section –
  - (a) the Board is able to confirm that a scheme rescue has occurred in relation to an occupational pension scheme if, and only if, it is able to confirm such matters as are prescribed for the purposes of this paragraph, and
  - (b) the Board is able to confirm that a scheme rescue is not possible in relation to such a scheme if, and only if, it is able to confirm such matters as are prescribed for the purposes of this paragraph.30
- (6) In this section “withdrawal notice” means a notice in the prescribed form which –
  - (a) states the time from which the Board ceases to be involved with the scheme, and
  - (b) contains such other information as may be prescribed.35

## **103 Protected liabilities**

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- (1) For the purposes of this Chapter the protected liabilities, in relation to an eligible scheme, at a particular time (“the relevant time”) are –
  - (a) the cost of securing benefits for and in respect of members of the scheme which are equivalent to the compensation which would be

- 
- payable, in relation to the scheme, in accordance with the pension compensation provisions (see section 124) if the Board assumed responsibility for the scheme under this Chapter,
- (b) liabilities of the scheme which are not liabilities to, or in respect of, its members, and 5
- (c) the estimated cost of winding up the scheme.
- (2) For the purposes of determining the cost of securing benefits within subsection (1)(a), references in Schedule 7 ((pension compensation provisions) to the assessment date are to be read as references to the day on which the relevant time falls. 10

*Restrictions on schemes during the assessment period*

**104 Assessment periods**

- (1) In this Part references to an assessment period are to be construed in accordance with this section.
- (2) Where, in relation to an eligible scheme, a qualifying insolvency event occurs in relation to the employer, an assessment period – 15
- (a) begins with the occurrence of that event, and
- (b) ends when –
- (i) the Board ceases to be involved with the scheme (see section 117), 20
- (ii) the trustees or managers of the scheme receive a transfer notice under section 122, or
- (iii) the winding up of the scheme is completed, whichever first occurs.
- (3) For the purposes of subsection (2) an insolvency event in relation to the employer is a qualifying insolvency event if it does not fall within an assessment period in respect of the scheme which began before that event. 25
- (4) Where, in relation to an eligible scheme, an application is made under section 101(1) or a notification is received under section 101(5)(a), an assessment period – 30
- (a) begins when the application is made or the notification is received, and
- (b) ends when –
- (i) the Board ceases to be involved with the scheme (see section 117),
- (ii) the trustees or managers of the scheme receive a transfer notice under section 122, or 35
- (iii) the winding up of the scheme is completed, whichever first occurs.
- (5) For the purposes of subsection (4) an application under section 101(1) or notification under section 127(5)(a) is to be disregarded if it is made or given during an assessment period in respect of the scheme which began before the application was made or notification was given. 40

## 105 Admission of new members, payment of contributions etc

- (1) This section applies where there is an assessment period in relation to an eligible scheme.
- (2) No new members may be admitted to the scheme during the assessment period. 5
- (3) No further contributions (other than those due to be paid before the beginning of the assessment period) may be paid towards the scheme during the assessment period.
- (4) Any obligation to pay contributions towards the scheme during the assessment period (including any obligation under section 49(8) of the Pensions Act 1995 (c. 26) to pay amounts deducted corresponding to such contributions) is to be read subject to subsection (3) and section 118 (obligation to pay contributions when assessment period ends). 10
- (5) During the assessment period, except in prescribed circumstances and subject to prescribed conditions, no transfers of, or transfer payments in respect of, any member's rights under the scheme are to be made from the scheme. 15
- (6) No benefits may accrue under the scheme to, or in respect of, members of the scheme during the assessment period.
- (7) Subsection (6) does not prevent any increase, in a benefit, which would otherwise accrue in accordance with the scheme or any enactment. 20  
This subsection is subject to section 110 (which limits the scheme benefits payable during an assessment period).
- (8) Subsection (6) does not prevent the accrual of money purchase benefits to the extent that they are derived from income or capital gains arising from the investment of payments which – 25
  - (a) are made by, or in respect of, a member of the scheme, and
  - (b) relate to periods of pensionable service (within the meaning of section 124(1) and (3) of the Pensions Act 1995) prior to the assessment period.
- (9) Any action taken in contravention of this section is void.
- (10) Disregarding subsection (9), section 10 of the Pensions Act 1995 (civil penalties) 30 applies to any trustee or manager of a scheme who fails to take all reasonable steps to secure compliance with this section.

## 106 Directions

- (1) This section applies where there is an assessment period in relation to an eligible scheme. 35
- (2) With a view to ensuring that the scheme's protected liabilities do not exceed its assets or, if they do exceed its assets, that the excess is kept to a minimum, the Board may give a relevant person in relation to the scheme directions regarding the exercise during that period of their powers in respect of – 40
  - (a) the investment of the scheme's assets,
  - (b) the incurring of expenditure,
  - (c) the instigation or conduct of legal proceedings, and
  - (d) such other matters as may be prescribed.
- (3) In subsection (2) –

- 
- (a) “relevant person” in relation to a scheme means –
- (i) the trustees or managers of the scheme,
  - (ii) the employer in relation to the scheme, or
  - (iii) such other persons as may be prescribed, and
- (b) the reference to the assets of the scheme is a reference to those assets excluding any assets representing the value of any rights in respect of money purchase benefits under the scheme. 5
- (4) The Board may revoke or vary any direction under this section.
- (5) Where a direction under this section given to the trustees or managers of a scheme is not complied with section 10 of the Pensions Act 1995 (c. 26) (civil penalties) applies to any such trustee or manager who has failed to take all reasonable steps to secure compliance with the direction. 10
- (6) That section also applies to any other person who, without reasonable excuse, fails to comply with a direction given to him under this section.
- 107 Restrictions on winding up of schemes 15**
- (1) This section applies where there is an assessment period in relation to an eligible scheme.
- (2) Subject to subsection (3), the winding up of the scheme must not begin during the assessment period.
- (3) Subsection (2) does not apply to the winding up of the scheme in accordance with an order by the Regulator under section 11(3A) of the Pensions Act 1995 (Regulator’s powers to wind up occupational pension schemes to protect Pension Protection Fund) directing the scheme to be wound up (and section 177 makes provision for the backdating of the winding up). 20
- (4) Where the winding up of the scheme begins by virtue of subsection (3), or otherwise began before the assessment period, no steps may be taken during that period to discharge any liability to or in respect of a member of the scheme in respect of pensions or other benefits. 25
- (5) Any action taken in contravention of this section is void, except to the extent that the Board validates the action (see section 108). 30
- (6) Disregarding subsection (5), where there is a contravention of this section, section 10 of the Pensions Act 1995 (civil penalties) applies to any trustee or manager who has failed to take all reasonable steps to secure compliance with this section.
- (7) The Regulator may not make a freezing order (see section 20) in relation to the scheme during the assessment period. 35
- (8) Nothing in this section operates to prevent the winding up of a scheme, and the discharge of any liability to or in respect of a member of the scheme, in accordance with section 119 (requirement to wind up schemes with sufficient assets to meet protected liabilities). 40
- 108 Power to validate contraventions of section 107**
- (1) The Board may validate an action for the purposes of section 107(5) only if it is satisfied that to do so is consistent with the objective of ensuring that the

scheme’s protected liabilities do not exceed its assets or, if those liabilities do exceed its assets, that the excess is kept to a minimum.

- (2) Where the Board determines to validate, or not to validate, any action of the trustees or managers for those purposes, it must give a notice to that effect to—
  - (a) the Regulator, 5
  - (b) the trustees or managers of the scheme,
  - (c) any insolvency practitioner in relation to the employer or, if there is no such insolvency practitioner, the employer, and
  - (d) any other person who appears to the Board to be directly affected by the determination. 10
- (3) A notice under subsection (2) must contain a statement of the Board’s reasons for the determination.
- (4) A determination to validate an action does not take effect—
  - (a) until the period within which the determination may be reviewed by virtue of Chapter 6 has expired, and 15
  - (b) if the determination is so reviewed, until—
    - (i) the review and any reconsideration,
    - (ii) any reference to the PPF Ombudsman in respect of the determination, and
    - (iii) any appeal against his determination or directions, 20has been finally disposed of.

#### **109 Board to act as creditor of the employer**

- (1) Subsection (2) applies where there is an assessment period in relation to an eligible scheme.
- (2) During the assessment period, the rights and powers of the trustees or managers of the scheme in relation to any debt (including any contingent debt) owed to them by the employer, whether by virtue of section 75 of the Pensions Act 1995 (c. 26) (deficiencies in the scheme assets) or otherwise, are exercisable by the Board to the exclusion of the trustees or managers. 25
- (3) Where, by virtue of subsection (2), any amount is paid to the Board in respect of such a debt, the Board must pay that amount to the trustees or managers of the scheme. 30
- (4) Where an insolvency arrangement is made in respect of the employer, the Board is not bound by the terms of that arrangement if, and to the extent that, the arrangement relates to a debt which, at the time the arrangement was made, was a contingent debt of the employer in respect of the scheme under section 75 of the Pensions Act 1995. 35
- (5) Subsection (4) does not apply where, before the arrangement was made, the Board consented to be so bound.
- (6) In subsection (4) “insolvency arrangement” means— 40
  - (a) a voluntary arrangement under Part 1 or 8 of the Insolvency Act 1986 (c. 45);
  - (b) an arrangement which has effect under section 425 of the Companies Act 1985 (c. 6);

- (c) a deed of arrangement registered in accordance with the Deeds of Arrangement Act 1914 (c. 47);
- (d) a trust deed executed for the employer’s creditors or a composition contract entered into by the employer.

**110 Payment of scheme benefits** 5

- (1) Subsection (2) applies where there is an assessment period in relation to an eligible scheme.
- (2) The benefits payable to or in respect of any member under the scheme during the assessment period must be reduced to the extent necessary to ensure that they do not exceed the compensation which would be payable to or in respect of the members for that period in accordance with this Chapter if – 10
  - (a) the Board assumed responsibility for the scheme under this Chapter, and
  - (b) the assessment date referred to in Schedule 7 were the date on which the assessment period began. 15
- (3) Section 10 of the Pensions Act 1995 (c. 26) (civil penalties) applies to a trustee or manager of a scheme who fails to take all reasonable steps to secure compliance with subsection (2).
- (4) Regulations may provide that, where there is an assessment period in relation to an eligible scheme, the commencement of a member’s pension or other benefits is, in such circumstances and on such terms and conditions as may be prescribed, to be postponed for the whole or any part of the assessment period for which he continues in employment after attaining normal pension age. 20
- (5) Nothing in subsection (2) applies to money purchase benefits.

**111 Loans to pay scheme benefits** 25

- (1) This section applies where section 110(2) applies in relation to an eligible scheme.
  - (2) Where the Board is satisfied that the trustees or managers of the scheme are not able to pay benefits under the scheme (reduced in accordance with section 110(2)) as they fall due, it may, on an application by the trustees or managers, lend to them such amounts as the Board considers appropriate for the purpose of enabling them to pay those benefits. 30
  - (3) Where an amount lent to the trustees or managers of a scheme under subsection (2) is outstanding at – 35
    - (a) the time the Board ceases to be involved with the scheme, or
    - (b) if earlier – 40
      - (i) the time during the assessment period when an order is made under section 11(3A) of the Pensions Act 1995 directing the winding up of the scheme, or
      - (ii) where no such order is made during that period, the time when section 119 (requirement to wind up schemes with sufficient assets to meet protected liabilities) first applies in relation to the scheme, 40
- that amount, together with the appropriate interest on it, falls to be repaid by the trustees or managers of the scheme to the Board at that time. 45

- (4) No loan may be made under subsection (2) after the time mentioned in subsection (3)(b).
- (5) In subsection (2) the reference to “benefits” does not include money purchase benefits.
- (6) In subsection (3) “the appropriate interest” on an amount lent under subsection (2) means interest at the prescribed rate from the time the amount was so lent until repayment. 5
- (7) Subject to this section, the Board may make a loan under subsection (2) on such terms as it thinks fit.

*Valuation of assets and liabilities* 10

**112 Board’s obligation to obtain valuation of assets and protected liabilities**

- (1) This section applies in a case within subsection (1) of section 99 or 100.
- (2) For the purposes of determining whether the condition in subsection (2)(a) of the section in question is satisfied, the Board must, as soon as reasonably practicable, obtain an actuarial valuation of the scheme as at the relevant time. 15
- (3) For this purpose –  
    “actuarial valuation”, in relation to the scheme, means a written valuation, prepared and signed by a person with prescribed qualifications, of the assets and protected liabilities of the scheme; and  
    “relevant time” – 20
  - (a) in a case within subsection (1) of section 99 has the meaning given in subsection (3)(c) of that section, and
  - (b) in a case within subsection (1) of section 100 has the meaning given in subsection (3)(b) of that section.
- (4) For the purposes of this Chapter, regulations may prescribe how – 25
  - (a) the assets and the protected liabilities of eligible schemes, and
  - (b) their amount or value,are to be determined, calculated and verified.
- (5) Subject to any provision made under subsection (4), those matters are to be determined, calculated and verified in accordance with guidance issued by the Board. 30
- (6) In calculating the amount of any liabilities for those purposes, a provision of the scheme which limits the amount of its liabilities by reference to the value of its assets is to be disregarded.
- (7) The duty imposed by subsection (2) ceases to apply if and when the Board ceases to be involved with the scheme. 35
- (8) In this section references to “assets” do not include assets representing the value of any rights in respect of money purchase benefits under the scheme.

**113 Approval of valuation**

- (1) This section applies where the Board obtains a valuation in respect of a scheme under section 112. 40

- 
- (2) Where the Board is satisfied that the valuation has been prepared in accordance with that section, it must –
- (a) approve the valuation, and
  - (b) give a copy of the valuation to –
    - (i) the Regulator, 5
    - (ii) the trustees or managers of the scheme, and
    - (iii) any insolvency practitioner in relation to the employer or, if there is no such insolvency practitioner, the employer.
- (3) Where the Board is not so satisfied, it must obtain another valuation under that section. 10

#### **114 Binding valuations**

- (1) For the purposes of this Chapter a valuation obtained under section 112 is not binding until –
- (a) it is approved under section 113,
  - (b) the period within which the approval may be reviewed by virtue of Chapter 6 has expired, and 15
  - (c) if the approval is so reviewed –
    - (i) the review and any reconsideration,
    - (ii) any reference to the PPF Ombudsman in respect of the determination, and 20
    - (iii) any appeal against his determination or directions, has been finally disposed of.
- (2) For the purposes of determining whether or not the condition in section 99(2)(a) or, as the case may be, section 100(2)(a) (condition that scheme assets are less than protected liabilities) is satisfied in relation to a scheme, a binding valuation is conclusive. 25  
 This subsection is subject to section 134(3) and (4) (treatment of fraud compensation payments).
- (3) Where a valuation becomes binding under this section the Board must as soon as practicable give a notice to that effect together with a copy of the binding valuation to – 30
- (a) the trustees or managers of the scheme,
  - (b) any insolvency practitioner in relation to the employer or, if there is no such insolvency practitioner, the employer.
- (4) A notice under subsection (3) must be in the prescribed form and contain the prescribed information. 35

#### *Refusal to assume responsibility*

#### **115 Schemes which become eligible schemes**

- (1) Regulations may provide that where the Board is satisfied that an eligible scheme was not such a scheme throughout such period as may be prescribed, the Board must refuse to assume responsibility for the scheme under this Chapter. 40

- (2) Where, by virtue of subsection (1), the Board is required to refuse to assume responsibility for a scheme, it—
- (a) must issue a withdrawal notice, and
  - (b) give a copy of that notice to—
    - (i) the Regulator, 5
    - (ii) the trustees or managers of the scheme, and
    - (iii) any insolvency practitioner in relation to the employer or, if there is no such insolvency practitioner, the employer.
- (3) In this section “withdrawal notice” means a notice in the prescribed form which— 10
- (a) states the time from which the Board ceases to be involved with the scheme (see section 117), and
  - (b) contains such other information as may be prescribed.

### 116 New schemes created to replace existing schemes

- (1) The Board must refuse to assume responsibility for a scheme (“the new scheme”) under this Chapter where it is satisfied that— 15
- (a) the new scheme was established during such period as may be prescribed,
  - (b) the employer in relation to the new scheme was, at the date of establishment of that scheme, also the employer in relation to a scheme established before the new scheme (the “old scheme”), 20
  - (c) a transfer or transfers of, or transfer payment or transfer payments in respect of, any rights of members under the old scheme has or have been made to the new scheme, and
  - (d) the main purpose or one of the main purposes of establishing the new scheme and making the transfer or transfers, or transfer payment or transfer payments, was to enable those members to receive compensation under the pension compensation provisions in respect of their rights under the new scheme in circumstances where, in the absence of the transfer or transfers, regulations under section 115 would have operated to prevent such payments in respect of their rights under the old scheme. 25 30
- (2) Where, under subsection (1), the Board is required to refuse to assume responsibility for a scheme, it— 35
- (a) must issue a withdrawal notice, and
  - (b) give a copy of that notice to—
    - (i) the Regulator,
    - (ii) the trustees or managers of the scheme, and
    - (iii) any insolvency practitioner in relation to the employer or, if there is no such insolvency practitioner, the employer. 40
- (3) In this section “withdrawal notice” means a notice in the prescribed form which—
- (a) states the time from which the Board ceases to be involved with the scheme (see section 117), and
  - (b) contains such other information as may be prescribed. 45

*Cessation of involvement with a scheme*

**117 Circumstances in which Board ceases to be involved with an eligible scheme**

- (1) Where an assessment period begins in relation to an eligible scheme, the Board ceases to be involved with the scheme, for the purposes of this Part, on the occurrence of the first withdrawal event after the beginning of that period. 5
- (2) For this purpose the following are withdrawal events in relation to a scheme –
  - (a) the issuing, by an insolvency practitioner in relation to the employer, of a notice under section 96(2) which confirms that a scheme rescue has occurred;
  - (b) the issuing, by the Board, of a withdrawal notice under section 102(3) (Board’s confirmation that a scheme rescue has occurred); 10
  - (c) in a case where a person who is or was such an insolvency practitioner issues a notice under section 96(4) –
    - (i) the issuing, by the Board, of a withdrawal notice under subsection (5) below, or 15
    - (ii) where no such withdrawal notice is issued before the end of the period of six months beginning with the date on which the notice was issued under section 96(4), the expiry of that period;
  - (d) the issuing, by the Board, of a withdrawal notice under section 115 or 116 (refusal to assume responsibility for a scheme). 20
- (3) Subsection (4) applies where the Board –
  - (a) receives a copy of a notice under section 96(4) in relation to an eligible scheme, and
  - (b) it has not, since the last insolvency event occurred in relation to the employer, ceased to be involved with the scheme. 25
- (4) The Board must, on receiving the notice, determine whether any insolvency event –
  - (a) has occurred in relation to the employer since the date that notice was issued, or
  - (b) is likely to so occur. 30
- (5) If the Board determines under subsection (4) that no insolvency event has occurred or is likely to occur as mentioned in that subsection, it must –
  - (a) issue a withdrawal notice, and
  - (b) give a copy of that notice to –
    - (i) the Regulator, 35
    - (ii) the trustees or managers of the scheme, and
    - (iii) the employer.
- (6) Where the Board ceases to be involved with a scheme by virtue of an event within subsection (2)(a) or (c)(ii), it must –
  - (a) issue a withdrawal notice, and 40
  - (b) give a copy of that notice to –
    - (i) the trustees or managers of the scheme,
    - (ii) the Regulator, and
    - (iii) the employer.
- (7) In subsections (5) and (6) “withdrawal notice” means a notice in the prescribed form which – 45

- (a) states the time from which the Board ceases to be involved with the scheme, and
- (b) contains such other information as may be prescribed.

### **118 Consequences of the Board ceasing to be involved with a scheme**

- (1) Where— 5
  - (a) an assessment period comes to an end by virtue of the Board ceasing to be involved with an eligible scheme, and
  - (b) during the assessment period any amount of any benefit payable to a member, or to a person in respect of a member, under the scheme was not paid by reason of section 110 (requirement to pay benefits in accordance with the pension compensation provisions), 10

that amount falls due to the member, or as the case may be, person at the end of that period.
- (2) Regulations may provide that, in cases within paragraph (a) of subsection (1), benefits are to accrue under the scheme, in such circumstances as may be prescribed, to or in respect of members of the scheme in respect of any specified period of service being service in employment which, but for section 105(6), would have qualified the member in question for those benefits under the scheme. 15
- (3) Regulations under subsection (2) may in particular make provision— 20
  - (a) for benefits not to accrue to, or in respect of, a member unless an election is made by or on behalf of the member that they accrue;
  - (b) for benefits not to accrue to, or in respect of, a member unless contributions are paid by or on behalf of the member towards the scheme within a prescribed period; 25
  - (c) for contributions towards the scheme which, but for section 105, would have been payable by or on behalf of the employer (otherwise than on behalf of an employee) during the assessment period, to fall due;
  - (d) requiring that such contributions as are mentioned in paragraph (a) or (b) are accepted for the assessment period or any part of that period. 30
- (4) In this section “contributions” means, in relation to an eligible scheme, contributions payable towards the scheme by or on behalf of the employer or the active members of the scheme in accordance with the schedule of contributions maintained under section 184 in respect of the scheme; and

*Reconsideration and winding up* 35

### **119 Requirement to wind up schemes with sufficient assets to meet protected liabilities**

- (1) This section applies where during an assessment period subsection (2) or (3) applies in relation to an eligible scheme.
- (2) This subsection applies where— 40
  - (a) a notice has been issued under section 96(2) confirming that a scheme rescue is not possible in relation to the scheme and the trustees or managers have received a copy of that notice under section 96(6) (or, where that provision does not apply, under section 97(4)),

- 
- (b) the Board would have been required to assume responsibility for the scheme under section 99 but for the fact that the condition in section 99(2)(a) was not satisfied, and
- (c) the valuation obtained by the Board under section 112 in respect of the scheme has become binding. 5
- (3) This subsection applies where –
- (a) the Board has given the trustees or managers of the scheme notice under section 102(2) confirming that a scheme rescue is not possible in relation to the scheme and the trustees or managers have received a copy of that notice under that section, 10
- (b) the Board would have been required to assume responsibility for the scheme under section 100 but for the fact that the requirement of section 100(2)(a) was not satisfied, and
- (c) the valuation obtained by the Board under section 112 in respect of the scheme has become binding. 15
- (4) The trustees or managers of the scheme must –
- (a) wind up the scheme, or
- (b) where the winding up of the scheme began before the assessment period (whether by virtue of section 177 or otherwise), continue the winding up of the scheme. 20
- This is subject to subsections (5) and (6) and to any order under section 11 of the Pensions Act 1995 (c. 26) (Regulator’s power to direct or authorise winding up).
- (5) The duties imposed by subsection (4) are suspended –
- (a) during the period when an application for reconsideration can be made under section 120, and 25
- (b) if such an application is made –
- (i) until the period within which the determination on the application may be reviewed by virtue of Chapter 6 has expired, and 30
- (ii) if the determination is so reviewed, until the review and any reconsideration, any reference to the PPF Ombudsman in respect of the determination, and any appeal against his determination or directions, has been finally disposed of.
- (6) Where a scheme is wound up in accordance with subsection (4)(a), the winding up is to be taken as beginning immediately before the assessment period. 35
- (7) Without prejudice to the power to give directions under section 106, the Board may give the trustees or managers of the scheme directions relating to the manner of the winding up of the scheme under this section (and may vary or revoke any such direction given by it). 40
- (8) The winding up of a scheme under this section is as effective in law as if it had been made under powers conferred by or under the scheme.
- (9) This section must be complied with in relation to a scheme –
- (a) in spite of any enactment or rule of law, or any rule of the scheme, which would otherwise operate to prevent the winding up, and 45
- (b) without regard to any such enactment, rule of law or rule of the scheme as would otherwise require or might otherwise be taken to require the

implementation of any procedure or the obtaining of any consent with a view to the winding up.

- (10) Where a public service pension scheme is required to be wound up under this section, provision may be made by order modifying any enactment in which the scheme is contained or under which it is made. 5

## 120 Application for reconsideration

- (1) Where a scheme is required to be wound up under section 119, the trustees or managers may make an application (“the application”) to the Board for it to assume responsibility for the scheme in accordance with this Chapter.
- (2) For the purposes of determining whether the scheme is required to be wound up, subsection (5) of that section (suspension of requirement to wind up pending reconsideration of scheme) is to be disregarded. 10
- (3) An application under this section must be in the prescribed form, contain the prescribed information and be accompanied by – 15
- (a) a protected benefits quotation in the prescribed form, and
  - (b) an auditor’s valuation of the scheme as at a date (“the reconsideration date”) within the prescribed period ending with the day on which the application is made.
- (4) The application must be made within the period of 3 months beginning – 20
- (a) in a case within subsection (2) of section 119, with the later of –
    - (i) the day on which the trustees or managers received the copy notice mentioned in paragraph (a) of that subsection, and
    - (ii) the day on which they were notified of the binding valuation mentioned in paragraph (c) of that subsection, and
  - (b) where subsection (3) of that section applies, with the later of – 25
    - (i) the day on which the trustees or managers receive the notice mentioned in paragraph (a) of that subsection, and
    - (ii) the day on which they are notified of the binding valuation mentioned in paragraph (c) of that subsection.
- (5) For the purposes of this section – 30
- “auditor’s valuation”, in relation to a scheme, means a written valuation of the assets of the scheme (excluding any assets representing the value of any rights in respect of money purchase benefits under the scheme), prepared and signed by the auditor in relation to the scheme (within the meaning given by section 47 of the Pensions Act 1995 (c. 26)); 35
- “protected benefits quotation” means a quotation for one or more annuities from one or more insurers, being companies willing to accept payment in respect of the members from the trustees or managers of the scheme, which would provide in respect of each member of the scheme – 40
- (a) benefits to or in respect of the member corresponding to the compensation which would be payable to or in respect of the member in accordance with the pension compensation provisions if the Board assumed responsibility for the scheme by virtue of this section, or 45
  - (b) benefits in accordance with the member’s accrued rights under the scheme (other than his rights in respect of money purchase benefits), if the cost of securing those benefits in respect of the

member is lower than the cost of securing the benefits within paragraph (a).

- (6) Subject to subsection (7), regulations under subsection (4) of section 112, and guidance under subsection (5) of that section, apply to an auditor’s valuations for the purposes of this section as they apply for the purposes of a valuation under that section. 5
- (7) Regulations may provide for the purposes of an auditor’s valuation accompanying an application under this section –
  - (a) that the value assigned to assets of a prescribed description is to be the value assigned to those assets in the binding valuation obtained under section 112; 10
  - (b) how the value to be assigned to such an asset is to be determined where the asset has been acquired during the assessment period.

### **121 Duty to assume responsibility following reconsideration**

- (1) This section applies where an application is made in respect of a scheme in accordance with section 120. 15
- (2) The Board must assume responsibility for the scheme in accordance with this Chapter if it is satisfied that the value of the assets of the scheme at the reconsideration date is less than the aggregate of –
  - (a) the amount quoted in the protected benefits quotation accompanying the application, 20
  - (b) the amount of the liabilities of the scheme which are not liabilities to, or in respect of, members of the scheme, and
  - (c) the estimated costs of winding up the scheme.
- (3) The Board may, for the purposes of subsection (2), obtain its own valuation of the assets of the scheme as at the reconsideration date and, where it does so, section 120(6) and (7) apply as they apply in relation to the auditor’s valuation under that section. 25
- (4) The amount of the liabilities mentioned in subsection (2)(b) is to be taken to be the amount assigned to those liabilities of the scheme which are not liabilities to, or in respect of, members of the scheme in –
  - (a) the binding valuation obtained under section 112, or
  - (b) where a valuation of those liabilities at a more recent date (but not later than the reconsideration date) has been obtained by the trustees or managers of the scheme for the purposes of the audited scheme accounts, that valuation. 30
- (5) In subsection (4) “audited scheme accounts”, in relation to a scheme, means accounts, audited by the auditor of the scheme, which are obtained by the trustees or managers of the scheme in accordance with a requirement under section 41 of the Pensions Act 1995 (c. 26). 40
- (6) In this section references to the assets of the scheme do not include assets representing the value of any rights in respect of money purchase benefits under the scheme.
- (7) This section is subject to sections 115 and 116 (refusal to assume responsibility for a scheme). 45

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*Assumption of responsibility for a scheme*

**122 Transfer notice**

- (1) This section applies where the Board is required to assume responsibility for a scheme under section 99, 100 or 121.
- (2) The Board must give the trustees or managers a notice (a “transfer notice”). 5
- (3) In a case to which section 99 or 100 applies, a transfer notice may not be given until the valuation obtained under section 112 is binding.
- (4) The Board must give a copy of any notice given under subsection (2) to—
  - (a) the Regulator, and
  - (b) any insolvency practitioner in relation to the employer or, if there is no such insolvency practitioner, the employer. 10
- (5) This section is subject to section 134(1) and (2) (no transfer notice within first 12 months of assessment period or when fraud compensation application is pending).

**123 Effect of Board assuming responsibility for a scheme** 15

- (1) Where a transfer notice is given to the trustees or managers of an eligible scheme, the Board assumes responsibility for the scheme in accordance with this Chapter.
- (2) The effect of the Board assuming responsibility for a scheme is that—
  - (a) the property, rights and liabilities of the scheme are transferred to the Board, without further assurance, with effect from the time the trustees or managers receive the transfer notice, 20
  - (b) the trustees or managers of the scheme are discharged from their pension obligations from that time, and
  - (c) from that time the Board is responsible for securing that compensation is paid in accordance with the pension compensation provisions, 25and, accordingly, the scheme is to be treated as having been wound up immediately after that time.
- (3) In subsection (2)(a) the reference to “liabilities of the scheme” does not include any liability to, or in respect of, any member of the scheme, other than liabilities in respect of money purchase benefits. 30
- (4) In subsection (2)(b) “pension obligations” in relation to the trustees or managers of the scheme means—
  - (a) their obligations to provide pensions or other benefits to or in respect of persons (including any obligation to provide guaranteed minimum pensions within the meaning of the Pension Schemes Act 1993 (c. 48)), and 35
  - (b) their obligations to administer the scheme in accordance with the scheme rules and this or any other enactment.
- (5) Schedule 6 makes provision in respect of the transfer of the property, rights and liabilities of a scheme under subsection (2)(a). 40
- (6) Regulations may make further provision regarding such transfers.

## **124 The pension compensation provisions**

- (1) Schedule 7 makes provision for pension compensation to be paid in relation to a scheme for which the Board assumes responsibility under this Chapter, including provision for –
- (a) periodic compensation to be paid to or in respect of members, 5
  - (b) lump sum compensation to be paid to members,
  - (c) a cap to be imposed on the periodic compensation and lump sum compensation payable, and
  - (d) annual increases to be made to periodic compensation.
- (2) In this Part references to the pension compensation provisions are to the provisions of this section and section 123(2)(c), Schedule 7 and any regulations made under section 130. 10  
 (Those references do not include section 132 (discharge of liabilities in respect of money purchase benefits).)

## **125 Adjustments to be made where Board assumes responsibility for a scheme** 15

- (1) This section applies where the Board assumes responsibility for an eligible scheme under this Chapter.
- (2) Any benefits (other than money purchase benefits) which –
- (a) were payable under the scheme to any member, or to any person in respect of any member, during the assessment period, and 20
  - (b) have been paid before the transfer notice is given,
- are to be regarded as going towards discharging any liability of the Board to pay compensation to the member or, as the case may be, person in accordance with the pension compensation provisions.
- (3) The Board must – 25
- (a) if any amount paid, during the assessment period, by the trustees or managers of the scheme to a member, or to a person in respect of a member, exceeded the entitlement of that member or person under the pension compensation provisions, take such steps as it considers appropriate (including adjusting future compensation payments made in accordance with those provisions) to recover an amount equal to the aggregate of – 30
    - (i) the amount of the excess, and
    - (ii) interest on that amount, at the prescribed rate, for the period which begins when the excess was paid by the trustees or managers and ends with the recovery of the excess, and 35
  - (b) if any amount so paid was less than that entitlement (or no amount was paid in respect of that entitlement), pay an amount to the member or person concerned equal to the aggregate of – 40
    - (i) the amount of the shortfall, and
    - (ii) interest on that amount, at the prescribed rate, for the period which begins when the shortfall ought to have been paid by the trustees or managers and ends with the payment of the shortfall by the Board.
- (4) In subsection (3) references to an amount paid do not include an amount paid in respect of any money purchase benefit. 45

- (5) Nothing in subsection (3) requires the Board to recover from any person any amount which it considers to be trivial.

**126 Postponement of compensation entitlement for the assessment period**

- (1) Regulations may provide that, where the Board assumes responsibility for an eligible scheme, the entitlement of any member of the scheme to compensation under this Chapter is, in such circumstances as may be prescribed, postponed for the whole or any part of the assessment period for which he continued in employment after attaining normal pension age. 5
- (2) Regulations under subsection (1) may provide that the postponement is on such terms and conditions (including those relating to increments) as may be prescribed. 10

**127 Guaranteed minimum pensions**

- (1) The Board must notify the Commissioners for Inland Revenue where, by reason of it assuming responsibility for an eligible scheme under this Chapter, the trustees or managers of the scheme are discharged from their liability to provide a guaranteed minimum pension (within the meaning of the Pension Schemes Act 1993 (c. 48)) to or in respect of a member of the scheme. 15
- (2) Notification under subsection (1) must be given as soon as reasonably practicable.

**128 Duty to pay scheme benefits unpaid at assessment date** 20

- (1) Where the Board assumes responsibility for a scheme under this Chapter it must pay any amount by way of benefits under the scheme to which a person had become entitled under the scheme rules before the assessment date but which remained unpaid at the time the transfer notice was received by the trustees or managers of the scheme. 25
- (2) If, immediately before the assessment date, the person is entitled to the amount but has postponed payment of it, subsection (1) does not apply.
- (3) In this section “assessment date” is to be construed in accordance with Schedule 7.

**129 Modification of Chapter where liabilities discharged during assessment period** 30

- Regulations may modify any of the provisions of this Chapter as it applies to cases where any liability to provide pensions or other benefits to or in respect of any member or members under a scheme is discharged during an assessment period in relation to the scheme by virtue of – 35
- (a) regulations under section 105(5), or
- (b) the Board validating any action mentioned in section 107(5).

**130 Administration of compensation**

- (1) Regulations may make further provision regarding the operation and administration of this Chapter. 40
- (2) Regulations under subsection (1) may, in particular, make provision –

- 
- (a) prescribing the manner in which and time when compensation is to be paid (including provision requiring periodic compensation to be paid by instalments);
  - (b) for calculating the amounts of compensation payable under Schedule 7 according to a prescribed scale or otherwise adjusting them to avoid fractional amounts or facilitate computation; 5
  - (c) prescribing the circumstances and manner in which the Board may discharge its liability to provide periodic compensation by the payment of a lump sum;
  - (d) prescribing the circumstances and manner in which compensation to which a person (“the beneficiary”) is entitled may be made to another person on behalf of the beneficiary for any purpose (including the discharge in whole or in part of an obligation of the beneficiary or any other person); 10
  - (e) for the payment or distribution of compensation to or among persons claiming to be entitled on the death of any person and for dispensing with strict proof of their title; 15
  - (f) for the recovery of amounts of compensation paid by the Board in excess of entitlement (together with interest on such amounts for the period from payment until recovery); 20
  - (g) specifying the circumstances in which payment of compensation can be suspended.
- (3) In this section “compensation” means compensation payable under Schedule 7.

*Discharge of Board’s liabilities*

- 131 Discharge of liabilities in respect of compensation** 25
- (1) The section applies where the Board assumes responsibility for an eligible scheme under this Chapter.
  - (2) The Board may provide for the discharge of any liability imposed by this Chapter to provide compensation –
    - (a) by the taking out of a policy of insurance or a number of such policies; 30
    - (b) by the entry into an annuity contract or a number of such contracts;
    - (c) by the transfer of the benefit of such a policy or policies or such a contract or contracts.
- 132 Discharge of liabilities in respect of money purchase benefits**
- (1) This subsection applies where – 35
    - (a) the Board assumes responsibility for an eligible scheme under this Chapter, and
    - (b) one or more members have accrued rights under the scheme to money purchase benefits.
  - (2) Regulations must make provision in respect of cases to which subsection (1) applies requiring the Board to secure that liabilities in respect of such benefits transferred to the Board under section 123 are discharged by it in the prescribed manner. 40
  - (3) The provision made under subsection (2) must include provision prescribing the manner in which protected rights are to be given effect to. 45

- (4) In this section “protected rights” has the meaning given in section 10 of the Pension Schemes Act 1993 (c. 48) (protected rights and money purchase benefits).

*Equal treatment*

<b>133 Equal treatment</b>	<b>5</b>
(1) This section applies where –	
(a) a woman has been employed on like work with a man in the same employment,	
(b) a woman has been employed on work rated as equivalent with that of a man in the same employment, or	10
(c) a woman has been employed on work which, not being work in relation to which paragraph (a) or (b) applies, was, in terms of the demands made on her (for instance under such headings as effort, skill and decision), of equal value to that of a man in the same employment,	
and service in that employment was pensionable service under an occupational pension scheme.	15
(2) If, apart from this subsection, any of the payment functions as it applies (directly or indirectly) in respect of the scheme –	
(a) is or becomes less favourable to the woman than it is to the man, or	
(b) is or becomes less favourable to the man than it is to the woman,	20
that function has effect with such modifications as are necessary to ensure that the provision is not less favourable.	
(3) Subsection (2) does not operate in relation to any difference as between a woman and a man in the operation of any of the payment functions if the Board proves that the difference is genuinely due to a material factor which –	25
(a) is not the difference of sex, but	
(b) is a material difference between the woman’s case and the man’s case.	
(4) Subsection (2) does not apply in such circumstances as may be prescribed.	
(5) This section has effect in relation to the exercise of any payment function in so far as it relates to pensionable service under the scheme on or after 17th May 1990.	30
(6) In this section –	
“payment function” means any function conferred on the Board by or by virtue of this Chapter which relates to a person’s entitlement to or the payment of any amount under or by virtue of –	35
(a) section 123(2)(c), 124 or 130 or Schedule 7 (pension compensation provisions),	
(b) section 128 (duty to pay scheme benefits unpaid at assessment date),	
(c) section 132 (discharge of liabilities in respect of money purchase benefits);	40
“pensionable service” has the meaning given in paragraph 33 of Schedule 7.	

*Relationship with fraud compensation regime*

**134 Relationship with fraud compensation regime**

- (1) No transfer notice may be given within the first 12 months of the assessment period.
- (2) Where an application has been made under section 144 (application for fraud compensation payment), no transfer notice may be given until –
  - (a) the Board has determined the application,
  - (b) the period within which the Board’s determination may be reviewed by virtue of Chapter 6 has expired, and
  - (c) if the determination is so reviewed –
    - (i) the review and any reconsideration,
    - (ii) any reference to the PPF Ombudsman in respect of the determination, and
    - (iii) any appeal against his determination or directions,
 has been finally disposed of.
- (3) Subsection (4) applies where during an assessment period in respect of a scheme the Board determines to make one or more fraud compensation payments (“the fraud compensation”) to the trustees or managers of the scheme under Chapter 4 of this Part.
- (4) For the purposes of determining whether the condition in section 99(2)(a), 100(2)(a) or section 121(2) is satisfied, any fraud compensation payment which becomes payable after the relevant time is, to the extent that it relates to a loss incurred by the scheme before that time, to be regarded as an asset of the scheme at that time.
- (5) For the purposes of subsection (4) “relevant time” –
  - (a) in the case of section 99(2)(a), has the same meaning as in that provision,
  - (b) in the case of section 100(2)(a), has the same meaning as in that provision, and
  - (c) in the case of section 121(2) means the reconsideration date (within the meaning of section 120).
- (6) Subsection (4) does not apply to the extent that the fraud compensation is payable in respect of a reduction in the value of money purchase assets of the scheme.  
For this purpose “money purchase assets” means assets representing the value of any rights in respect of money purchase benefits under the scheme.

*The fund*

**135 Pension Protection Fund**

- (1) The Pension Protection Fund shall consist of –
  - (a) property and rights transferred to the Board under section 123(2)(a),
  - (b) contributions levied under section 136 or 137 (initial and pension protection levies),
  - (c) money borrowed by the Board under section 89 for the purposes of this Chapter,

- 
- (d) income credited under subsection (2),
  - (e) any amount paid to the Board by virtue of section 111 (repayment of loans to trustees or managers and payment of interest),
  - (f) amounts recovered under section 125(3)(a) (overpayments during the assessment period), 5
  - (g) amounts transferred from the Fraud Compensation Fund under section 149 (fraud compensation transfer payments), and
  - (h) amounts of a prescribed description (other than amounts paid, directly or indirectly, to the Board by the Crown).
- (2) The Board must credit to the Pension Protection Fund any income or capital gain arising from the assets in the Fund. 10
- (3) The following are payable out of the Pension Protection Fund –
- (a) any sums required to meet liabilities transferred to the Board under section 123(2)(a),
  - (b) any sums required to make payments in accordance with the provisions of sections 123(2)(c) and 124, Schedule 7 and any regulations under section 130 (payment of benefits in accordance with the pension compensation provisions), 15
  - (c) any sums required for the repayment of, and the payment of interest on, money within subsection (1)(c), 20
  - (d) any sums required to make loans under section 111 (loans to trustees or managers),
  - (e) any sums required to make payments under section 125(3)(b) (underpayments during the assessment period),
  - (f) any sums required to make payments under section 128 (payment of unpaid scheme benefits), 25
  - (g) any sums required to discharge liabilities under section 131 or 132 (discharge of liabilities in respect of compensation or money purchase benefits),
  - (h) any sums required to meet expenditure incurred by virtue of section 123(5) and paragraph 7 of Schedule 6 (expenditure associated with transfer of property, rights and liabilities to the Board), 30
  - (i) sums required for prescribed purposes.
- (4) No other amounts are payable out of the Pension Protection Fund.
- The levy* 35

### 136 Initial levy

- (1) Regulations must make provision for imposing a levy (“the initial levy”) in respect of eligible schemes for the period (“the initial period”) which –
- (a) begins with the day appointed for this purpose by the regulations, and
  - (b) ends on the following 31st March or, if the regulations so provide, 12 months after that date. 40
- (2) The regulations must prescribe –
- (a) the factors by reference to which the initial levy is to be assessed,
  - (b) the rate of the levy, and
  - (c) the time or times during the initial period when the levy, or any instalment of the levy, becomes payable. 45

- (3) *Regulations under this section may only be made with the approval of the Treasury.*

### 137 Pension protection levies

- (1) *For each financial year falling after the initial period, the Board must impose one or both of the following –*
- (a) *a risk-based pension protection levy in respect of eligible schemes;* 5
  - (b) *a scheme-based pension protection levy in respect of eligible schemes.*
- In this Chapter “pension protection levy” means a levy imposed in accordance with this section.*
- (2) *For the purposes of this section –*
- (a) *a risk-based pension protection levy is a levy assessed by reference to –* 10
    - (i) *the difference between the value of a scheme’s assets (disregarding any assets representing the value of any rights in respect of money purchase benefits under the scheme) and the amount of its protected liabilities, and*
    - (ii) *if the Board considers it appropriate, one or more other risk factors mentioned in subsection (3), and* 15
  - (b) *a scheme-based pension protection levy is a levy assessed by reference to one or more scheme factors mentioned in subsection (4).*
- (3) *The other risk factors referred to in subsection (2)(a)(ii) are factors which the Board considers indicate one or more of the following –* 20
- (a) *the likelihood of an insolvency event occurring in relation to the employer in relation to a scheme;*
  - (b) *the risks associated with the nature of the scheme’s investments when compared with the nature of its liabilities;*
  - (c) *such other matters as may be prescribed.* 25
- (4) *The scheme factors referred to in subsection (2)(b) are –*
- (a) *the number of persons who are members, or fall within any description of member, of a scheme;*
  - (b) *the total annual amount of pensionable earnings of active members of a scheme;*
  - (c) *the amount of a scheme’s liabilities to or in respect of members (other than liabilities in respect of money purchase benefits);* 30
  - (d) *such other factors as may be prescribed.*
- (5) *The Board must, before the beginning of each financial year, determine in respect of that year –*
- (a) *whether to impose both or only one of the levies mentioned in subsection (1),* 35
  - (b) *the factors by reference to which the pension protection levy or levies are to be assessed,*
  - (c) *the time or times by reference to which those factors are to be assessed,*
  - (d) *the rate of the levy or levies, and*
  - (e) *the time or times during the year when the levy or levies, or any instalment of levy, becomes payable.* 40
- (6) *Different risk factors, scheme factors or rates may be determined in respect of different descriptions of scheme.*
- (7) *The rate determined in respect of a description of scheme may be nil.*
- (8) *In this section –* 45

*“initial period” is to be construed in accordance with section 136;*  
*“pensionable earnings”, in relation to an active member under a scheme, means the earnings by reference to which a member’s entitlement to benefits is calculated under the scheme rules (within the meaning of paragraph 33(3) of Schedule 7).*

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(9) *In this section and sections 138 to 143 “financial year” means a period of 12 months ending with 31st March.*

(10) *The Board’s duty to impose a pension protection levy or levies in respect of any financial year is subject to –*

(a) *section 139 (amounts to be raised by the pension protection levies), and*

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(b) *section 142 (transitional provision).*

### **138 Supplementary provisions about pension protection levies**

(1) *The Board must consult such persons as it considers appropriate in the prescribed manner before making a determination under section 137(5) in respect of a financial year if –*

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(a) *that year is the first financial year for which the Board is required to impose a levy or levies under section 137,*

(b) *any of the proposed levy factors or levy rates is different, or applies to a different description of scheme, from the levy factors and levy rates in respect of the pension protection levy or levies imposed in the previous financial year, or*

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(c) *no consultation has been required under this subsection in relation to any pension protection levy imposed for either of the previous two financial years.*

(2) *The Board must publish details of any determination under section 137(5) in the prescribed manner.*

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### **139 Amounts to be raised by the pension protection levies**

(1) *Before determining the pension protection levy or levies to be imposed for a financial year, the Board must estimate the amount which will be raised by the levy or levies it proposes to impose.*

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(2) *The Board must impose a levy or levies for a financial year in a form which it estimates will raise an amount not exceeding the levy ceiling for the financial year.*

(3) *The Board may impose both a risk-based pension protection levy and a scheme-based pension protection levy for a financial year only if the levies are in a form which the Board estimates will result in at least 50% of the amount raised by the levies for that year being raised by the risk-based pension protection levy.*

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(4) *The Board may impose only a scheme-based pension protection levy for a financial year only if the amount which the Board estimates will be raised by the levy is less than 10% of the levy ceiling for that year.*

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(5) *For the first financial year after the transitional period, regulations may modify subsections (2) and (4) so as to provide that the reference to the levy ceiling for the financial year is to be read as a reference to such lower amount as is prescribed.*

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- (6) For the second financial year after the transitional period and for any subsequent financial year, the Board must impose a pension protection levy or pension protection levies in a form which it estimates will raise an amount which does not exceed by more than 25% the amount estimated under subsection (1) in respect of the pension protection levy or levies imposed for the previous financial year. 5
- (7) The Secretary of State may by order –
- (a) substitute a different percentage for the percentage for the time being specified in subsection (4);
  - (b) substitute a different percentage for the percentage for the time being specified in subsection (6). 10
- (8) Before making an order under subsection (7)(b), the Secretary of State must consult such persons as he considers appropriate.
- (9) Regulations under subsection (5), or an order under subsection (7)(b), may be made only with the approval of the Treasury. 15
- (10) In this section –
- (a) “risk-based pension protection levy” and “scheme-based pension protection levy” are to be construed in accordance with section 137, and
  - (b) “transitional period” has the meaning given by section 142(3)
- 140 The levy ceiling** 20
- (1) The Secretary of State must, before the beginning of each financial year for which a levy is or levies are required to be imposed under section 137, specify by order the amount which is to be the levy ceiling for that year for the purposes of section 139.
- (2) An order under subsection (1) in respect of the first financial year for which a levy is or levies are imposed under section 137 may be made only with the approval of the Treasury. 25
- (3) Subject to subsection (8), the amount specified under subsection (1) for a financial year (“the current year”) after the first year for which a levy or levies is imposed under section 137 must be – 30
- (a) where it appears to the Secretary of State that the level of earnings in the review period has increased, the amount specified under subsection (1) for the previous financial year increased by the earnings percentage for that review period specified under subsection (6), and
  - (b) in any other case, the amount specified under subsection (1) for the previous financial year. 35
- (4) In subsection (3) –
- “level of earnings” means the general level of earnings obtaining in Great Britain; and
  - “review period” in relation to the current year means the period of 12 months ending with the prescribed date in the previous financial year. 40
- (5) For the purposes of subsection (3), the Secretary of State must, in respect of each review period, review the general level of earnings obtaining in Great Britain and any changes in that level; and for the purposes of such a review the Secretary of State may estimate the general level of earnings in such manner as he thinks appropriate. 45

- 
- (6) Where it appears to the Secretary of State that the general level of earnings has increased during the review period, he must by order specify the percentage by which that level has so increased (“the earning percentage”).
- (7) The Secretary of State must discharge the duties imposed by subsections (5) and (6) in respect of a review period before the beginning of the prescribed period which ends at the time the first financial year after the review period begins. 5
- (8) The Secretary of State may, on the recommendation of the Board and with the approval of the Treasury, make an order under subsection (1) in respect of a financial year which specifies an amount exceeding the amount required to be specified under subsection (3). 10
- (9) Before making a recommendation for the purposes of subsection (8), the Board must consult such persons as it considers appropriate in the prescribed manner.
- 141 Valuations to determine scheme underfunding 15**
- (1) For the purposes of enabling risk-based pension protection levies (within the meaning of section 137) to be calculated in respect of eligible schemes, regulations may make provision requiring the trustees or managers of each such scheme to provide the Board –
- (a) with an actuarial valuation of the scheme at such intervals as may be prescribed, and 20
- (b) with such other information as the Board may require in respect of the assets and protected liabilities of the scheme at such times as may be prescribed.
- (2) For the purposes of this section, in relation to a scheme – 25
- “an actuarial valuation” means a written valuation of the scheme’s assets and protected liabilities prepared and signed by the actuary, and
- “the actuary” means –
- (a) the actuary appointed under section 47(1)(b) of the Pensions Act 1995 (c. 26) (professional advisers) in relation to the scheme, or 30
- (b) if no such actuary has been appointed, a person with prescribed qualifications.
- (3) Regulations under this section may prescribe how –
- (a) the assets and the protected liabilities of schemes, and
- (b) their amount or value, 35
- are to be determined, calculated and verified.
- (4) Subject to any provision made under subsection (3), those matters are to be determined, calculated and verified in accordance with guidance issued by the Board.
- (5) In calculating the amount of any liabilities for the purposes of a valuation required by virtue of this section, a provision of the scheme which limits the amount of its liabilities by reference to the value of its assets is to be disregarded. 40
- (6) In this section references to “assets” do not include assets representing the value of any rights in respect of money purchase benefits under the scheme. 45

## **142 Pension protection levies during the transitional period**

- (1) Regulations may provide that in respect of any financial year during the transitional period –
  - (a) sections 137 and 139(3) and (4) are to apply with such modifications as may be prescribed; 5
  - (b) section 139(2) is to apply as if the reference to the levy ceiling for the financial year were a reference to such lower amount as is specified in the regulations.
- (2) Regulations which contain provision made by virtue of subsection (1)(b) may only be made with the approval of the Treasury. 10
- (3) For the purposes of this section “the transitional period” means the prescribed period beginning immediately after the initial period (within the meaning of section 136).

## **143 Calculation, collection and recovery of levies**

- (1) This section applies in relation to – 15
  - (a) the initial levy imposed under section 136 in respect of a scheme, and
  - (b) any pension protection levy imposed under section 137 in respect of a scheme.
- (2) The levy is payable to the Board by or on behalf of –
  - (a) the trustees or managers of the scheme, or 20
  - (b) any other prescribed person.
- (3) The Board must in respect of the levy –
  - (a) determine the schemes in respect of which it is imposed,
  - (b) calculate the amount of the levy in respect of each of those schemes,
  - (c) notify any person liable to pay the levy in respect of the scheme of the amount of the levy in respect of the scheme and the date or dates on which it becomes payable. 25
- (4) The Board may require the Regulator to discharge the Board’s functions under subsection (3) in respect of the levy.
- (5) Where a scheme is an eligible scheme for only part of a financial year, the amount of the levy payable in respect of the scheme for that year is such proportion of the full amount as that part bears to the year. 30
- (6) An amount payable by a person on account of the levy is a debt due from him to the Board.
- (7) An amount so payable may be recovered – 35
  - (a) by the Board, or
  - (b) if the Board so determines, by the Regulator on its behalf.
- (8) Regulations may make provision relating to –
  - (a) the collection and recovery of amounts payable by way of any levy in relation to which this section applies; 40
  - (b) the circumstances in which any such amount may be waived.

## CHAPTER 4

### FRAUD COMPENSATION

#### *Entitlement to fraud compensation*

#### **144 Cases where fraud compensation payments can be made**

- (1) The Board shall, in accordance with this section, make one or more payments (in this Part referred to as “fraud compensation payments”) in respect of an occupational pension scheme if—
  - (a) the scheme is not of a prescribed description,
  - (b) the value of the assets of the scheme has been reduced since the relevant date and the Board considers that there are reasonable grounds for believing that the reduction was attributable to an act or omission constituting a prescribed offence,
  - (c) subsection (2), (3) or (4) applies,
  - (d) an application is made which meets the requirements of subsection (5), and
  - (e) the application is made within the authorised period.
- (2) This subsection applies where—
  - (a) a qualifying insolvency event has occurred in relation to the employer in relation to the scheme,
  - (b) after that event, an insolvency practitioner in relation to the employer has issued a notice under section 96(2) confirming that a scheme rescue is not possible in relation to the scheme, and
  - (c) in the period which began with the occurrence of the insolvency event and ended immediately before that notice was issued, no cessation event occurred.
- (3) This subsection applies where—
  - (a) in relation to the scheme, an application has been made under subsection (1), or a notification has been given under subsection (5)(a), of section 101, and
  - (b) in response to that application, or the notice given by the Regulator under subsection (4) of that section, the Board has issued a notice under section 102(2) confirming that a scheme rescue is not possible in relation to the scheme.
- (4) This subsection applies where—
  - (a) the scheme is not an eligible scheme,
  - (b) the employer in relation to the scheme is unlikely to continue as a going concern,
  - (c) the prescribed requirements are met in relation to the employer,
  - (d) the application under this section states that the case is one in relation to which paragraphs (b) and (c) apply, and
  - (e) in response to that application the Board has issued a notice under section 145(2) confirming that a scheme rescue is not possible in relation to the scheme.
- (5) An application meets the requirements of this subsection if—
  - (a) it is made by a prescribed person,

- 
- (b) it is made in the prescribed manner and contains the prescribed information.
- (6) Subject to subsection (7), an application is made within the authorised period if it is made within the period of 12 months beginning with the later of –
- (a) the time of the relevant event, or 5
  - (b) the time when the auditor or actuary of the scheme, or the trustees or managers, knew or ought reasonably to have known that a reduction of value falling within subsection (1)(b) had occurred, or within such longer period as the Board may determine in any case.
- (7) No application for fraud compensation may be made under this section in respect of a scheme once a transfer notice is given in relation to the scheme under section 122. 10
- (8) For the purposes of this section –
- (a) a cessation event occurs in relation to a scheme when –
    - (i) an insolvency practitioner in relation to the employer issues a notice under section 96(2), or the Board issues a notice under section 102(3) or 145(2), confirming that a scheme rescue has occurred in relation to the scheme, 15
    - (ii) the Board ceases to be involved with the scheme by virtue of an event within section 117(2)(c)(i) or (ii), or 20
    - (iii) a person who is or was an insolvency practitioner in relation to the employer issues a notice under section 96(4), in a case where section 117(4) does not apply, and
  - (b) an insolvency event (“the current event”) in relation to the employer is a qualifying insolvency event if – 25
    - (i) it is the first insolvency event in relation to the employer, or
    - (ii) a cessation event has occurred after the last such insolvency event to occur before the current event.
- (9) In this section –
- “auditor” and “actuary”, in relation to an occupational pension scheme, have the meaning given by section 47 of the Pensions Act 1995 (c. 26); 30
  - “the relevant event” means –
    - (a) in a case where subsection (2) applies in relation to an eligible scheme, the event within paragraph (a) of that subsection,
    - (b) in any other case where subsection (2) applies, the event within paragraph (b) of that subsection, 35
    - (c) in a case where subsection (3) applies, the event within paragraph (a) of that subsection, and
    - (d) in a case where subsection (4) applies, the trustees or managers becoming aware that paragraphs (b) and (c) of that subsection apply in relation to the scheme; 40
  - “the relevant date” means –
    - (a) in the case of an occupational pension scheme established under a trust, 6th April 1997, and
    - (b) in any other case, the day appointed by the Secretary of State by order for the purposes of this section. 45
- (10) This section is subject to section 146(2) (no fraud compensation payments to be made until settlement date determined).

#### **145 Schemes which are not eligible schemes or subject to insolvency events**

- (1) This section applies where, in a case to which paragraphs (a) to (c) of subsection (4) of section 144 apply (employer not likely to continue as going concern etc), the Board receives an application within paragraph (d) of that subsection. 5
- (2) If the Board is able to confirm –
  - (a) that a scheme rescue is not possible, or
  - (b) that a scheme rescue has occurred,it must, as soon as practicable, issue a notice to that effect.
- (3) Where the Board issues a notice under subsection (2), it must, as soon as practicable, give a copy of the notice to – 10
  - (a) the Regulator,
  - (b) the trustees or managers of the scheme,
  - (c) if the trustees or managers did not make the application mentioned in subsection (1), the person who made that application, and 15
  - (d) any insolvency practitioner in relation to the employer or, if there is no such insolvency practitioner, the employer.
- (4) Section 102(5) (circumstances in which scheme rescue can or cannot be confirmed) applies for the purposes of this section.

#### **146 Recovery of value** 20

- (1) Where an application for a fraud compensation payment is made, the trustees or managers must obtain any recoveries of value, to the extent that they may do so without disproportionate cost and within a reasonable time.
- (2) No fraud compensation payment may be made until the date (“the settlement date”) determined by the Board, after consulting the trustees or managers of the scheme in question, as the date after which further recoveries of value are unlikely to be obtained without disproportionate cost or within a reasonable time. 25
- (3) In this section “recovery of value” means any increase in the value of the assets of the scheme, being an increase attributable to any payment received (otherwise than from the Board) by the trustees or managers of the scheme in respect of any act or omission – 30
  - (a) which there are reasonable grounds for believing constituted an offence prescribed for the purposes of paragraph (b) of section 144(1), and
  - (b) to which any reduction in value falling within that paragraph was attributable. 35
- (4) It is for the Board to determine whether anything received by the trustees or managers of the scheme is to be treated as a payment received in respect of any such act or omission. 40  
For this purpose “payment” includes any money or money’s worth.

#### **147 Fraud compensation payments**

- (1) Where the Board determines to make one or more fraud compensation payments, it must make the payment or payments to the trustees or managers of the scheme in accordance with this section.

- 
- (2) A fraud compensation payment may be made on such terms (including terms requiring repayment in whole or in part) and on such conditions as the Board considers appropriate.
- (3) The amount of the payment (or, if there is more than one, the aggregate) must not exceed the difference between – 5
- (a) the amount of the reduction (or, if more than one, the aggregate amount of the reductions) within section 144(1)(b), and
- (b) the amount of any recoveries of value obtained before the settlement date (within the meaning of section 146(2)).
- (4) Subject to subsection (3), the Board – 10
- (a) must determine the amount of any fraud compensation payment in accordance with regulations made for the purposes of this subsection, and
- (b) must take account of any interim payment already made under section 148. 15
- (5) The Board must give written notice of its determination under subsection (4) to –
- (a) the Regulator,
- (b) the trustees or managers of the scheme,
- (c) if the trustees or managers did not make the application under section 144 (fraud compensation payments), the person who made that application, and 20
- (d) any insolvency practitioner in relation to the employer or, if there is no such insolvency practitioner, the employer.
- 148 Interim payments** 25
- (1) The Board may, on an application under section 144, make a payment or payments to the trustees or managers of an occupational pension scheme if –
- (a) it is of the opinion that – 30
- (i) the case is one to which subsection (1) of that section applies or may apply, and
- (ii) the trustees or managers would not otherwise be able to meet liabilities of a prescribed description, but
- (b) it has not determined the settlement date under section 146.
- (2) Amounts payable under this section must not exceed the amounts determined in accordance with regulations. 35
- (3) The Board may, except in prescribed circumstances, recover so much of any payment made under subsection (1) as it considers appropriate if, after the payment is made, it determines –
- (a) that the case is not one to which section 144(1) applies, or
- (b) that the amount of the payment was excessive. 40
- (4) Subject to that, a payment under subsection (1) may be made on such terms (including terms requiring repayment in whole or in part) and on such conditions as the Board considers appropriate.

## 149 Board’s powers to make fraud compensation transfer payments

- (1) This section applies where –
  - (a) the Board assumes responsibility for a scheme in accordance with Chapter 3, 5
  - (b) the value of the assets of the scheme was reduced after the relevant date but before the transfer notice (within the meaning of section 122) was received by the trustees or managers of the scheme and there are reasonable grounds for believing that the reduction was attributable to an act or omission constituting an offence prescribed for the purposes of section 144(1)(b), and 10
  - (c) no application was made under section 144 in respect of that reduction (or any such application was withdrawn before it was determined).
- (2) The Board may transfer an amount from the Fraud Compensation Fund to the Pension Protection Fund (“fraud compensation transfer payment”) in respect of the reduction in value, subject to the provisions of this section. 15
- (3) The Board must obtain any recoveries of value, to the extent that they may do so without disproportionate cost and within a reasonable time.
- (4) No fraud compensation transfer payment may be made until the date determined by the Board as the date after which further recoveries of value are unlikely to be obtained without disproportionate cost and within a reasonable time. 20
- (5) In this section “recovery of value” means any increase in the value of the Pension Protection Fund, being an increase attributable to any payment received (otherwise than under this section) by the Board in respect of any act or omission – 25
  - (a) which there are reasonable grounds for believing constituted an offence prescribed for the purposes of section 144(1)(b), and
  - (b) to which any reduction in value falling within subsection (1)(b) above was attributable.
- (6) It is for the Board to determine whether anything received by it is to be treated as a payment received in respect of any such act or omission. 30  
For this purpose “payment” includes any money or money’s worth.
- (7) The amount of any fraud compensation transfer payment (or, if there is more than one, the aggregate) must not exceed the difference between – 35
  - (a) the amount of the reduction (or, if more than one, the aggregate amount of the reductions) within subsection (1)(b), and
  - (b) the amount of any recoveries of value obtained by the Board before the date determined by the Board under subsection (4).
- (8) Subject to subsection (7), the Board must determine the amount of any fraud compensation transfer payment in accordance with regulations made for the purposes of this subsection. 40
- (9) In this section “the relevant date” has the meaning given by section 144(9).

*The fund***150 Fraud Compensation Fund**

- (1) The Fraud Compensation Fund shall consist of –
  - (a) any property and rights transferred under section 226 (dissolution of the Pensions Compensation Board) which the Board designates as assets of the Fund, 5
  - (b) contributions levied under section 151 (fraud compensation levy),
  - (c) money borrowed by the Board under section 89 for the purposes of this Chapter, and
  - (d) amounts recovered under section 148 (recovery of interim payments). 10
- (2) The Board must credit to the Fraud Compensation Fund any income or capital gain arising from the assets in the Fund.
- (3) The following are payable out of the Fraud Compensation Fund –
  - (a) sums required to meet liabilities transferred to the Board under section 226 (dissolution of the Pensions Compensation Board), which the Board designates as liabilities of the Fund, 15
  - (b) payments under section 147 (fraud compensation payments),
  - (c) payments under section 148(1) (interim payments),
  - (d) amounts required to be transferred to the Pension Protection Fund under section 149 (fraud compensation transfer payments), 20
  - (e) money required for the repayment of, and the payment of interest on, money within subsection (1)(c).
- (4) No other amounts are payable out of the Fraud Compensation Fund.

*The levy***151 Fraud compensation levy**

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- (1) *For the purposes of meeting expenditure payable out of the fraud compensation fund, regulations may provide for the imposition of a levy (“fraud compensation levy”) in respect of occupational pension schemes.*
- (2) *Subsection (1) does not apply in relation to any scheme which is of a description prescribed under section 144(1)(a) (schemes not eligible for fraud compensation).* 30
- (3) *A fraud compensation levy imposed in respect of a scheme is payable to the Board by or on behalf of –*
  - (a) *the trustees or managers of the scheme, or*
  - (b) *any other prescribed person.*
- (4) *A fraud compensation levy is so payable at prescribed times and at a rate, not exceeding the prescribed rate, determined by the Board.* 35
- (5) *In determining the amount of expenditure in respect of which a fraud compensation levy is to be imposed, the Board may take one year with another (and, in doing so, must have regard to expenditure estimated to be incurred in current or future periods and to actual expenditure incurred in previous periods).* 40
- (6) *Notice of the rates determined by the Board under subsection (4) must be given to prescribed persons in the prescribed manner.*

- (7) *An amount payable by a person on account of a fraud compensation levy is a debt due from him to the Board.*
- (8) *An amount so payable may be recovered –*
- (a) *by the Board, or*
  - (b) *if the Board so determines, by the Regulator on its behalf.* 5
- (9) *Without prejudice to the generality of subsection (1), (7) or (8), regulations under this section may include provision relating to –*
- (a) *the collection and recovery of amounts payable by way of levy under this section;*
  - (b) *the circumstances in which any such amount may be waived.* 10

## CHAPTER 5

### GATHERING INFORMATION

#### 152 Information to be provided to the Board

- (1) Regulations may require such persons as may be prescribed to provide to the Board information of a prescribed description at such times, or in such circumstances, as may be prescribed. 15
- (2) Regulations under subsection (1) may in particular make provision for requiring such persons as may be prescribed to provide any information or evidence needed for a determination of entitlement to compensation under Chapter 3 of this Part. 20

#### 153 Notices requiring provision of information

- (1) Any person to whom subsection (3) applies may be required by a notice in writing to produce any document, or provide any other information, which is – 25
- (a) of a description specified in the notice, and
  - (b) relevant to the exercise of the Board’s functions in relation to an occupational pension scheme.
- (2) A notice under subsection (1) may be given by – 30
- (a) the Board, or
  - (b) a person authorised by the Board for the purposes of this section in relation to the scheme.
- (3) This subsection applies to – 35
- (a) a trustee or manager of the scheme,
  - (b) a professional adviser in relation to the scheme,
  - (c) the employer in relation to the scheme,
  - (d) an insolvency practitioner in relation to the employer, and
  - (e) any other person appearing to the Board or person giving the notice to be a person who holds, or is likely to hold, information relevant to the discharge of the Board’s functions in relation to the scheme.
- (4) Where the production of a document, or the provision of information, is required by a notice given under subsection (1), the document must be 40

produced, or information must be provided, in such a manner, at such a place and within such a period as may be specified in the notice.

#### **154 Entry of premises**

- (1) An appointed person may, for the purpose of enabling or facilitating the performance of any function of the Board in relation to an occupational pension scheme, at any reasonable time enter scheme premises and, while there –
- (a) may make such examination and inquiry as may be necessary for such purpose, 5
  - (b) may require any person on the premises to produce, or secure the production of, any document relevant to that purpose for inspection by the appointed person, 10
  - (c) may take copies of any such document,
  - (d) may take possession of any document appearing to be such a document or take in relation to any such document any other steps which appear necessary for preserving it or preventing interference with it, 15
  - (e) may, in the case of any such document which consists of information which is stored in electronic form and is on, or accessible from, the premises, require the information to be produced in a form –
    - (i) in which it can be taken away, and 20
    - (ii) in which it is legible or from which it can readily be produced in a legible form, and
  - (f) may, as to any matter relevant to the exercise of the Board’s functions in relation to the scheme, examine, or require to be examined, either alone or in the presence of another person, any person on the premises whom he has reasonable cause to believe to be able to give information relevant to that matter. 25
- (2) Premises are scheme premises for the purposes of subsection (1) if the appointed person has reasonable grounds to believe that –
- (a) they are being used for the business of the employer, 30
  - (b) an insolvency practitioner in relation to the employer is acting there in that capacity,
  - (c) documents relevant to –
    - (i) the administration of the scheme, or
    - (ii) the employer, 35
 are being kept there, or
  - (d) the administration of the scheme, or work connected with the administration of the scheme, is being carried out there, 40
- unless the premises are a private dwelling-house not used by, or by permission of, the occupier for the purposes of a trade or business.
- (3) An appointed person applying for admission to any premises for the purposes of this section must, if so required, produce his certificate of appointment.
- (4) When exercising a power under this section an appointed person may be accompanied by such persons as he considers appropriate.
- (5) Any document of which possession is taken under this section may be retained until the end of the period comprising – 45

- (a) the period of 12 months beginning with the date on which possession was taken of the document, and
  - (b) any extension of that period under subsection (6).
- (6) The Board may before the end of the period mentioned in subsection (5) (including any extension of it under this subsection) extend it by such period not exceeding 12 months as the Board considers appropriate. 5
- (7) In this section “appointed person” means a person appointed by the Board for the purposes of this section in relation to the scheme.

### 155 Penalties relating to sections 153 and 154

- (1) A person who, without reasonable excuse, neglects or refuses to provide information or produce a document when required to do so under section 153 is guilty of an offence. 10
- (2) A person who without reasonable excuse –
  - (a) intentionally delays or obstructs an appointed person exercising any power under section 154, 15
  - (b) neglects or refuses to produce, or secure the production of, any document when required to do so under that section, or
  - (c) neglects or refuses to answer a question or to provide information when so required,is guilty of an offence. 20
- (3) In subsection (2)(a) “appointed person” has the same meaning as it has in section 154.
- (4) A person guilty of an offence under subsection (1) or (2) is liable on summary conviction to a fine not exceeding level 5 on the standard scale.
- (5) An offence under subsection (1) or (2)(b) or (c) may be charged by reference to any day or longer period of time; and a person may be convicted of a second or subsequent offence by reference to any period of time following the preceding conviction of the offence. 25
- (6) Any person who intentionally and without reasonable excuse alters, suppresses, conceals or destroys any document which he is or is liable to be required under section 153 or 154 to produce to the Board is guilty of an offence. 30
- (7) Any person guilty of an offence under subsection (6) is liable –
  - (a) on summary conviction, to a fine not exceeding the statutory maximum; 35
  - (b) on conviction on indictment, to a fine or imprisonment for a term not exceeding two years, or both.

### 156 Warrants

- (1) A justice of the peace may issue a warrant under this section if satisfied on information on oath given by or on behalf of the Board that there are reasonable grounds for believing – 40
  - (a) that there is on, or accessible from, any premises any document –

- 
- (i) whose production has been required under section 153 or 154, or any corresponding provision in force in Northern Ireland, and
  - (ii) which has not been produced in compliance with that requirement, 5
  - (b) that there is on, or accessible from, any premises any document relevant to the exercise of the Board’s functions in relation to an occupational pension scheme whose production could be so required and, if its production were so required, the document –
    - (i) would not be produced, but 10
    - (ii) would be removed, or made inaccessible, from the premises, hidden, tampered with or destroyed, or
  - (c) that a person will do any act which constitutes a misuse or misappropriation of the assets of an occupational pension scheme and that there is on, or accessible from, any premises any document – 15
    - (i) which relates to whether the act will be done, and
    - (ii) whose production could be required under section 153 or 154, or any corresponding provision in force in Northern Ireland.
  - (2) A warrant under this section shall authorise an inspector –
    - (a) to enter the premises specified in the information, using such force as is reasonably necessary for the purpose, 20
    - (b) to search the premises and –
      - (i) take possession of any document appearing to be such a document as is mentioned in subsection (1), or
      - (ii) take in relation to such a document any other steps which appear necessary for preserving it or preventing interference with it, 25
    - (c) to take copies of any such document,
    - (d) to require any person named in the warrant to provide an explanation of any such document or to state where it may be found or how access to it may be obtained, and 30
    - (e) in the case of any such document which consists of information which is stored in electronic form and is on, or accessible from, the premises, to require the information to be produced in a form –
      - (i) in which it can be taken away, and 35
      - (ii) in which it is legible or from which it can readily be produced in a legible form.
  - (3) When executing a warrant under this section, an inspector may be accompanied by such persons as he considers appropriate.
  - (4) A warrant under this section continues in force until the end of the period of one month beginning with the day on which it is issued. 40
  - (5) Any document of which possession is taken under this section may be retained until the end of the period comprising –
    - (a) the period of 12 months beginning with the date on which possession was taken of the document, and 45
    - (b) any extension of that period under subsection (6).
  - (6) The Board may before the end of the period mentioned in subsection (5) (including any extension of it under this subsection) extend it by such period not exceeding 12 months as the Board considers appropriate.

- (7) In this section “inspector” means a person appointed by the Board as an inspector.
- (8) In the application of this section in Scotland –
- (a) the reference to a justice of the peace is to be read as a reference to a justice within the meaning of the Criminal Procedure (Scotland) Act 1995 (c. 46), and
  - (b) the references in subsections (1) and (2)(a) to information are to be read as references to evidence.

*Provision of false or misleading information*

**157 Offence of providing false or misleading information to the Board** 10

- (1) Any person who knowingly or recklessly provides information which is false or misleading in a material particular is guilty of an offence if the information –
- (a) is provided in purported compliance with a requirement under –
    - (i) section 152 (information to be provided to the Board), 15
    - (ii) section 153 (notices requiring provision of information),
    - (iii) section 154 (entry of premises), or
  - (b) is provided otherwise than as mentioned in paragraph (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 Board for the purposes of exercising its functions under this Act. 20
- (2) Any person guilty of an offence under subsection (1) is liable –
- (a) on summary conviction, to a fine not exceeding the statutory maximum;
  - (b) on conviction on indictment, to a fine or imprisonment for a term not exceeding two years, or both. 25

*Use of information*

**158 Use of information**

Information held by the Board in the exercise of any of its functions may be used by the Board for the purposes of, or for any purpose connected with or incidental to, the exercise of its functions. 30

*Disclosure of information*

**159 Restricted information**

- (1) Except as provided by sections 160 to 165 and section 192, restricted information must not be disclosed – 35
- (a) by the Board, or
  - (b) by any person who receives the information directly or indirectly from the Board,
- except with the consent of the person to whom it relates and (if different) the person from whom the Board obtained it. 40

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- (2) For the purposes of this section and sections 160 to 165, “restricted information” means any information obtained by the Board in the exercise of its functions which relates to the business or other affairs of any person, except for information –
- (a) which at the time of the disclosure is or has already been made available to the public from other sources, or
  - (b) which is in the form of a summary or collection of information so framed as not to enable information relating to any particular person to be ascertained from it.
- (3) Any person who discloses information in contravention of this section is guilty of an offence and liable –
- (a) on summary conviction, to a fine not exceeding the statutory maximum;
  - (b) on conviction on indictment, to a fine or imprisonment for a term not exceeding two years, or both.
- (4) Information which –
- (a) is obtained under section 153 by a person other than the Board, but
  - (b) if obtained by the Board, would be restricted information,
- is treated for the purposes of sections 160 to 165 as restricted information which the person has received from the Board.
- 160 Disclosure for facilitating exercise of functions by the Board**
- (1) Section 159 does not preclude the disclosure of restricted information in any case in which disclosure is for the purpose of enabling or assisting the Board to exercise its functions.
- (2) Subsection (3) applies where, in order to enable or assist the Board properly to exercise any of its functions, the Board considers it necessary to seek advice from any qualified person on any matter of law, accountancy, valuation or other matter requiring the exercise of professional skill.
- (3) Section 159 does not preclude the disclosure by the Board to a person qualified to provide that advice of such information as appears to the Board to be necessary to ensure that he is properly informed with respect to the matters on which his advice is sought.
- 161 Disclosure for facilitating exercise of functions by the Regulator**
- Section 159 does not preclude the disclosure of restricted information in any case in which disclosure is for the purpose of enabling or assisting the Regulator to exercise its functions.
- 162 Disclosure for facilitating exercise of functions by other supervisory authorities**
- (1) Section 159 does not preclude the disclosure by the Board of restricted information to any person specified in the first column of Schedule 8 if the Board considers that the disclosure would enable or assist that person to exercise the functions specified in relation to him in the second column of that Schedule.
- (2) The Secretary of State may after consultation with the Board –

- (a) by order amend Schedule 8 by –
  - (i) adding any person exercising regulatory functions and specifying functions in relation to that person,
  - (ii) removing any person for the time being specified in the Schedule, or
  - (iii) altering the functions for the time being specified in the Schedule in relation to any person, or
- (b) by order restrict the circumstances in which, or impose conditions subject to which, disclosure may be made to any person for the time being specified in the Schedule.

### 163 Other permitted disclosures

- (1) Section 159 does not preclude the disclosure by the Board of restricted information to –
  - (a) the Secretary of State,
  - (b) the Commissioners of Inland Revenue or their officers, or
  - (c) the Department for Social Development in Northern Ireland,if the disclosure appears to the Board to be desirable or expedient in the interests of members of occupational pension schemes or in the public interest.
- (2) Section 159 does not preclude the disclosure of restricted information –
  - (a) with a view to the institution of, or otherwise for the purposes of, any criminal proceedings,
  - (b) in connection with any other proceedings arising out of –
    - (i) this Act,
    - (ii) the Welfare Reform and Pensions Act 1999 (c. 30),
    - (iii) the Pensions Act 1995 (c. 26), or
    - (iv) the Pension Schemes Act 1993 (c. 48),or any corresponding enactment in force in Northern Ireland, or any proceedings for breach of trust in relation to an occupational pension scheme,
  - (c) with a view to the institution of, or otherwise for the purposes of, proceedings under –
    - (i) section 7 or 8 of the Company Directors Disqualification Act 1986 (c. 46), or
    - (ii) Article 10 or 11 of the Companies (Northern Ireland) Order 1989 (S.I. 1989/2404 (N.I. 18)),
  - (d) in connection with any proceedings under –
    - (i) the Insolvency Act 1986 (c. 45), or
    - (ii) the Insolvency (Northern Ireland) Order 1989 (S.I. 1989/2405 (N.I. 19)),which the Board has instituted or in which it has a right to be heard,
  - (e) with a view to the institution of, or otherwise for the purposes of, any disciplinary proceedings relating to the exercise of his professional duties by a solicitor, an actuary, an accountant or an insolvency practitioner,
  - (f) with a view to the institution of, or otherwise for the purpose of, any disciplinary proceedings relating to the exercise by a public servant of his functions, or
  - (g) in pursuance of a Community obligation.

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- (3) In subsection (2)(f), “public servant” means an officer or servant of the Crown or of any prescribed authority.
- (4) Section 159 does not preclude the disclosure by the Board of restricted information to—
- (a) the Director of Public Prosecutions, 5
  - (b) the Director of Public Prosecutions for Northern Ireland,
  - (c) the Lord Advocate,
  - (d) a procurator fiscal, or
  - (e) a constable.
- (5) Section 159 does not preclude the disclosure of restricted information in any case where the disclosure is required by or by virtue of an enactment. 10
- (6) Section 159 does not preclude the disclosure of restricted information in any case where the disclosure is to a Regulator-appointed trustee of an occupational pension scheme for the purpose of enabling or assisting him to exercise his functions in relation to the scheme. 15
- (7) In subsection (6), “Regulator-appointed trustee” means a trustee appointed by the Regulator under section 7 of the Pensions Act 1995 (c. 26) or any corresponding provision in force in Northern Ireland.
- (8) Section 159 does not preclude the disclosure by any person mentioned in subsection (1) or (4) of restricted information obtained by the person by virtue of that subsection, if the disclosure is made with the consent of the Board. 20
- (9) Section 159 does not preclude the disclosure by any person specified in the first column of Schedule 8 of restricted information obtained by the person by virtue of section 162(1), if the disclosure is made—
- (a) with the consent of the Board, and 25
  - (b) for the purpose of enabling or assisting the person to exercise any functions specified in relation to him in the second column of the Schedule.
- (10) Before deciding whether to give its consent to such a disclosure as is mentioned in subsection (8) or (9), the Board must take account of any representations made to it, by the person seeking to make the disclosure, as to the desirability of the disclosure or the necessity for it. 30
- 164 Disclosure of information by the Inland Revenue**
- (1) This section applies to information held by any person in the exercise of tax functions about any matter which is relevant, for the purposes of those functions, to tax or duty in the case of an identifiable person (in this section referred to as “tax information”). 35
- (2) No obligation as to secrecy imposed by section 182 of the Finance Act 1989 (c. 26) or otherwise shall prevent the disclosure of tax information to the Board for the purpose of enabling or assisting the Board to discharge its functions. 40
- (3) Where tax information is disclosed to the Board by virtue of subsection (2), it must, subject to subsection (4), be treated for the purposes of section 159 as restricted information.
- (4) Sections 160 to 163 do not apply to tax information, and such information must not be disclosed except— 45

- (a) to, or in accordance with authority given by, the Commissioners of Inland Revenue or the Commissioners of Customs and Excise, or
  - (b) with a view to the institution of, or otherwise for the purposes of, any criminal proceedings.
- (5) In this section “tax functions” has the same meaning as in section 182 of the Finance Act 1989 (c. 26). 5

*Provision of information to scheme members etc*

**165 Provision of information to members of schemes etc**

- (1) Regulations may –
- (a) require the Board to provide information of prescribed descriptions to such persons as may be prescribed at prescribed times, or 10
  - (b) require trustees or managers of occupational pension schemes to provide such information –
    - (i) relating to the exercise of the Board’s functions in relation to any scheme of which they are trustees or managers, 15
    - (ii) relating to any notice issued or application or determination made under Chapter 2, 3 or 4 which relates to any such scheme, or
    - (iii) otherwise relating to the Board’s involvement with any such scheme, 20as may be prescribed to prescribed persons at prescribed times.
- (2) Section 159 does not preclude the disclosure of restricted information by the Board which relates to the entitlement of a particular individual to compensation under Chapter 3 if the disclosure is made to that individual or to a person authorised by him. 25
- (3) Section 159 does not preclude the disclosure of restricted information by the Board if –
- (a) the information relates to the exercise of the Board’s functions in relation to an occupational pension scheme,
  - (b) the disclosure is made to – 30
    - (i) all affected persons, or
    - (ii) all affected persons of a particular description, and
  - (c) the Board is satisfied that, in all the circumstances, it is reasonable to make the disclosure.
- (4) In subsection (3) “affected person”, in relation to an occupational pension scheme, means a person – 35
- (a) who is a member of the scheme, or
  - (b) who is for the time being nominated by a member of the scheme for the purposes of that subsection.
- (5) A nomination by a member of the scheme under subsection (4)(b) – 40
- (a) may be made by notice in writing given by the member,
  - (b) becomes effective when the notice is received by the Board, and
  - (c) ceases to be effective when the Board receives a further notice from the member withdrawing the nomination.

- (6) In the case of an occupational pension scheme, section 159 does not preclude the disclosure of restricted information by the Board if—
- (a) the disclosure is made to any of the following in relation to the scheme—
    - (i) a trustee or manager, 5
    - (ii) any professional adviser,
    - (iii) the employer,
    - (iv) the insolvency practitioner in relation to the employer,
  - (b) the information is relevant to the exercise of that person’s functions in relation to the scheme, and 10
  - (c) the Board considers that it is reasonable in all the circumstances to make the disclosure for the purpose of facilitating the exercise of those functions.

*Interpretation*

**166 Sections 152 to 165: interpretation** 15

- (1) This section applies for the purposes of sections 152 to 165.
- (2) “Document” includes information recorded in any form, and any reference to production of a document, in relation to information recorded otherwise than in a legible form, is to producing a copy of the information—
  - (a) in a legible form, or 20
  - (b) in a form from which it can readily be produced in a legible form.
- (3) Where the Board has assumed responsibility for a scheme—
  - (a) any reference to the Board’s functions in relation to the scheme includes a reference to the functions which it has by virtue of having assumed responsibility for the scheme, and 25
  - (b) any reference to a trustee, manager, professional adviser or employer in relation to the scheme is to be read as a reference to a person who held that position in relation to the scheme before the Board assumed responsibility for it.

**CHAPTER 6** 30

REVIEWS, APPEALS AND MALADMINISTRATION

*Review etc by the Board*

**167 Meaning of “reviewable matters”**

- For the purposes of this Chapter, the following are reviewable matters—
- (a) whether an occupational pension scheme is an eligible scheme; 35
  - (b) any determination by the Board that it is, or is not, satisfied as to the matter mentioned in section 97(1) (Board’s duty where insolvency practitioner fails to give a notice under section 96);
  - (c) any direction given under subsection (2) of section 106 (directions during an assessment period) or any variation or revocation of such a direction under subsection (4) of that section; 40

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- (d) any determination by the Board under section 108 to validate, or not to validate, an action of the trustees or managers of a scheme (power to validate contraventions of section 107);
- (e) any determination by the Board –
- (i) to make, or not to make, a loan under section 111(2) (loans to pay scheme benefits), or
  - (ii) of the amount of any such loan;
- (f) the approval by the Board of a valuation in respect of an eligible scheme under section 113(2);
- (g) any determination by the Board to refuse to assume responsibility for an occupational pension scheme under or by virtue of –
- (i) section 115 (schemes which become eligible schemes), or
  - (ii) section 116 (new schemes created to replace existing schemes);
- (h) any direction given under section 119(7) (direction about winding up of scheme with sufficient assets to meet protected liabilities) and any variation or revocation of such a direction;
- (i) any determination by the Board that it is, or is not, satisfied as mentioned in section 121(2) (duty to assume responsibility following reconsideration);
- (j) any determination by the Board of a person’s entitlement to compensation under the pension compensation provisions;
- (k) any failure to make a payment required by section 125(3)(b) (adjustments to be made where Board assumes responsibility for a scheme) within the prescribed period;
- (l) any determination by the Board under section 143(3)(b) of the amount of the initial levy or any pension protection levy payable in respect of an eligible scheme;
- (m) any determination by the Board –
- (i) whether to make a fraud compensation payment under section 144(1), or
  - (ii) of the amount of any such payment;
- (n) any determination by the Board of a settlement date under section 146(2) (recovery of value);
- (o) any determination by the Board under section 146(4) (recovery of value: whether amount received in respect of particular act or omission);
- (p) any term or condition imposed by the Board –
- (i) under section 147(2) on the making of a fraud compensation payment, or
  - (ii) under subsection (4) of section 148 (interim payments) on the making of a payment under subsection (1) of that section;
- (q) any determination by the Board under section 148(3)(b) (interim payments) that the amount of a payment was excessive;
- (r) any determination by the Board of a date under section 149(4) (earliest date for making a fraud compensation transfer payment);
- (s) any determination by the Board under section 149(6) (fraud compensation transfer payments: whether payment is received in respect of particular act or omission);
- (t) any other determination, act or omission of the Board which may be prescribed.

## **168 Review and reconsideration by Board of reviewable matters**

- (1) Regulations must –
- (a) provide for the Board, on the written application of an interested person, to give a decision (“a review decision”) on any reviewable matter, and 5
  - (b) require a committee of the Board constituted for the purposes of this section (the “Reconsideration Committee”), on the written application of an interested person following a review decision, to reconsider the reviewable matter and give a decision (“a reconsideration decision”).
- (2) In subsection (1), “interested person” in relation to a reviewable matter, means a person of a description prescribed in relation to reviewable matters of that description. 10
- (3) Regulations under subsection (1) may –
- (a) permit a review decision in respect of a reviewable matter of a prescribed description to be made otherwise than on an application, and 15
  - (b) permit a reconsideration decision in respect of such a matter to be made otherwise than on an application.
- (4) Regulations under subsection (1) must provide for the Board’s powers on making a review decision or reconsideration decision to include power – 20
- (a) to vary or revoke the determination, direction or other decision already made by the Board in respect of the reviewable matter,
  - (b) to substitute a different determination, direction or decision,
  - (c) generally to deal with the matters arising on the review decision or reconsideration decision as if they had arisen on the original determination, direction or decision, 25
  - (d) to pay such compensation as the Board considers appropriate to such persons as it may determine, and
  - (e) to make savings and transitional provision.
- (5) Regulations under subsection (1) must include provision – 30
- (a) about applications under the regulations for a review decision or reconsideration decision in respect of a reviewable matter, including the times by which they are to be made,
  - (b) requiring notice – 35
    - (i) of such applications, or
    - (ii) of a decision of the Board or the Reconsideration Committee by virtue of subsection (3) to give a review decision or reconsider a reviewable matter otherwise than on such an application,
  - (c) to be given to interested persons in relation to the matter, 40
  - (d) with a view to securing that individuals concerned in giving a reconsideration decision were not concerned in the reviewable matter in respect of which the decision is to be made,
  - (e) as to the procedure for reaching and giving decisions under the regulations, including – 45
    - (i) rights of interested persons to make representations to the Reconsideration Committee on a reconsideration under regulations made under subsection (1)(b), and
    - (ii) the times by which decisions are to be given, and

- (e) requiring notice of the review decision or the reconsideration decision in respect of a reviewable matter to be given to interested persons in relation to the matter.
- (6) Provision required by subsection (5)(c) may modify paragraphs 15 and 16 of Schedule 5 (membership and procedure of committees of the Board). 5

### **169 Investigation by Board of complaints of maladministration**

- (1) Regulations must make provision for dealing with relevant complaints.
- (2) For the purposes of this Chapter, “relevant complaint” means a complaint –
  - (a) by a person who is or might become entitled to compensation under Schedule 7 (pension compensation provisions), or 10
  - (b) by a person who has or may make an application under section 144 (fraud compensation),  
that he has sustained injustice in consequence of maladministration in connection with any act or omission by the Board or any person exercising functions on its behalf. 15
- (3) Regulations under subsection (1) must –
  - (a) provide for the Board to investigate and give decisions on matters complained of in relevant complaints, and
  - (b) provide for a committee of the Board, on applications following such decisions, to investigate matters complained of and give decisions on them. 20
- (4) Such regulations may, in particular, make provision –
  - (a) about the making of relevant complaints and applications under the regulations, including the times by which they are to be made,
  - (b) with a view to securing that individuals concerned in giving a decision were not concerned in the matter which is the subject of the relevant complaint in question, 25
  - (c) as to the procedure for reaching and giving decisions under the regulations, including –
    - (i) rights of prescribed persons to make representations to the Board, on an investigation under regulations made under subsection (3)(b), and 30
    - (ii) the times by which decisions are to be given, and
  - (d) requiring notice –
    - (i) of a relevant complaint under the regulations, or 35
    - (ii) of a decision under the regulations in respect of the complaint, to be given to prescribed persons in relation to the matter.
- (5) Regulations under subsection (1) may confer power on the Board to pay such compensation as it considers appropriate to such persons as it considers have sustained injustice in consequence of the matters complained of. 40
- (6) The power conferred by subsection (4)(b) includes power to modify paragraphs 15 and 16 of Schedule 5 (membership and procedure of committees of the Board).

*The PPF Ombudsman*

**170 The Ombudsman for the Board of the Pension Protection Fund**

- (1) There is to be a commissioner to be known as the Ombudsman for the Board of the Pension Protection Fund (in this Act referred to as “the PPF Ombudsman”).
- (2) The PPF Ombudsman is to be appointed by the Secretary of State on such terms and conditions as are determined by the Secretary of State. 5
- (3) The PPF Ombudsman –
  - (a) is to hold and vacate office in accordance with the terms and conditions of his appointment, and
  - (b) may resign or be removed from office in accordance with those terms and conditions. 10
- (4) The Secretary of State may appoint one or more persons to act as deputy to the PPF Ombudsman on such terms and conditions as are determined by the Secretary of State.
- (5) The provisions of this section, sections 173 to 176 and any corresponding provisions in force in Northern Ireland apply in relation to such a deputy as they apply in relation to the PPF Ombudsman subject to such modifications as may be prescribed. 15
- (6) The Secretary of State may by order make provision –
  - (a) about the payment, or provision for payment, of remuneration, compensation for loss of office, pension, allowances or gratuities to or in respect of the PPF Ombudsman; 20
  - (b) about the reimbursement of the PPF Ombudsman in respect of any expenses incurred by him in the performance of his functions;
  - (c) about the staff of the PPF Ombudsman and the provision of facilities (including additional staff) to him; 25
  - (d) authorising the PPF Ombudsman –
    - (i) to charge such fees as are specified in the order;
    - (ii) to charge fees sufficient to meet such costs as are specified in the order; 30
  - (e) conferring powers to enable the PPF Ombudsman to obtain such information and documents as he may require for the performance of his functions; and
  - (f) about restrictions on the disclosure of information held by him.
- (7) An order under subsection (6)(d) – 35
  - (a) may prescribe, or authorise the PPF Ombudsman to determine, the time at which any fee is due, and
  - (b) provide that any fee which is owed to the PPF Ombudsman by virtue of an order under subsection (6)(d) may be recovered as a debt due to the PPF Ombudsman. 40
- (8) *The Secretary of State must pay to the PPF Ombudsman out of money provided by Parliament such sums as may be required to be paid by the Secretary of State to or in respect of the PPF Ombudsman by virtue of an order under subsection (6).*

**171 Disqualification of PPF Ombudsman from certain offices**

- (1) In Part 3 of Schedule 1 to the House of Commons Disqualification Act 1975 (c. 24) (other disqualifying offices), at the appropriate place insert –  
“Ombudsman for the Board of the Pension Protection Fund”.
- (2) In Part 3 of Schedule 1 to the Northern Ireland Assembly Disqualification Act 1975 (c. 25) (other disqualifying offices), at the appropriate place insert –  
“Ombudsman for the Board of the Pension Protection Fund”. 5

**172 Annual reports to Secretary of State**

- (1) The PPF Ombudsman must prepare a report on the discharge of his functions for each financial year. 10
- (2) The PPF Ombudsman must send each report to the Secretary of State as soon as practicable after the end of the financial year for which it is prepared.
- (3) The Secretary of State must arrange for the publication of each report sent to him under subsection (2).
- (4) In this section “financial year” means – 15
  - (a) the period beginning with the date on which the PPF Ombudsman is established and ending with the next following 31st March, and
  - (b) each successive period of 12 months.

*References to the PPF Ombudsman*

**173 Reference of reviewable matter to the PPF Ombudsman** 20

- (1) Regulations must make provision –
  - (a) for a reviewable matter to be referred to the PPF Ombudsman following a reconsideration decision under regulations made under subsection (1)(b) or by virtue of subsection (3)(b) of section 168 in respect of the matter, and 25
  - (b) for the PPF Ombudsman –
    - (i) to investigate and determine what (if any) is the appropriate action for the Board to take in relation to the matter, and
    - (ii) to remit the matter to the Board with directions for the purpose of giving effect to his determination. 30
- (2) Regulations under subsection (1) must make provision about the making of references to the PPF Ombudsman, including provision –
  - (a) about the descriptions of persons who may make them,
  - (b) about the manner of making such references, including the times by which they are to be made, and 35
  - (c) for prescribed persons to be notified of –
    - (i) references made under the regulations, and
    - (ii) determinations and directions given under the regulations.
- (3) Regulations under subsection (1) must – 40
  - (a) require the PPF Ombudsman to conduct an oral hearing in relation to any reviewable matter referred to him under the regulations or to dispose of the matter on the basis of written representations,

- 
- (b) enable the PPF Ombudsman to consider evidence relating to the matter which was not available to the Board or the Reconsideration Committee, and
  - (c) make other provision about the procedure for conducting investigations, and reaching and giving determinations, under the regulations, including the times by which determinations are to be given. 5
- (4) The provision that may be made by virtue of subsection (3)(c) includes provision –
- (a) conferring rights on prescribed persons – 10
    - (i) to make representations to the PPF Ombudsman in relation to a reviewable matter referred to him by virtue of this section,
    - (ii) to be heard or represented at any oral hearing by the PPF Ombudsman in relation to such a matter,
  - (b) about the consideration of evidence by the PPF Ombudsman, including – 15
    - (i) production of documents,
    - (ii) oral hearings,
    - (iii) expert evidence,
    - (iv) attendance of witnesses, 20
  - (c) conferring rights on prescribed persons to continue a reference made by a person who has died or is otherwise unable to act for himself,
  - (d) as to the costs or expenses of prescribed persons,
  - (e) conferring rights on prescribed persons to apply for a stay (or in Scotland, for a sist) in relation to prescribed legal proceedings which begin after the reference is made and conferring power on the relevant court to make an order staying (or sisting) the proceedings if it is satisfied of prescribed matters, and 25
  - (f) for securing that any determination or direction of the PPF Ombudsman under the regulations is binding on prescribed persons. 30
- (5) Regulations under subsection (1) may include provision –
- (a) conferring power on the PPF Ombudsman to direct the Board to pay such compensation as he considers appropriate to such persons as he may direct,
  - (b) conferring power on the Board to make such payments, and 35
  - (c) conferring such other powers on the Board as may be required when a matter is remitted to it.

#### **174 Investigation by PPF Ombudsman of complaints of maladministration**

- (1) Regulations must provide for the investigation and determination by the PPF Ombudsman of such matters as may be prescribed following decisions on relevant complaints given by the Board or the committee of the Board referred to in section 169(3)(b) under regulations made under that section. 40
- (2) Regulations under this section must make provision –
  - (a) prescribing the descriptions of person who may refer matters to the PPF Ombudsman under the regulations, 45
  - (b) about the manner in which such references may be made, including the times by which they are to be made,

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- (c) about the procedure for conducting investigations, and reaching and giving determinations, on such references, including the times by which the determinations are to be given,
  - (d) about the powers of the PPF Ombudsman on making such determinations, including— 5
    - (i) the power to direct the Board to pay such compensation as he considers appropriate to such persons as he considers have sustained injustice in consequence of the matters complained of, and
    - (ii) the power to direct the Board to take or refrain from taking such other steps as he may specify, 10
  - (e) conferring such powers on the Board as are necessary to comply with such requirements,
  - (f) for prescribed persons to be notified of— 15
    - (i) references to the PPF Ombudsman under the regulations, and
    - (ii) determinations and directions by the PPF Ombudsman under the regulations,
  - (g) conferring rights on prescribed persons— 20
    - (i) to make representations to the PPF Ombudsman in relation to a matter referred to him by virtue of this section,
    - (ii) to be heard or represented at any oral hearing by the PPF Ombudsman in relation to such a matter,
  - (h) about the consideration of evidence by the PPF Ombudsman, including— 25
    - (i) production of documents,
    - (ii) oral hearings,
    - (iii) expert evidence,
    - (iv) attendance of witnesses,
  - (i) conferring rights on prescribed persons to continue a reference made by a person who has died or is otherwise unable to act for himself, 30
  - (j) as to the costs or expenses of prescribed persons,
  - (k) conferring rights on prescribed persons to apply for a stay (or in Scotland, for a sist) in relation to prescribed legal proceedings which begin after the reference is made and conferring power on the relevant court to make an order staying (or sisting) the proceedings if it is satisfied of prescribed matters, and 35
  - (l) for securing that any determination or direction of the PPF Ombudsman under the regulations is binding on prescribed persons.

## 175 Determinations of the PPF Ombudsman

- (1) A person bound by a determination or direction by the PPF Ombudsman by virtue of regulations made under section 173 or section 174 may appeal on a point of law arising from the determination or direction— 40
  - (a) in England and Wales, to the High Court, or
  - (b) in Scotland, to the Court of Session.
- (2) Any determination or direction of the PPF Ombudsman is enforceable— 45
  - (a) in England and Wales, in a county court as if it were a judgment or order of that court, and

- (b) in Scotland, in like manner as an extract registered decree arbitral bearing warrant for execution issued by the sheriff court of any sheriffdom in Scotland.

## 176 Obstruction etc of the PPF Ombudsman

- (1) This section applies if any person— 5
- (a) without lawful excuse obstructs the PPF Ombudsman in the performance of his functions, or
- (b) is guilty of any act or omission in relation to an investigation by the PPF Ombudsman under regulations made under section 173 or section 174, which, if that investigation were a proceeding in the court, would constitute contempt of court. 10
- (2) The PPF Ombudsman may certify the offence to the court.
- (3) Where an offence is certified under subsection (2), the court may—
- (a) inquire into the matter,
- (b) hear any witnesses who may be produced against or on behalf of the person charged with the offence and any statement that may be offered in defence, and 15
- (c) deal with him in any manner in which the court could deal with him if he had committed the like offence in relation to the court.
- (4) This section is to be construed, in its application to Scotland, as if contempt of court were categorised as an offence in Scots law. 20
- (5) In this section “the court” means—
- (a) in England and Wales, a county court;
- (b) in Scotland, the sheriff.

## CHAPTER 7

25

### MISCELLANEOUS

#### *Backdating the winding up of eligible schemes*

## 177 Backdating the winding up of eligible schemes

- (1) Subsection (2) applies where—
- (a) a qualifying insolvency event occurs in relation to the employer in relation to an eligible scheme, and 30
- (b) the winding up of the scheme begins at or after the time of that event but not later than the first of the following events in relation to the scheme—
- (i) the issuing of a notice under section 96(2) by an insolvency practitioner in relation to the employer, 35
- (ii) the Board ceasing to be involved with the scheme by virtue of an event within section 117(2)(c), or
- (iii) in a case where section 117(4) does not apply, the issuing of a notice under section 96(4) by a person who was or is such an insolvency practitioner. 40

- (2) The winding up of the scheme is to be taken as beginning immediately before that qualifying insolvency event if –
  - (a) the winding up is in pursuance of an order of the Regulator under section 11 of the Pensions Act 1995 (c. 26) directing the winding up of the scheme, or 5
  - (b) in any other case, the trustees or managers of the scheme so determine.
- (3) For the purposes of this section “qualifying insolvency event” has the same meaning as in section 99.
- (4) This section is to be read subject to section 107 (which restricts the winding up of an eligible scheme during an assessment period). 10

### PART 3

#### SCHEME FUNDING

##### *Introductory*

#### **178 Pension schemes to which this Part applies**

- (1) The provisions of this Part apply to every occupational pension scheme other than – 15
  - (a) a money purchase scheme, or
  - (b) a prescribed scheme or a scheme of a prescribed description.
- (2) Regulations under subsection (1)(b) may provide for exemptions from all or any of the provisions of this Part. 20

##### *Scheme funding*

#### **179 The statutory funding objective**

- (1) Every scheme is subject to a requirement (“the statutory funding objective”) that it must have sufficient and appropriate assets to cover its technical provisions. 25
- (2) A scheme’s “technical provisions” means the amount required, on an actuarial calculation, to make provision for the scheme’s liabilities.
- (3) For the purposes of this Part –
  - (a) the assets to be taken into account and their value shall be determined, calculated and verified in a prescribed manner, and 30
  - (b) the liabilities to be taken into account shall be determined in a prescribed manner and the scheme’s technical provisions shall be calculated in accordance with any prescribed methods and assumptions.
- (4) Regulations may – 35
  - (a) provide for alternative prescribed methods and assumptions,
  - (b) provide that it is for the trustees or managers to determine which methods and assumptions are to be used in calculating a scheme’s technical provisions, and

- (c) require the trustees or managers, in making their determination, to take into account prescribed matters and follow prescribed principles.
- (5) Any provision of the scheme that limits the amount of its liabilities by reference to the value of its assets shall be disregarded.

## 180 Statement of funding principles 5

- (1) The trustees or managers must prepare, and from time to time review and if necessary revise, a written statement of –
  - (a) their policy for securing that the statutory funding objective is met, and
  - (b) such other matters as may be prescribed.
 This is referred to in this Part as a “statement of funding principles”. 10
- (2) The statement must, in particular, record any decisions by the trustees or managers as to –
  - (a) the methods and assumptions to be used in calculating the scheme’s technical provisions, and
  - (b) the period within which, and manner in which, any failure to meet the statutory funding objective is to be remedied. 15
- (3) Provision may be made by regulations –
  - (a) as to the period within which a statement of funding principles must be prepared, and
  - (b) requiring it to be reviewed at such intervals, and on such occasions, as may be prescribed. 20
- (4) Where any requirement of this section is not complied with section 10 of the Pensions Act 1995 (c. 26) (civil penalties) applies to a trustee or manager who has failed to take all reasonable steps to secure compliance.

## 181 Actuarial valuations and reports 25

- (1) The trustees or managers must obtain actuarial valuations –
  - (a) at intervals of not more than one year or, if they obtain actuarial reports for the intervening years, at intervals of not more than three years, and
  - (b) in such circumstances and on such other occasions as may be prescribed. 30
- (2) In this Part –
  - (a) an “actuarial valuation” means a written report, prepared and signed by the actuary, valuing the scheme’s assets and calculating its technical provisions,
  - (b) the effective date of an actuarial valuation is the date by reference to which the assets are valued and the technical provisions calculated, 35
  - (c) an “actuarial report” means a written report, prepared and signed by the actuary, on developments affecting the scheme’s technical provisions since the last actuarial valuation was prepared, and
  - (d) the effective date of an actuarial report is the date by reference to which the information in the report is stated. 40
- (3) The intervals referred to in subsection (1)(a) are between effective dates of the valuations, and the effective date of the first actuarial valuation must be not more than one year after the establishment of the scheme.

- (4) The trustees or managers must ensure that a valuation or report obtained by them is received by them within the prescribed period after its effective date.
- (5) Nothing in this section affects any power or duty of the trustees or managers to obtain actuarial valuations or reports at more frequent intervals or in other circumstances or on other occasions. 5
- (6) An actuarial valuation or report (whether obtained under this section or in pursuance of any other power or duty) must be prepared in such a manner, give such information, contain such statements and satisfy such other requirements as may be prescribed.
- (7) The trustees or managers must secure that any actuarial valuation or report obtained by them (whether obtained under this section or in pursuance of any other power or duty) is made available to the employer within seven days of their receiving it. 10
- (8) Where subsection (1), (4) or (7) is not complied with section 10 of the Pensions Act 1995 (c. 26) (civil penalties) applies to a trustee or manager who has failed to take all reasonable steps to secure compliance. 15

## 182 Certification of technical provisions

- (1) When an actuarial valuation is carried out, the calculation of the technical provisions must be certified by the actuary.
- (2) The certificate must state that in the opinion of the actuary the calculation – 20
  - (a) is made in accordance with prescribed methods and assumptions that have been determined in accordance with prescribed principles,
  - (b) is consistent with any prescribed guidance, and
  - (c) complies with any other prescribed requirements.“Prescribed guidance” means guidance that is prepared and from time to time revised by a prescribed body and, if the regulations so provide, is approved by the Secretary of State. 25
- (3) The certificate must contain such other statements and comply with such other requirements as may be prescribed.
- (4) If the actuary cannot give the certificate required by subsection (2) he must report the matter in writing to the Regulator as soon as reasonably practicable. Section 10 of the Pensions Act 1995 (civil penalties) applies to the actuary if he fails without reasonable excuse to comply with this subsection. 30

## 183 Recovery plan

- (1) If having obtained an actuarial valuation it appears to the trustees or managers of a scheme that the statutory funding objective was not met on the effective date of the valuation, they must prepare a recovery plan within the prescribed time. 35
- (2) A recovery plan must set out – 40
  - (a) the steps to be taken to meet the statutory funding objective, and
  - (b) the period within which that is to be achieved.
- (3) A recovery plan must comply with any prescribed requirements and must be appropriate having regard to the nature and circumstances of the scheme.

- 
- (4) In preparing a recovery plan the trustees or managers must take account of prescribed matters.
- (5) Provision may be made by regulations as to the circumstances in which a recovery plan may or must –
- (a) be reviewed and if necessary revised, or 5
  - (b) be replaced by a recovery plan prepared as a result of a subsequent actuarial valuation.
- (6) The trustees or managers must send a copy of any recovery plan to the Regulator as soon as reasonably practicable.
- If the recovery plan replaces an earlier recovery plan, it must be accompanied by the prescribed information. 10
- (7) Where any requirement of this section is not complied with section 10 of the Pensions Act 1995 (c. 26) (civil penalties) applies to a trustee or manager who has failed to take all reasonable steps to secure compliance.
- 184 Schedule of contributions 15**
- (1) The trustees or managers must prepare, and from time to time review and if necessary revise, a schedule of contributions.
- (2) A “schedule of contributions” means a statement showing –
- (a) the rates of contributions payable towards the scheme by or on behalf of the employer and the active members of the scheme, and 20
  - (b) the dates on or before which such contributions are to be paid.
- (3) Provision may be made by regulations –
- (a) as to the period within which, after the establishment of a scheme, a schedule of contributions must be prepared,
  - (b) requiring the schedule of contributions to be reviewed at such intervals, and on such occasions, as may be prescribed, and 25
  - (c) as to the period for which a schedule of contributions is to be in force.
- (4) The schedule of contributions must satisfy prescribed requirements.
- (5) The schedule of contributions, as prepared or from time to time revised, must be certified by the actuary. 30
- (6) The certificate must state that, in the opinion of the actuary –
- (a) the schedule of contributions is consistent with the statement of funding principles, and
  - (b) the rates shown in the schedule are such that –
    - (i) where the statutory funding objective was not met on the prescribed date, the statutory funding objective can be expected to be met by the end of the period specified in the recovery plan, or 35
    - (ii) where the statutory funding objective was met on the prescribed date, the statutory funding objective can be expected to continue to be met for the period for which the schedule is to be in force. 40
- (7) Where the statutory funding objective was not met on the prescribed date, the trustees or managers must send a copy of the schedule of contributions to the Regulator as soon as reasonably practicable. 45

- (8) Where any requirement of the preceding provisions of this section is not complied with section 10 of the Pensions Act 1995 (c. 26) (civil penalties) applies to a trustee or manager who has failed to take all reasonable steps to secure compliance.
- (9) If the actuary is unable to give the certificate required by subsection (6), he must report the matter in writing to the Regulator as soon as reasonably practicable. 5  
Section 10 of the Pensions Act 1995 (civil penalties) applies to the actuary if he fails without reasonable excuse to comply with this subsection.
- (10) The provisions of subsections (1) and (3) to (9) above do not apply in relation to a schedule of contributions imposed by the Regulator under section 188 or, as the case may be, where such a schedule of contributions is in force. 10

### 185 Failure to make payments

- (1) This section applies where an amount payable in accordance with the schedule of contributions by or on behalf of the employer or an active member of a scheme is not paid on or before the due date. 15
- (2) If the trustees or managers have reasonable cause to believe that the failure is likely to be of material significance in the exercise by the Regulator of any of its functions, they must, except in prescribed circumstances, give notice of the failure to the Regulator in writing as soon as reasonably practicable. 20
- (3) If the failure comes to the notice of the actuary or auditor and they have reasonable cause to believe that it is likely to be of material significance in the exercise by the Regulator of any of its functions, he must, except in prescribed circumstances, give notice of the failure to the Regulator in writing as soon as reasonably practicable. 25
- (4) The amount unpaid (whether payable by the employer or not), if not a debt due from the employer to the trustees or managers apart from this subsection, shall be treated as such a debt.
- (5) Section 10 of the Pensions Act 1995 (civil penalties) applies – 30  
(a) where subsection (2) above is not complied with, to a trustee or manager who has failed to take all reasonable steps to secure compliance with that subsection;  
(b) to the actuary or the auditor if he fails without reasonable excuse to comply with subsection (3) above;  
(c) to the employer if he fails without reasonable excuse to make a payment required of him – 35  
(i) in accordance with the schedule of contributions, or  
(ii) by virtue of subsection (4) above.
- (6) This section applies in relation to a schedule of contributions imposed by the Regulator under section 188 as in relation to one agreed between the trustees or managers and the employer. 40

### 186 Matters requiring agreement of the employer

- (1) The trustees or managers must obtain the agreement of the employer to –  
(a) any decision as to the methods and assumptions to be used in calculating the scheme's technical provisions (see section 179(4)); 45

- 
- (b) any matter to be included in the statement of funding principles (see section 180);
  - (c) any recovery plan (see section 183);
  - (d) any matter to be included in the schedule of contributions (see section 184). 5
- (2) If it appears to the trustees or managers that it is not otherwise possible to obtain the employer’s agreement within the prescribed time to any such matter, they may (if the employer agrees) by resolution modify the scheme as regards the future accrual of benefits.
- (3) Any such modification must be – 10
- (a) recorded in writing by the trustees or managers, and
  - (b) notified to the members within one month of the decision being taken.
- (4) If the trustees or managers are unable to reach agreement with the employer within the prescribed time on any such matter as is mentioned in subsection (1), they must report the failure in writing to the Regulator as soon as reasonably practicable. 15
- (5) Where subsection (1) or (4) is not complied with section 10 of the Pensions Act 1995 (c. 26) (civil penalties) applies to a trustee or manager who has failed to take all reasonable steps to secure compliance.
- 187 Matters on which advice of actuary must be obtained** 20
- (1) The trustees or managers must obtain the advice of the actuary before doing any of the following –
- (a) making any decision as to the methods and assumptions to be used in calculating the scheme’s technical provisions (see section 179(4)),
  - (b) preparing or revising the statement of funding principles (see section 180), 25
  - (c) preparing a recovery plan (see section 183),
  - (d) preparing or revising the schedule of contributions (see section 184).
- (2) Regulations may require the actuary to comply with any prescribed requirements when advising the trustees or managers of a scheme on any such matter. 30
- (3) The regulations may require the actuary to have regard to prescribed guidance. “Prescribed guidance” means guidance that is prepared and from time to time revised by a prescribed body and, if the regulations so provide, is approved by the Secretary of State. 35
- 188 Powers of the Regulator**
- (1) The powers conferred by this section are exercisable where it appears to the Regulator with respect to a scheme (as a result of a report made to it or otherwise) –
- (a) that the trustees or managers have failed – 40
    - (i) to prepare a statement of funding principles as required by section 180(1), or
    - (ii) to review and revise such a statement as required by regulations under section 180(3)(b);

- (b) that the trustees or managers have failed to obtain an actuarial valuation as required by section 181(1);
  - (c) that the actuary is unable, on an actuarial valuation required by section 181(1), to certify the calculation of the scheme’s technical provisions;
  - (d) that the trustees or managers – 5
    - (i) have failed to prepare a recovery plan when required to do so under section 183,
    - (ii) have prepared a recovery plan that does not comply with the requirements of that section or any prescribed requirements, or 10
    - (iii) have failed to review, revise or replace a recovery plan as required by subsection (5) of that section;
  - (e) that the trustees or managers have failed –
    - (i) to prepare a schedule of contributions as required by section 184(1), or 15
    - (ii) to review and revise such a schedule as required by regulations under section 184(3);
  - (f) that the actuary is unable to certify a schedule of contributions (see section 184(6));
  - (g) that the employer has failed to make payments in accordance with the schedule of contributions, or that are required of him by virtue of section 185(4), and the failure is of material significance; 20
  - (h) that the trustees or managers have been unable to reach agreement with the employer within the prescribed time as to a matter in relation to which such agreement is required (see section 186(4)). 25
- (2) In any of those circumstances the Regulator may by order exercise all or any of the following powers –
- (a) it may modify the scheme as regards the future accrual of benefits;
  - (b) it may give directions as to –
    - (i) the manner in which the scheme’s technical provisions are to be calculated, including the methods and assumptions to be used in calculating the scheme’s technical provisions, or 30
    - (ii) the period within which, and manner in which, any failure to meet the statutory funding objective is to be remedied;
  - (c) it may impose a schedule of contributions. 35
- (3) In exercising any of the powers conferred by this section the Regulator must comply with any prescribed requirements.
- (4) The powers conferred by this section are in addition to any other powers exercisable by the Regulator under this Act or the Pensions Act 1995 (c. 26).

*Supplementary provisions* 40

**189 Power to modify provisions of this Part**

Regulations may modify the provisions of this Part as they apply in prescribed circumstances.

**190 Construction as one with the Pensions Act 1995**

This Part shall be construed as one with Part 1 of the Pensions Act 1995. 45

**PART 4**

## FINANCIAL PLANNING FOR RETIREMENT

*Retirement planning***191 Promoting and facilitating financial planning for retirement**

- (1) *The Secretary of State and the Northern Ireland Department may take action for the purpose of promoting or facilitating financial planning for retirement.* 5
- (2) *The action may in particular include the provision of facilities for the purpose of enabling or assisting an individual or a person authorised by him –*
- (a) *to estimate the financial resources the individual is likely to need after his retirement;* 10
  - (b) *to estimate the financial resources that are likely to be available to the individual after his retirement, from pensions and other sources;*
  - (c) *to ascertain what action might be taken with a view to increasing the financial resources available to the individual after his retirement.*
- (3) *This section does not authorise the Secretary of State or the Northern Ireland Department to take action which the Secretary of State or the Northern Ireland Department would otherwise be prohibited from taking under section 21 of the Financial Services and Markets Act 2000 (c. 8) (restrictions on financial promotion).* 15
- (4) *In this section “the Northern Ireland Department” means the Department for Social Development in Northern Ireland.* 20

**192 Supply of information for purposes of section 191**

- (1) This section applies to –
- (a) information which is relevant for determining the pensions and other benefits that may become payable to or in respect of an individual;
  - (b) information which relates to the financial resources of, or available to, an individual; 25
  - (c) information which relates to action taken in connection with –
    - (i) providing facilities for saving (for retirement or otherwise) by individuals, or
    - (ii) promoting or facilitating saving (for retirement or otherwise) by individuals. 30
- (2) A person who holds information to which this section applies may supply it to –
- (a) the Secretary of State or the Northern Ireland Department, or
  - (b) a person providing services to the Secretary of State or the Northern Ireland Department, 35
- for use for the purposes of functions under section 191(1).
- (3) Information supplied under subsection (2) must not be supplied by the recipient except –
- (a) if the information relates to an individual – 40
    - (i) to the individual or a person authorised by him;
    - (ii) to another person, with the consent of the individual;

- 
- (b) in any case –
- (i) to a person to whom it could be supplied under subsection (2);
  - (ii) to any person with a view to the institution of relevant criminal proceedings or otherwise for the purposes of relevant criminal proceedings. 5
- (4) In subsection (3) “relevant criminal proceedings” means criminal proceedings under –
- (a) the Pension Schemes Act 1993 (c. 48);
  - (b) the Pensions Act 1995 (c. 26);
  - (c) this Act; 10
  - (d) any enactment in force in Northern Ireland corresponding to an Act mentioned in any of paragraphs (a) to (c).
- (5) In this section “the Northern Ireland Department” means the Department for Social Development in Northern Ireland.
- 193 Use and supply of information: private pensions policy and retirement planning** 15
- Schedule 9 (which makes provision about the use and supply of information for purposes relating to private pensions policy and retirement planning) has effect.
- 194 Combined pension forecasts** 20
- (1) Regulations may require the trustees or managers of an occupational or personal pension scheme to provide any member of the scheme with –
- (a) the information specified in subsection (2), together with
  - (b) the information specified in subsection (3).
- (2) The information referred to in subsection (1)(a) is information relating to the member which – 25
- (a) is state pension information for the purposes of section 42 of the Child Support, Pensions and Social Security Act 2000 (c. 19),
  - (b) has been disclosed to the trustees or managers under that section (or, by virtue of that section, is treated as having been so disclosed), and 30
  - (c) is of a description specified in the regulations.
- (3) The information referred to in subsection (1)(b) is information which –
- (a) relates to the pensions and other benefits likely to accrue to the member, or capable of being secured by him, under the scheme, and
  - (b) is of a description specified in the regulations. 35
- (4) Regulations under subsection (1) may require information referred to in that subsection to be provided at a time or times specified in the regulations.
- Employee information and advice*
- 195 Information and advice to employees**
- (1) Regulations may require employers to take action for the purpose of enabling employees to obtain information and advice about pensions and saving for retirement. 40

- (2) Regulations under subsection (1) may in particular –
- (a) provide that they are to apply in relation to employers of a prescribed description and employees of a prescribed description;
  - (b) make different provision for different descriptions of employers and employees; 5
  - (c) make provision as to the action to be taken by employers (including the frequency at which, and the time and place at which, action is to be taken);
  - (d) make provision as to the description of information and advice in relation to which requirements apply; 10
  - (e) make provision about the description of person authorised to provide any such information and advice.
- (3) Employers to whom regulations under subsection (1) apply must provide information to the Regulator about the action taken by them for the purpose of complying with the regulations. 15
- (4) Regulations may make provision as to –
- (a) the information to be provided under subsection (3);
  - (b) the form and manner in which the information is to be provided;
  - (c) the period within which the information is to be provided.
- (5) Section 10 of the Pensions Act 1995 (c. 26) (civil penalties) applies to any person who, without reasonable excuse, fails to comply with subsection (3). 20
- (6) In this section “employer” means any employer, whether or not resident or incorporated in any part of the United Kingdom.

## PART 5

### OCCUPATIONAL AND PERSONAL PENSION SCHEMES: MISCELLANEOUS PROVISIONS 25

#### *Requirements for member-nominated trustees and directors*

#### **196 Requirement for member-nominated trustees**

- (1) The trustees of an occupational trust scheme must secure –
- (a) that, within a reasonable period of the commencement date, arrangements are in place which provide for at least one-third of the total number of trustees to be member-nominated trustees, and 30
  - (b) that those arrangements are implemented.
- (2) “Member-nominated trustees” are trustees of an occupational trust scheme who –
- (a) are nominated as the result of a process in which at least all the active members of the scheme are eligible to participate, and 35
  - (b) are selected by some or all of the members of the scheme.
- (3) The “commencement date”, in relation to a scheme, is –
- (a) the date upon which this section first applies in relation to the scheme, or 40
  - (b) in the case of a scheme to which this section has ceased to apply and then reapplies, the date on which the section reapplies to it.

- (4) The arrangements may provide for a greater number of member-nominated trustees than that required to satisfy the one-third minimum mentioned in subsection (1)(a) only if the employer has approved the greater number.
- (5) The arrangements –
- (a) must provide for the nomination and selection process to take place within a reasonable period of any requirement arising under the arrangements to appoint a member-nominated trustee, 5
  - (b) must provide, where a vacancy is not filled because insufficient nominations are received, for the nomination and selection process to be repeated at reasonable intervals until the vacancy is filled, 10
  - (c) must provide that where the employer so requires, a person who is not a member of the scheme must have the employer’s approval to qualify for selection as a member-nominated trustee, and
  - (d) subject to paragraph (c), may provide that, where the number of nominations received is equal to or less than the number of appointments required, the nominees are deemed to be selected. 15
- (6) The arrangements must provide that the removal of a member-nominated trustee requires the agreement of all the other trustees.
- (7) Nothing in the arrangements or in the provisions of the scheme may exclude member-nominated trustees from the exercise of functions exercisable by other trustees by reason only of the fact that they are member-nominated trustees. 20
- (8) This section does not apply in relation to an occupational trust scheme if –
- (a) every member of the scheme is a trustee of the scheme and no other person is such a trustee,
  - (b) every trustee of the scheme is a company, or 25
  - (c) the scheme is of a prescribed description.
- (9) If, in the case of an occupational trust scheme, the arrangements required by subsection (1) –
- (a) are not in place as required by subsection (1)(a), or
  - (b) are not being implemented, 30
- section 10 of the Pensions Act 1995 (c. 26) (civil penalties) applies to any trustee who has failed to take all reasonable steps to secure compliance.

### 197 Requirement for member-nominated directors of corporate trustees

- (1) Where a company is a trustee of an occupational trust scheme and every trustee of the scheme is a company, the company must secure – 35
- (a) that, within a reasonable period of the commencement date, arrangements are in place which provide for at least one-third of the total number of directors of the company to be member-nominated directors, and
  - (b) that those arrangements are implemented. 40
- (2) “Member-nominated directors” are directors who –
- (a) are nominated as the result of a process in which at least all the active members of the occupational trust scheme are eligible to participate, and
  - (b) are selected by some or all of the members of that scheme. 45
- (3) The “commencement date”, in relation to a company, is –

- 
- (a) the date upon which this section first applies in relation to the company, or
- (b) in the case of a company to which this section has ceased to apply and then reappplies, the date on which the section reappplies to it.
- (4) The arrangements may provide for a greater number of member-nominated directors than that required to satisfy the one-third minimum mentioned in subsection (1)(a) only if the employer has approved the greater number. 5
- (5) The arrangements –
- (a) must provide for the nomination and selection process to take place within a reasonable period of any requirement arising under the arrangements to appoint a member-nominated director, 10
- (b) must provide, where a vacancy is not filled because insufficient nominations are received, for the nomination and selection process to be repeated at reasonable intervals until the vacancy is filled,
- (c) must provide that where the employer so requires, a person who is not a member of the scheme must have the employer’s approval to qualify for selection as a member-nominated director, and 15
- (d) subject to paragraph (c), may provide that, where the number of nominations received is equal to or less than the number of appointments required, the nominees are deemed to be selected. 20
- (6) The arrangements must provide that the removal of a member-nominated director requires the agreement of all the other directors.
- (7) Nothing in the arrangements may exclude member-nominated directors from the exercise of functions exercisable by other directors by reason only of the fact that they are member-nominated directors. 25
- (8) Where the same company is a trustee of two or more occupational trust schemes by reference to each of which this section applies to the company, then subject to subsection (9), the preceding provisions of this section have effect as if –
- (a) the schemes were a single scheme, 30
- (b) the members of each of the schemes were members of that single scheme, and
- (c) the references to “the employer” were references to all the employers in relation to the schemes.
- (9) Where, apart from this subsection, subsection (8) would apply in relation to a company, the company may elect that subsection (8) – 35
- (a) is not to apply as mentioned in that subsection, or
- (b) is to apply but only in relation to some of the schemes to which it would otherwise apply.
- (10) This section does not apply in relation to an occupational trust scheme if the scheme is of a prescribed description. 40
- (11) If, in the case of a company which is a trustee of an occupational trust scheme, the arrangements required by subsection (1) –
- (a) are not in place as required by subsection (1)(a), or
- (b) are not being implemented, 45
- section 10 of the Pensions Act 1995 (c. 26) (civil penalties) applies to the company.

**198 Member-nominated trustees and directors: supplementary**

- (1) Regulations may modify sections 196 and 197 in their application to prescribed cases.
- (2) In sections 196 and 197 –
  - “company” means a company within the meaning given by section 735(1) of the Companies Act 1985 (c. 6) or a company which may be wound up under Part 5 of the Insolvency Act 1986 (c. 45) (unregistered companies); 5
  - “occupational trust scheme” means an occupational pension scheme established under a trust. 10

*Obligations of trustees of occupational pension schemes*

**199 Investment principles**

For section 35 of the Pensions Act 1995 (c. 26) (investment principles) substitute –

- “35 Investment principles”** 15
- (1) The trustees of a trust scheme must secure –
    - (a) that a statement of investment principles is prepared and maintained for the scheme, and
    - (b) that the statement is reviewed at such intervals, and on such occasions, as may be prescribed and, if necessary, revised. 20
  - (2) In this section “statement of investment principles”, in relation to a trust scheme, means a written statement of the investment principles governing decisions about investments for the purposes of the scheme.
  - (3) Before preparing or revising a statement of investment principles, the trustees of a trust scheme must comply with any prescribed requirements. 25
  - (4) A statement of investment principles must be in the prescribed form and cover, amongst other things, the prescribed matters.
  - (5) Neither a trust scheme nor a statement of investment principles may impose restrictions (however expressed) on any power to make investments by reference to the consent of the employer. 30
  - (6) If in the case of a trust scheme –
    - (a) a statement of investment principles has not been prepared, is not being maintained or has not been reviewed or revised, as required by this section, or 35
    - (b) the trustees have not complied with the obligation imposed on them by subsection (3),section 10 applies to any trustee who has failed to take all reasonable steps to secure compliance.
  - (7) Regulations may provide that this section is not to apply to any scheme which is of a prescribed description.” 40

**200 Requirement for knowledge and understanding: individual trustees**

- (1) This section applies to every individual who is a trustee of an occupational pension scheme.
- (2) In this section, “relevant scheme”, in relation to an individual, means any occupational pension scheme of which he is a trustee. 5
- (3) An individual to whom this section applies must, in relation to each relevant scheme, be conversant with –
- (a) the trust deed and scheme rules,
  - (b) any statement of investment principles for the time being maintained under section 35 of the Pensions Act 1995 (c. 26), 10
  - (c) in the case of a relevant scheme to which Part 3 (scheme funding) applies, the statement of funding principles most recently prepared or revised under section 180, and
  - (d) any other document recording policy for the time being adopted by the trustees relating to the administration of the scheme generally. 15
- (4) An individual to whom this section applies must have knowledge and understanding of –
- (a) the law relating to pensions and trusts,
  - (b) the principles relating to – 20
    - (i) the funding of occupational pension schemes, and
    - (ii) investment of the assets of such schemes, and
  - (c) such other matters as may be prescribed.
- (5) The degree of knowledge and understanding required by subsection (4) is that appropriate for the purposes of enabling the individual properly to exercise his functions as trustee of any relevant scheme. 25

**201 Requirement for knowledge and understanding: corporate trustees**

- (1) This section applies to any company which is a trustee of an occupational pension scheme.
- (2) In this section, “relevant scheme”, in relation to a company, means any occupational pension scheme of which it is a trustee. 30
- (3) A company to which this section applies must, in relation to each relevant scheme, secure that each individual who exercises any function which the company has as trustee of the scheme is conversant with each of the documents mentioned in subsection (4) so far as it is relevant to the exercise of the function.
- (4) Those documents are – 35
- (a) the trust deed and scheme rules,
  - (b) any statement of investment principles for the time being maintained under section 35 of the Pensions Act 1995,
  - (c) in the case of a relevant scheme to which Part 3 (scheme funding) applies, the statement of funding principles most recently prepared or revised under section 180, and 40
  - (d) any other document recording policy for the time being adopted by the trustees relating to the administration of the scheme generally.

(5)	A company to which this section applies must secure that any individual who exercises any function which the company has as trustee of any relevant scheme has knowledge and understanding of –	
	(a) the law relating to pensions and trusts,	
	(b) the principles relating to –	5
	(i) the funding of occupational pension schemes, and	
	(ii) investment of the assets of such schemes, and	
	(c) such other matters as may be prescribed.	
(6)	The degree of knowledge and understanding required by subsection (5) is that appropriate for the purposes of enabling the individual properly to exercise the function in question.	10
(7)	References in this section to the exercise by an individual of any function of a company are to anything done by the individual on behalf of the company which constitutes the exercise of the function by the company.	
<b>202</b>	<b>Requirement for knowledge and understanding: supplementary</b>	15
(1)	For the purposes of sections 200 and 201, a person’s functions as trustee of a relevant scheme are any functions which he has by virtue of being such a trustee and include, in particular –	
	(a) any functions which he has as one of the trustees authorised under section 34(5)(a) of the Pensions Act 1995 (c.26) (delegation of investment discretions) in the case of the scheme, and	20
	(b) any functions which he otherwise has as a member of a committee of the trustees of the scheme.	
(2)	Regulations may provide for any provision in section 200 or 201 –	
	(a) not to apply, or	25
	(b) to apply with modifications, to a trustee in prescribed circumstances.	
(3)	Nothing in either of those sections affects any rule of law requiring a trustee to have knowledge of, or expertise in, any matter.	
	<i>Pension protection on transfer of employment</i>	30
<b>203</b>	<b>Conditions for pension protection</b>	
(1)	This section applies in relation to a person (“the employee”) where –	
	(a) there is a transfer of an undertaking, or part of an undertaking, to which the TUPE Regulations apply,	
	(b) by virtue of the transfer the employee ceases to be employed by the transferor and becomes employed by the transferee, and	35
	(c) at the time immediately before the employee becomes employed by the transferee –	
	(i) there is an occupational pension scheme (“the scheme”) in relation to which the transferor is the employer, and	40
	(ii) one of subsections (2), (3) and (4) applies.	
(2)	This subsection applies where –	
	(a) the employee is an active member of the scheme, and	

- (b) if any of the benefits that may be provided under the scheme are money purchase benefits –
- (i) the transferor is required to make contributions to the scheme in respect of the employee, or
  - (ii) the transferor is not so required but has made one or more such contributions. 5
- (3) This subsection applies where –
- (a) the employee is not an active member of the scheme but is eligible to be such a member, and
  - (b) if any of the benefits that may be provided under the scheme are money purchase benefits, the transferor would have been required to make contributions to the scheme in respect of the employee if the employee had been an active member of it. 10
- (4) This subsection applies where –
- (a) the employee is not an active member of the scheme, nor eligible to be such a member, but would have been an active member of the scheme or eligible to be such a member if he had been employed by the transferor for a longer period, and 15
  - (b) if any of the benefits that may be provided under the scheme are money purchase benefits, the transferor would have been required to make contributions to the scheme in respect of the employee if the employee had been an active member of it. 20
- (5) For the purposes of this section, the condition in subsection (1)(c) is to be regarded as satisfied in any case where it would have been satisfied but for any action taken by the transferor by reason of the transfer. 25
- (6) In subsection (1)(a), the reference to an undertaking, or part of an undertaking, has the same meaning as in the TUPE Regulations.
- (7) In the case of a scheme which is contracted-out by virtue of section 9 of the Pension Schemes Act 1993 (c. 48), the references in subsections (2)(b), (3)(b) and (4)(b) to contributions mean contributions other than minimum payments (within the meaning of that Act). 30
- (8) In this section –
- the “TUPE regulations” means the Transfer of Undertakings (Protection of Employment) Regulations 1981 (S.I. 1981/1794);
  - references to the transferor include any associate of the transferor, and section 435 of the Insolvency Act 1986 (c. 45) applies for the purposes of this section as it applies for the purposes of that Act. 35

## 204 Form of protection

- (1) In a case where section 203 applies, it is a condition of the employee’s contract of employment with the transferee that the requirements in subsection (2) or the requirement in subsection (3) are complied with. 40
- (2) The requirements in this subsection are that –
- (a) the transferee secures that, as from the relevant time, the employee is, or is eligible to be, an active member of an occupational pension scheme in relation to which the transferee is the employer, and 45
  - (b) in a case where the scheme is a money purchase scheme, as from the relevant time –

- (i) the transferee makes relevant contributions to the scheme in respect of the employee, or
- (ii) if the employee is not an active member of the scheme but is eligible to be such a member, the transferee would be required to make such contributions if the employee were an active member, and 5
- (c) in a case where the scheme is not a money purchase scheme, as from the relevant time the scheme –
  - (i) satisfies the statutory standard referred to in section 12A of the Pension Schemes Act 1993 (c. 48), or 10
  - (ii) if regulations so provide, complies with such other requirements as may be prescribed.
- (3) The requirement in this subsection is that, as from the relevant time, the transferee makes relevant contributions to a stakeholder pension scheme of which the employee is a member. 15
- (4) The requirement in subsection (3) is for the purposes of this section to be regarded as complied with by the transferee during any period in relation to which the condition in subsection (5) is satisfied.
- (5) The condition in this subsection is that the transferee has offered to make relevant contributions to a stakeholder pension scheme of which the employee is eligible to be a member (and the transferee has not withdrawn the offer). 20
- (6) Subsection (1) does not apply in relation to a contract if or to the extent that the employee and the transferee so agree at any time after the time when the employee becomes employed by the transferee.
- (7) In this section – 25
  - “the relevant time” means –
    - (a) in a case where section 203 applies by virtue of the application of subsection (2) or (3) of that section, the time when the employee becomes employed by the transferee;
    - (b) in a case where that section applies by virtue of the application of subsection (4) of that section, the time at which the employee would have been a member of the scheme referred to in subsection (1)(c)(i) of that section or (if earlier) would have been eligible to be such a member; 30
  - “relevant contributions” means such contributions in respect of such period or periods as may be prescribed; 35
  - “stakeholder pension scheme” means a pension scheme which is registered under section 2 of the Welfare Reform and Pensions Act 1999 (c. 30).

*Safeguarding pension rights* 40

## 205 Paternity leave and adoption leave

- (1) In Schedule 5 to the Social Security Act 1989 (c. 24) (employment-related schemes for pensions or other benefits: equal treatment), after paragraph 5

insert –

*“Unfair paternity leave provisions*

- 5A (1) Where an employment-related benefit scheme includes any unfair paternity leave provisions (irrespective of any differences on the basis of sex in the treatment accorded to members under those provisions), then – 5
- (a) the scheme shall be regarded to that extent as not complying with the principle of equal treatment; and
  - (b) subject to sub-paragraph (3), this Schedule shall apply accordingly. 10
- (2) In this paragraph “unfair paternity leave provisions”, in relation to an employment-related benefit scheme, means any provision –
- (a) which relates to continuing membership of, or the accrual of rights under, the scheme during any period of paid paternity leave in the case of any member who is (or who, immediately before the commencement of such a period, was) an employed earner and which treats such a member otherwise than in accordance with the normal employment requirement; or 15
  - (b) which requires the amount of any benefit payable under the scheme to or in respect of any such member, to the extent that it falls to be determined by reference to earnings during a period which included a period of paid paternity leave, to be determined otherwise than in accordance with the normal employment requirement. 20
- (3) In the case of any unfair paternity leave provision –
- (a) the more favourable treatment required by paragraph 3(1) is treatment no less favourable than would be accorded to the member in accordance with the normal employment requirement; and 30
  - (b) paragraph 3(2) does not authorise the making of any such election as is there mentioned;
- but, in respect of any period of paid paternity leave, a member shall only be required to pay contributions on the amount of contractual remuneration or statutory paternity pay actually paid to or for him in respect of that period. 35
- (4) In this paragraph –
- “period of paid paternity leave”, in the case of a member, means a period –
  - (a) throughout which the member is absent from work in circumstances where sub-paragraph (5), (6) or (7) applies, and 40
  - (b) for which the employer (or if he is no longer in his employment, his former employer) pays him any contractual remuneration or statutory paternity pay; and 45
- “the normal employment requirement” is the requirement that any period of paid paternity leave shall be treated as if it were a period throughout which the member in question

- works normally and receives the remuneration likely to be paid for doing so.
- (5) This sub-paragraph applies if –
- (a) the member’s absence from work is due to the birth or expected birth of a child, and 5
  - (b) the member satisfies the conditions prescribed under section 171ZA(2)(a)(i) and (ii) of the Social Security Contributions and Benefits Act 1992 in relation to that child.
- (6) This sub-paragraph applies if –
- (a) the member’s absence from work is due to the placement or expected placement of a child for adoption under the law of any part of the United Kingdom, and 10
  - (b) the member satisfies the conditions prescribed under section 171ZB(2)(a)(i) and (ii) of that Act in relation to that child.
- (7) This sub-paragraph applies if – 15
- (a) the member’s absence from work is due to the adoption or expected adoption of a child who has entered the United Kingdom in connection with or for the purposes of adoption which does not involve the placement of the child for adoption under the law of any part of the United Kingdom, and 20
  - (b) the member satisfies the conditions prescribed under section 171ZB(2)(a)(i) and (ii) of that Act (as applied by virtue of section 171ZK of that Act (adoption cases not involving placement under the law of the United Kingdom)) in relation to that child. 25

*Unfair adoption leave provisions*

- 5B (1) Where an employment-related benefit scheme includes any unfair adoption leave provisions (irrespective of any differences on the basis of sex in the treatment accorded to members under those provisions), then – 30
- (a) the scheme shall be regarded to that extent as not complying with the principle of equal treatment; and
  - (b) subject to sub-paragraph (3), this Schedule shall apply accordingly. 35
- (2) In this paragraph “unfair adoption leave provisions”, in relation to an employment-related benefit scheme, means any provision –
- (a) which relates to continuing membership of, or the accrual of rights under, the scheme during any period of paid adoption leave in the case of any member who is (or who, immediately before the commencement of such a period, was) an employed earner and which treats such a member otherwise than in accordance with the normal employment requirement; or 40
  - (b) which requires the amount of any benefit payable under the scheme to or in respect of any such member, to the extent that it falls to be determined by reference to earnings during a period which included a period of paid adoption leave, to be determined otherwise than in accordance with the normal employment requirement. 45
- 50

- (3) In the case of any unfair adoption leave provision –
- (a) the more favourable treatment required by paragraph 3(1) is treatment no less favourable than would be accorded to the member in accordance with the normal employment requirement; and 5
  - (b) paragraph 3(2) does not authorise the making of any such election as is there mentioned;
- but, in respect of any period of paid adoption leave, a member shall only be required to pay contributions on the amount of contractual remuneration or statutory adoption pay actually paid to or for him in respect of that period. 10
- (4) In this paragraph –
- “period of paid adoption leave”, in the case of a member, means a period –
- (a) throughout which the member is absent from work in circumstances where sub-paragraph (5) or (6) applies, and 15
  - (b) for which the employer (or, if he is no longer in his employment, his former employer) pays him any contractual remuneration or statutory adoption pay; and 20
- “the normal employment requirement” is the requirement that any period of paid adoption leave shall be treated as if it were a period throughout which the member in question works normally and receives the remuneration likely to be paid for doing so. 25
- (5) This sub-paragraph applies if –
- (a) the member’s absence from work is due to the placement, or expected placement, of a child for adoption under the law of any part of the United Kingdom, and 30
  - (b) the member is a person with whom the child is, or is expected to be, placed for such adoption.
- (6) This sub-paragraph applies if –
- (a) the member’s absence from work is due to the adoption or expected adoption of a child who has entered the United Kingdom in connection with or for the purposes of adoption which does not involve the placement of the child for adoption under the law of any part of the United Kingdom, and 35
  - (b) the member is a person by whom the child has been or is expected to be adopted.” 40
- (2) The provision that may be made under section 142(1) of the Adoption and Children Act 2002 (c. 38) (power to make consequential etc provision to give full effect to any provision of that Act) includes provision modifying paragraph 5A or 5B of Schedule 5 to the Social Security Act 1989 (c. 24) (as inserted by subsection (1) above). 45

## 206 Inalienability of occupational pension

- (1) Section 91 of the Pensions Act 1995 (c. 26) (inalienability of occupational pension) is amended as follows.

- (2) In subsection (5) (exceptions to the rule of inalienability) at the end insert –
- “(f) subject to subsection (6), a charge or lien on, or set-off against, the person in question’s entitlement, or right, for the purpose of discharging some monetary obligation due from the person in question to the scheme arising out of a payment made in error in respect of the pension.” 5
- (3) In subsection (6) (limits on the charge, lien or set-off under subsection (5)(d) or (e)) for “or (e)” substitute “, (e) or (f)”.

*Payments by employers*

**207 Payments made by employers to personal pension schemes 10**

- (1) Section 111A of the Pension Schemes Act 1993 (c. 48) (monitoring of employers’ payments to personal pension schemes) is amended as follows.
- (2) For subsections (3) to (7) substitute –
- “(3) The trustees or managers of the scheme must monitor the payment of contributions by or on behalf of the employer under the direct payment arrangements. 15
- (4) The trustees or managers may request the employer to provide them, (or arrange for them to be provided) with the payment information specified in the request.
- (5) For the purposes of subsection (4) “payment information” is information required by the trustees or managers to enable them to discharge the duty imposed by subsection (3). 20
- (6) The employer must comply with a request under subsection (4) within a reasonable period.
- (7) Where, as a result of the employer’s failure to so comply, the trustees or managers are unable to discharge the duty imposed by subsection (3), they must give notice to that effect to the Regulatory Authority within a reasonable period. 25
- (7A) Where –
- (a) a contribution payable under the direct payment arrangements has not been paid on or before its due date, and
- (b) the trustees or managers have reasonable cause to believe that the failure to pay the contribution is likely to be of material significance in the exercise by the Regulatory Authority of any of their functions, 30
- they must give notice to that effect to the Regulatory Authority and the employee within a reasonable period after the due date.” 35
- (3) In subsection (8) (employer’s liability for civil penalties) for “subsection (3) or (5)” substitute “subsection (6) and as a result the trustees or managers of the scheme are unable to discharge the duty imposed by subsection (3)”. 40
- (4) In subsection (9) (liability of trustees or managers for civil penalties) for “subsection (6) or (7)” substitute “subsection (7) or (7A)”.

**208 Payments made by employers and members to occupational pension schemes**

- (1) In section 49 of the Pensions Act 1995 (c. 26) (other responsibilities of trustees, employers, etc), in subsection (9) (duty of trustee etc to report a failure by employer to pay contributions deducted from earnings on time) for paragraph (b) substitute – 5
- “(b) if the trustees or managers have reasonable cause to believe that the failure is likely to be of material significance in the exercise by the Authority of any of their functions, they must, except in prescribed circumstances, give notice of the failure to the Authority and the member within a reasonable period after the end of the prescribed period under subsection (8).” 10
- (2) In section 88 of that Act (schedules of payments to money purchase schemes), for subsection (1) (duty of trustees or managers to report a failure to pay amounts on time) substitute –
- “(1) Where, in the case of an occupational pension scheme to which section 87 applies – 15
- (a) there is a failure to pay on or before the due date any amounts payable in accordance with the payment schedule, and
- (b) the trustees or managers have reasonable cause to believe that the failure is likely to be of material significance in the exercise by the Authority of any of their functions, 20
- they must, except in prescribed circumstances, give notice of the failure to the Authority and to the members of the scheme within a reasonable period after the due date.”
- Deficiency in assets of certain occupational pension schemes* 25

**209 Debt due from the employer when assets insufficient**

- (1) Section 75 of the Pensions Act 1995 (deficiencies in the assets) is amended as follows.
- (2) For subsections (1) to (4) substitute –
- “(1) This section applies in relation to an occupational pension scheme other than a scheme which is – 30
- (a) a money purchase scheme, or
- (b) of a prescribed description.
- (2) If – 35
- (a) at any time which falls –
- (i) when a scheme is being wound up, but
- (ii) before any insolvency event in relation to the employer which occurs while the scheme is being wound up, 40
- the value of the assets of the scheme is less than the amount at that time of the liabilities of the scheme, and
- (b) the trustees or managers of the scheme designate that time for the purposes of this subsection (before the occurrence of an event within paragraph (a)(ii)), 40
- an amount equal to the difference shall be treated as a debt due from the employer to the trustees or managers of the scheme. 45

- This is subject to subsection (3).
- (3) Subsection (2) applies only if before the commencement of the winding up of the scheme –
- (a) no insolvency event has occurred in relation to the employer, or
  - (b) any such event has been followed by an event within subsection (6A)(b), (c) or (d). 5
- (4) Where –
- (a) immediately before a qualifying insolvency event occurs in relation to the employer the value of the assets of the scheme is less than the amount at that time of the liabilities of the scheme, and 10
  - (b) if the scheme was being wound up immediately before that event, subsection (2) has not applied in relation to the scheme to treat an amount as a debt due from the employer to the trustees or managers of the scheme, 15
- an amount equal to the difference shall be treated as a debt due from the employer to the trustees or managers of the scheme.
- (4A) A debt under subsection (4) is to be taken, for the purposes of the law relating to insolvency as it applies to the employer, to arise immediately before the occurrence of the qualifying insolvency event. 20
- (4B) Where the scheme was not being wound up immediately before the qualifying insolvency event, the debt due from the employer under subsection (4) is contingent upon –
- (a) the occurrence, in relation to the scheme, of an event within paragraph (a) of subsection (6A) in circumstances where that event is the first event within that subsection to occur after the qualifying insolvency event, or 25
  - (b) the commencement of the winding up of the scheme before any event within subsection (6A) occurs.”
- (3) In subsection (5) for “subsection (1)” substitute “subsections (2) and (4)”. 30
- (4) After subsection (6) insert –
- “(6A) The events within this subsection are –
- (a) the issuing of a notice under subsection (2) of section 96 of the Pensions Act 2004 confirming that a scheme rescue is not possible; 35
  - (b) the issuing of such a notice confirming that a scheme rescue has occurred;
  - (c) the Board ceasing to be involved with the scheme by virtue of an event within section 117(2)(c) of that Act (withdrawal where no insolvency event likely to occur in six month period or expiry of six month period without further insolvency event occurring), or 40
  - (d) if where an insolvency practitioner issues a notice under section 96(4) of that Act (confirmation of inability to confirm status of scheme) section 117(4) of that Act (Board’s duty to consider whether to withdraw) does not apply, the issuing of that notice. 45
- (6B) For the purposes of this section –

- (a) section 95 of the Pensions Act 2004 applies for the purposes of determining if and when an insolvency event has occurred in relation to the employer,
  - (b) an insolvency event (“the current event”) in relation to the employer is a qualifying insolvency event if –
    - (i) it is the first insolvency event in relation to the employer, or
    - (ii) an event within subsection (6A)(b), (c) or (d) has occurred in relation to the scheme since the date of the last insolvency event (if any) to occur in relation to the employer before the current event, and
  - (c) references to an insolvency event in relation to an employer do not include an insolvency event which occurred in relation to him before he became the employer in relation to the scheme.”
- (5) Omit subsection (9).

### *Pension disputes*

## 210 Resolution of disputes

For section 50 of the Pensions Act 1995 (c. 26) (resolution of disputes) substitute –

- “50 Requirement for dispute resolution arrangements**
- (1) The trustees or managers of an occupational pension scheme must secure that dispute resolution arrangements are made and implemented.
  - (2) Dispute resolution arrangements are such arrangements as are required by this section for the resolution of pension disputes.
  - (3) For this purpose a pension dispute is a dispute which –
    - (a) is between –
      - (i) the trustees or managers of a scheme, and
      - (ii) one or more persons with an interest in the scheme (see section 50A),
    - (b) is about matters relating to the scheme, and
    - (c) is not an exempted dispute (see subsection (9)).
  - (4) The dispute resolution arrangements must provide a procedure –
    - (a) for any of the parties to the dispute mentioned in subsection (3)(a)(ii) to make an application for a decision to be taken on the matters in dispute (“an application for the resolution of a pension dispute”), and
    - (b) for the trustees or managers to take that decision.
  - (5) Where an application for the resolution of a pension dispute is made in accordance with the dispute resolution arrangements, the trustees or managers must –
    - (a) take the decision required on the matters in dispute within a reasonable period of the receipt of the application by them, and
    - (b) notify the applicant of the decision within a reasonable period of it having been taken.

- (6) The procedure provided for by the dispute resolution arrangements must include the provision required by section 50B.
- (7) Dispute resolution arrangements under subsection (1) must, in the case of existing schemes, have effect on and after the date of commencement of this section in relation to applications made on or after that date. 5
- (8) This section does not apply in relation to an occupational pension scheme if—
- (a) every member of the scheme is a trustee of the scheme,
  - (b) the scheme has no more than one member, or
  - (c) the scheme is of a prescribed description. 10
- (9) For the purposes of this section a dispute is an exempted dispute if—
- (a) proceedings in respect of it have been commenced in any court or tribunal,
  - (b) the Pensions Ombudsman has commenced an investigation in respect of it as a result of a complaint made or a dispute referred to him, or
  - (c) it is of a prescribed description. 15
- (10) If, in the case of an occupational pension scheme, the dispute resolution arrangements required by this section to be made—
- (a) have not been made, or
  - (b) are not being implemented,
- section 10 applies to any of the trustees or managers who have failed to take all reasonable steps to secure that such arrangements are made or implemented. 20
- 50A Meaning of “person with an interest in the scheme” 25**
- (1) For the purposes of section 50 a person is a person with an interest in an occupational pension scheme if—
- (a) he is a member of the scheme,
  - (b) he is a widow, widower or surviving dependant of a deceased member of the scheme,
  - (c) he is a surviving non-dependant beneficiary of a deceased member of the scheme,
  - (d) he is a prospective member of the scheme,
  - (e) he has ceased to be within any of the categories of persons referred to in paragraphs (a) to (d), or
  - (f) he claims to be such a person as is mentioned in paragraphs (a) to (e) and the dispute relates to whether he is such a person. 30
- (2) In subsection (1)(c) a “non-dependant beneficiary”, in relation to a deceased member of an occupational pension scheme, means a person who, on the death of the member, is entitled to the payment of benefits under the scheme. 40
- (3) In subsection (1)(d) a “prospective member” means any person who, under the terms of his contract of service or the rules of the scheme—
- (a) is able, at his own option, to become a member of the scheme,
  - (b) will become so able if he continues in the same employment for a sufficiently long period, 45

- (c) will be admitted to the scheme automatically unless he makes an election not to become a member, or
- (d) may be admitted to it subject to the consent of his employer.

### 50B The dispute resolution procedure

- (1) The procedure provided for by the dispute resolution arrangements under section 50 must include the following provision. 5
- (2) The procedure must provide that an application for the resolution of a pension dispute under section 50(4) may be made or continued on behalf of a person who is a party to the dispute mentioned in section 50(3)(a)(ii) – 10
  - (a) where the person dies, by his personal representative,
  - (b) where the person is a minor or is otherwise incapable of acting for himself, by a member of his family or some other person suitable to represent him, and
  - (c) in any other case, by a representative nominated by him. 15
- (3) The procedure may include provision about the time limits for making an application for the resolution of a pension dispute but it must require that –
  - (a) in the case of a person with an interest in a scheme as mentioned in section 50A(1)(e), the time limit for making an application is the end of the period of six months beginning immediately after the date upon which he ceased to be a person with an interest as mentioned in section 50A(1)(a), (b), (c) or (d), and 20
  - (b) in the case of a person with an interest in a scheme as mentioned in section 50A(1)(f) who is claiming to be such a person as is mentioned in section 50A(1)(e), the time limit for making an application is the end of the period of six months beginning immediately after the date upon which he claims that he ceased to be a person with an interest as mentioned in section 50A(1)(a), (b), (c) or (d). 25 30
- (4) The procedure must include provision about –
  - (a) the manner in which an application for the resolution of a pension dispute is to be made,
  - (b) the particulars which must be included in such an application, and 35
  - (c) the manner in which any decisions required are to be reached and given.
- (5) The procedure must provide that if, after an application for the resolution of a pension dispute has been made, the dispute becomes an exempted dispute within the meaning of section 50(9)(a) or (b), the resolution of the dispute under the procedure ceases.” 40

### *Pension compensation*

### 211 Amendments relating to the Pensions Compensation Board

- (1) The Pensions Act 1995 (c. 26) is amended as follows.
- (2) In section 80 (review of decisions of the Pensions Compensation Board) – 45

- (a) after subsection (2) insert –
  - “(2A) The Compensation Board may also review such a determination without an application being made.”
- (b) for subsections (4) and (5) substitute –
  - “(4) Regulations may make provision – 5
    - (a) with respect to reviews under this section (or any corresponding provision in force in Northern Ireland);
    - (b) with respect to applications under subsection (2) (or any corresponding provision in force in Northern Ireland) and the procedure to be adopted on any such application.” 10
- (3) In section 81 (cases where compensation provisions apply), omit subsections (1)(d), (2A) and (7).
- (4) In section 83 (amount of compensation) for subsections (3) and (4) substitute –
  - “(3) The amount of the payment, or (if there is more than one) the aggregate, must not exceed the aggregate of – 15
    - (a) the amount (if any) by which the shortfall at the application date exceeds the recoveries of value made between the application date and the settlement date, and
    - (b) interest at the prescribed rate for the prescribed period on the amount of that excess (if any).” 20

*Annual increases in rate of pensions*

**212 Annual increase in rate of certain occupational pensions**

- (1) Section 51 of the Pensions Act 1995 (c. 26) (annual increase in rate of certain occupational pensions) is amended in accordance with subsections (2) to (5). 25
- (2) In subsection (1) omit “and” at the end of paragraph (a) and for paragraph (b) substitute –
  - “(b) the whole, or any part of, the pension is attributable to pensionable service on or after the appointed day or, in the case of money purchase benefits, to payments in respect of employment carried on on or after the appointed day, and 30
  - (c) apart from this section –
    - (i) the annual rate of the pension, or
    - (ii) if only part of the pension is attributable as described in paragraph (b), so much of the annual rate as is attributable to that part, 35would not be increased each year by at least the appropriate percentage of that rate.”
- (3) In subsection (4)(b) for “5 per cent per annum” substitute “–
  - (i) in the case of a category X pension, 5% per annum, and 40
  - (ii) in the case of a category Y pension, 2.5% per annum.”

## (4) After subsection (4) insert –

“(4A) For the purposes of this section, a pension is a category X pension if it is –

(a) a pension which became a pension in payment before the commencement day, or 5

(b) a pension –

(i) which becomes a pension in payment on or after the commencement day, and

(ii) the whole of which is attributable to pensionable service before that day or, in the case of money purchase benefits, to payments in respect of employment carried on before that day. 10

(4B) For the purposes of this section, a pension is a category Y pension if it is a pension –

(a) which becomes a pension in payment on or after the commencement day, and 15

(b) the whole of which is attributable to pensionable service on or after the commencement day or, in the case of money purchase benefits, to payments in respect of employment carried on on or after that day. 20

(4C) For the purposes of applying this section in the case of a pension –

(a) which becomes a pension in payment on or after the commencement day,

(b) part of which is attributable to pensionable service before the commencement day or, in the case of money purchase benefits, to payments in respect of employment carried on before that day, and 25

(c) part of which is attributable to pensionable service on or after that day or, in the case of money purchase benefits, to payments in respect of employment carried on on or after that day, 30

each of those parts of the pension is to be treated as if it were a separate pension.”

## (5) In subsection (5) –

(a) for “the provisions of subsections (2) and (3)” substitute “any of the provisions of this section”, and 35

(b) in paragraph (a), after “appointed day” insert “or the commencement day”.

## (6) After that section insert –

**“51ZA Meaning of the “appropriate percentage”**

(1) For the purposes of section 51(1)(c) and (2), “the appropriate percentage” in relation to an increase in the whole or part of the annual rate of a pension – 40

(a) in the case of a category X pension, means the revaluation percentage for the latest revaluation period specified in the order under paragraph 2 of Schedule 3 to the Pension Schemes Act 1993 (revaluation of accrued pension benefits) which is in force at the time of the increase, and 45

- (b) in the case of a category Y pension, means whichever is the lesser of—
  - (i) the revaluation percentage for the latest revaluation period specified in the order under paragraph 2 of Schedule 3 to the Pension Schemes Act 1993 which is in force at the time of the increase, and 5
  - (ii) 2.5%.
- (2) In this section “the revaluation percentage” and “the revaluation period” have the same meaning as in paragraph 2 of Schedule 3 to the Pension Schemes Act 1993.” 10
- (7) In section 54(3) of that Act (sections 51 to 53: supplementary), at the appropriate place insert—
  - ““the commencement day” means the day appointed for the coming into force of section 212 of the Pensions Act 2004 (amendments to section 51);”. 15

### 213 Annual increase in rate of certain personal pensions

- (1) Section 162 of the Pensions Act 1995 (c. 26) (annual increase in rate of certain personal pensions) is amended in accordance with subsections (2) and (3).
- (2) In subsection (1) omit “and” at the end of paragraph (a) and for paragraph (b) substitute—
  - (b) the whole, or any part of, the pension is attributable to contributions in respect of employment carried on on or after the appointed day, and
  - (c) apart from this section—
    - (i) the annual rate of the pension, or 25
    - (ii) if only part of the pension is attributable as described in paragraph (b), so much of the annual rate as is attributable to that part, would not be increased each year by at least the appropriate percentage of that rate.” 30
- (3) After subsection (2) insert—
  - “(2A) For the purposes of this section, a pension is a category X pension if it is—
    - (a) a pension which became a pension in payment before the commencement day, or 35
    - (b) a pension—
      - (i) which becomes a pension in payment on or after the commencement day, and
      - (ii) the whole of which is attributable to contributions in respect of employment carried on before that day. 40
  - (2B) For the purposes of this section, a pension is a category Y pension if it is a pension—
    - (a) which becomes a pension in payment on or after the commencement day, and
    - (b) the whole of which is attributable to contributions in respect of employment carried on on or after that day. 45

- (2C) For the purposes of applying this section in the case of a pension –
- (a) which becomes a pension in payment on or after the commencement day,
  - (b) part of which is attributable to contributions in respect of employment carried on before that day, and 5
  - (c) part of which is attributable to contributions in respect of employment carried on on or after that day,
- each of those parts of the pension is to be treated as if it were a separate pension.”
- (4) After that section insert – 10
- “162A Meaning of the “appropriate percentage”**
- (1) For the purposes of section 162(1)(c) and (2), “the appropriate percentage” in relation to an increase in the whole or part of the annual rate of a pension –
- (a) in the case of a category X pension, means the revaluation percentage for the latest revaluation period specified in the order under paragraph 2 of Schedule 3 to the Pension Schemes Act 1993 (revaluation of accrued pension benefits) which is in force at the time of the increase, and 15
  - (b) in the case of a category Y pension, means whichever is the lesser of – 20
    - (i) the revaluation percentage for the latest revaluation period specified in the order under paragraph 2 of Schedule 3 to the Pension Schemes Act 1993 which is in force at the time of the increase, and 25
    - (ii) 2.5%.
- (2) In this section “the revaluation percentage” and “the revaluation period” have the same meaning as in paragraph 2 of Schedule 3 to the Pension Schemes Act 1993.”
- (5) In section 163(3) of that Act (section 162: supplementary), at the appropriate place insert – 30
- ““the commencement day” means the day appointed for the coming into force of section 213 of the Pensions Act 2004 (amendments to section 162);”.
- 214 Power to increase pensions giving effect to pension credits etc 35**
- (1) Section 40 of the Welfare Reform and Pensions Act 1999 (c. 30) (power of the Secretary of State to increase pensions provided to give effect to certain rights) is amended as follows.
- (2) In subsection (1), for “5%” substitute “the maximum percentage”.
- (3) After subsection (2) insert – 40
- “(2A) For the purposes of subsection (1) the “maximum percentage” means –
- (a) 5% in a case where –
    - (i) the pension is in payment before the commencement day, or

- (ii) the pension is not in payment before the commencement day but the entitlement to the relevant pension credit arose before that day, and
  - (b) 2.5% in a case where the entitlement to the relevant pension credit arises on or after the commencement day.” 5
- (4) In subsection (3), at the appropriate places insert –
  - ““commencement day” means the day appointed for the coming into force of section 214 of the Pensions Act 2004 (amendments to section 40);”
  - ““relevant pension credit” means the pension credit to which the eligible pension credit rights or, as the case may be, the safeguarded rights relate.” 10

### *Revaluation*

#### **215 Exemption from statutory revaluation requirement**

- (1) Section 84 of the Pension Schemes Act 1993 (c. 48) (basis of revaluation) is amended as follows. 15
- (2) In subsection (5), after paragraph (a) insert “or
  - (b) under any arrangement which maintains the value of the pension or other benefit by reference to the rise in the retail prices index during that period,”. 20
- (3) After that subsection add –
  - “(6) In subsection (5)(b), “retail prices index” means –
    - (a) the general index of retail prices (for all items) published by the Office for National Statistics; or
    - (b) where that index is not published for a month, any substituted index or figures published by that Office.” 25

### *Contracting out*

#### **216 Meaning of “working life” in Pension Schemes Act 1993**

- In section 181 of the Pension Schemes Act 1993 (general interpretation), in subsection (1) for the definition of “working life” substitute – 30
- ““working life”, in relation to a person, means the period beginning with the tax year in which the person attains the age of 16 and ending with –
- (a) the tax year before the one in which the person attains the age of 65 in the case of a man or 60 in the case of a woman, or 35
  - (b) if earlier, the tax year before the one in which the person dies.”

#### **217 Power to prescribe conditions by reference to Inland Revenue approval**

In section 9 of the Pension Schemes Act 1993 (requirements for certification of

schemes: general), after subsection (5) insert—

- “(5A) Regulations about pension schemes made under this Chapter may contain provisions framed by reference to whether or not a scheme—
- (a) is approved under Chapter 1 (retirement benefit schemes) of Part 14 of the Income and Corporation Taxes Act 1988, or is a relevant statutory scheme within the meaning of that Chapter, or
  - (b) is approved under Chapter 4 (personal pension schemes) of that Part.”

5

## **218 Restrictions on commutation and age at which benefits may be received** 10

- (1) For section 21(1) of the Pension Schemes Act 1993 (c. 48) (commutation in guaranteed minimum pension cases) substitute—

“(1) A scheme may, in such circumstances and subject to such restrictions and conditions as may be prescribed, provide for the payment of a lump sum instead of a pension required to be provided by the scheme in accordance with section 13 or 17.”

15

- (2) In section 17 of that Act (minimum pensions for widows and widowers), at the end insert—

“(8) Where—

- (a) a lump sum is paid to an earner under provisions included in a scheme by virtue of section 21(1), and
- (b) those provisions are of a prescribed description,

the earner shall be treated for the purposes of this section as having any guaranteed minimum under section 14 that he would have had but for that payment.”

20

25

- (3) In section 28 of that Act (ways of giving effect to protected rights), in subsection (4) (provision of a lump sum)—

- (a) after “provision of a lump sum” insert “, subject to such restrictions as may be prescribed,”;
- (b) omit paragraphs (a) and (b);
- (c) at the end insert “; and
- (e) such other conditions as may be prescribed are satisfied.”

30

- (4) Omit subsections (4A) and (4B) of that section.

- (5) In subsections (3) and (5) of that section, for “, (4) or (4A)” substitute “or (4)”. 35

- (6) In subsection (8) of that section, in the definition of “the starting date” omit “, which must not be earlier than the member’s 60th birthday,”.

- (7) In section 29(1) of that Act (how a pension may comply with “the pension requirements” for the purposes of section 28)—

- (a) in paragraph (a), for the words from “date” to “or on” substitute “date that is not later than the member’s 65th birthday, or on”;
- (b) in paragraph (aa)(ii) omit the words from “and is not” to “75th birthday,”.

40

*Stakeholder pensions*

**219 Meaning of “stakeholder pension scheme”**

- (1) Section 1 of the Welfare Reform and Pensions Act 1999 (c. 30) (meaning of “stakeholder pension scheme”) is amended in accordance with subsections (2) to (4). 5
- (2) In subsection (1) (requirements to be met by stakeholder pension schemes), in paragraph (a) for “to (9)” substitute “to (10)”.
- (3) In subsection (5) (prescribed requirements relating to administrative expenses of scheme), in paragraph (a) for “by or on behalf of” substitute “by, or on behalf or in respect of,”. 10
- (4) After subsection (9) insert –  
“(10) The ninth condition is that –
  - (a) if the scheme is an occupational pension scheme, it is specified in a contracting-out certificate in relation to all categories of employment to which the scheme relates, and 15
  - (b) if the scheme is a personal pension scheme, it is an appropriate scheme within the meaning of section 7(4) of the 1993 Act.”
- (5) In section 2 of that Act (registration of stakeholder pension), in subsection (2)(b)(i) for “to (9)” substitute “to (10)”.

**PART 6** 20

STATE PENSIONS

*Entitlement to more than one pension*

**220 Persons entitled to more than one Category B retirement pension**

- In section 43(3) of the Social Security Contributions and Benefits Act 1992 (c. 4) (persons entitled to more than one retirement pension) – 25
- (a) for paragraph (a) substitute –
    - “(a) to both a Category A retirement pension and one or more Category B retirement pensions under this Part for the same period, 30
    - (aa) to more than one Category B retirement pension (but not a Category A retirement pension) under this Part for the same period, or”, and
  - (b) for the words from “paragraph (a)” to “above” substitute “paragraph (a), (aa) or (b) (as the case may be)”.

*Deferral of state pension* 35

**221 Deferral of retirement pensions and shared additional pensions**

- (1) For section 55 of the Social Security Contributions and Benefits Act 1992

(increase of retirement pension where entitlement is deferred) substitute –

**“55 Pension increase or lump sum where entitlement to retirement pension is deferred**

- (1) Where a person’s entitlement to a Category A or Category B retirement pension is deferred, Schedule 5 to this Act has effect. 5
- (2) In that Schedule –
- paragraph A1 makes provision enabling an election to be made where the pensioner’s entitlement is deferred
  - paragraphs 1 to 3 make provision about increasing pension where the pensioner’s entitlement is deferred 10
  - paragraphs 3A and 3B make provision about lump sum payments where the pensioner’s entitlement is deferred
  - paragraph 3C makes provision enabling an election to be made where the pensioner’s deceased spouse has deferred entitlement 15
  - paragraphs 4 to 7 make provision about increasing pension where the pensioner’s deceased spouse has deferred entitlement
  - paragraphs 7A and 7B make provision about lump sum payments where the pensioner’s deceased spouse has deferred entitlement 20
  - paragraphs 7C to 9 make supplementary provision.
- (3) For the purposes of this Act a person’s entitlement to a Category A or Category B retirement pension is deferred if and so long as that person –
- (a) does not become entitled to that pension by reason only – 25
    - (i) of not satisfying the conditions of section 1 of the Administration Act (entitlement to benefit dependent on claim), or
    - (ii) in the case of a Category B retirement pension payable by virtue of a spouse’s contributions, of the spouse not satisfying those conditions with respect to his Category A retirement pension, or 30
  - (b) in consequence of an election under section 54(1), falls to be treated as not having become entitled to that pension, 35
- and, in relation to any such pension, “period of deferment” shall be construed accordingly.”
- (2) For section 55C of that Act (increase of shared additional pension where entitlement is deferred) substitute –
- “55C Pension increase or lump sum where entitlement to shared additional pension is deferred** 40
- (1) Where a person’s entitlement to a shared additional pension is deferred, Schedule 5A to this Act has effect.
- (2) In that Schedule –
- paragraph 1 makes provision enabling an election to be made where the person’s entitlement is deferred 45
  - paragraphs 2 and 3 make provision about increasing pension where the person’s entitlement is deferred

- paragraphs 4 and 5 make provision about lump sum payments where the person’s entitlement is deferred.
- (3) For the purposes of this Act, a person’s entitlement to a shared additional pension is deferred –
- (a) where he would be entitled to a Category A or Category B retirement pension but for the fact that his entitlement is deferred, if and so long as his entitlement to such a pension is deferred, and 5
  - (b) otherwise, if and so long as he does not become entitled to the shared additional pension by reason only of not satisfying the conditions of section 1 of the Administration Act (entitlement to benefit dependent on claim), 10
- and, in relation to a shared additional pension, “period of deferment” shall be construed accordingly.”
- (3) In paragraph 6 of Schedule 4 to the Pensions Act 1995 (c. 26) (which, with effect from 6th April 2010, amends the existing law regarding the deferment of pensions), for sub-paragraph (5) (commencement) substitute – 15
- “(5) The preceding sub-paragraphs shall come into force as follows –
- (a) sub-paragraphs (1) and (4) shall come into force on 6th April 2005; 20
  - (b) sub-paragraphs (2) and (3) shall have effect in relation to incremental periods (within the meaning of Schedule 5 to the Social Security Contributions and Benefits Act 1992 (c. 4)) beginning on or after that date.”
- (4) Schedule 10 (which contains further amendments relating to the deferral of retirement pensions and shared additional pensions) has effect. 25

*Miscellaneous*

**222 Disclosure of state pension information**

- (1) Section 42 of the Child Support, Pensions and Social Security Act 2000 (c. 19) (disclosure of state pension information) is amended as follows. 30
- (2) In subsection (2), for the words from the beginning to “information”, substitute, “The Secretary of State may, in the prescribed manner, disclose or authorise the disclosure of any information”.
- (3) After subsection (3) insert –
- “(3A) For the purposes of this section and of any regulations made under it, anything done by or in relation to a person who – 35
- (a) provides, or proposes to provide, relevant services to a person falling within subsection (3) (“the qualifying person”), and
  - (b) is authorised in writing by the qualifying person to act for the purposes of this section, 40
- is treated as done by or in relation to the qualifying person.  
In paragraph (a) “relevant services” means services that may involve the giving of advice or forecasts to which information to which this section applies may be relevant.”
- (4) In subsection (7) – 45

- (a) omit the “and” at the end of paragraph (c), and
- (b) after paragraph (d) insert – “and
  - (e) a projection of the amount of any lump sum to which that individual is likely to become entitled, or might become entitled in particular circumstances.” 5
- (5) In subsection (11) –
  - (a) for the definitions of “basic retirement pension” and “additional retirement pension”, substitute –
    - ““additional retirement pension” means any additional pension or shared additional pension under the Social Security Contributions and Benefits Act 1992, or any graduated retirement benefit under sections 36 and 37 of the National Insurance Act 1965; 10
    - “basic retirement pension” means any basic pension under the Social Security Contributions and Benefits Act 1992;”, 15
  - (b) after the definition of “employer”, insert –
    - ““lump sum” means a lump sum under Schedule 5 or 5A to the Social Security Contributions and Benefits Act 1992;”, and
  - (c) for the definitions of “trustee” and “manager”, substitute –
    - ““trustee or manager”, in relation to an occupational or personal pension scheme, means – 20
    - (a) in the case of a scheme established under a trust, the trustee or trustees of the scheme, and
    - (b) in any other case, the person or persons responsible for the management of the scheme.” 25

## 223 Claims for certain benefits following termination of reciprocal agreement with Australia

- (1) This section applies to claims for –
  - (a) retirement pension,
  - (b) bereavement benefit, or 30
  - (c) widow’s benefit,
 made on or after 1st March 2001 (the date from which the termination of the reciprocal agreement with Australia had effect).
- (2) For the purposes of such claims –
  - (a) the relevant provisions of that agreement shall be treated as continuing in force as provided by this section; and 35
  - (b) the relevant UK legislation shall have effect as if modified to the extent required to give effect to those provisions (as they continue in force by virtue of this section).
- (3) The relevant provisions of that agreement are treated as continuing in force as follows – 40
  - (a) references to periods during which a person was resident in Australia are only to periods spent in Australia before 6th April 2001 and forming part of a period of residence in Australia which began before 1st March 2001; 45
  - (b) Articles 3(3) and 5(2) (entitlement by virtue of previous receipt of pension in Australia) apply only to persons who were last in Australia during a period falling within paragraph (a) above;

- (c) references to the territory of the United Kingdom do not include the islands of Jersey, Guernsey, Alderney, Herm or Jethou;
- (d) references to widow’s benefit, widow’s payment, widow’s pension and widowed mother’s allowance include, respectively, bereavement benefit, bereavement payment, bereavement allowance and widowed parent’s allowance; 5
- (e) for the purposes of claims by a widower –
  - (i) for retirement pension by virtue of his wife’s insurance, or
  - (ii) for bereavement benefit,references to widows and husbands include, respectively, widowers and wives. 10
- (4) An Order made under –
  - (a) section 179 of the Social Security Administration Act 1992 (c. 5), or
  - (b) section 155 of the Social Security Administration (Northern Ireland) Act 1992 (c. 8), 15may, in consequence of a change in the law of Great Britain or, as the case may be, Northern Ireland, modify the relevant provisions of the reciprocal agreement with Australia as they are treated as continuing in force for the purposes of claims to which this section applies.
- (5) For the purposes of this section – 20
  - (a) “the reciprocal agreement with Australia” means the agreement set out in Schedule 1 to the Social Security (Australia) Order 1992 (S.I. 1992/1312) and the Social Security (Australia) Order (Northern Ireland) 1992 (S.R. 1992 No. 269) (as amended by the exchange of notes set out in Schedule 3 to those Orders); 25
  - (b) “the relevant provisions” of that agreement are the provisions of Articles 1, 3, 5, 8, 18, 20 and 24, so far as they relate to the United Kingdom;
  - (c) “the relevant UK legislation” is –
    - (i) the Social Security Contributions and Benefits Act 1992 (c. 4); 30
    - (ii) the Social Security Administration Act 1992;
    - (iii) the Social Security Contributions and Benefits (Northern Ireland) Act 1992 (c. 7); and
    - (iv) the Social Security Administration (Northern Ireland) Act 1992;and, for the purposes of subsection (4), a change in the law of Great Britain or Northern Ireland includes any change made after the date of the reciprocal agreement with Australia. 35
- (6) In this section –
  - “retirement pension” has the meaning given in the reciprocal agreement with Australia; 40
  - “bereavement benefit” means bereavement payment, widowed parent’s allowance or bereavement allowance payable under the Social Security Contributions and Benefits Act 1992 or the Social Security Contributions and Benefits (Northern Ireland) Act 1992;
  - “widow’s benefit” means widow’s payment, widowed mother’s allowance or widow’s pension payable under either of those Acts. 45
- (7) This section shall be deemed to have had effect at all times on and after 1st March 2001.

- (8) Nothing in this section affects Article 2(2) of the Social Security (Australia) Order 2000 (S.I. 2000/3255) or Article 2(2) of the Social Security (Australia) Order (Northern Ireland) 2000 (S.R. 2000 No. 407) (which provide for cases where a person was in receipt of benefit on 28th February 2001 or had made a claim on or before that date).

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## PART 7

### MISCELLANEOUS AND SUPPLEMENTARY

#### *Dissolution of existing bodies*

#### **224 Dissolution of OPRA**

- (1) The Occupational Pensions Regulatory Authority (“OPRA”) is hereby dissolved. 10
- (2) An order under section 245 which appoints the day on which subsection (1) comes into force may provide—
- (a) for all property, rights and liabilities to which OPRA is entitled or subject immediately before that day to become the property, rights and liabilities of the Regulator or the Secretary of State, and 15
- (b) for any function of OPRA falling to be exercised on or after that day, or which fell to be exercised before that day but has not been exercised, to be exercised by the Regulator, the Secretary of State or the Department for Social Development in Northern Ireland. 20
- (3) Information obtained by the Regulator by virtue of an order under this section is to be treated as “restricted information” for the purposes of sections 56 to 61 (disclosure of information).

#### **225 Transfer of employees from OPRA to the Regulator**

- (1) For the purposes of the Transfer of Undertakings (Protection of Employment) Regulations 1981 (S.I. 1981/1794) (“TUPE”), the transfer of functions from OPRA to the Regulator (“the transfer”) is to be treated as a transfer of an undertaking. 25
- (2) The provisions of Regulation 7 of TUPE (exclusion of occupational pension schemes) shall not apply in relation to the transfer. 30

#### **226 Dissolution of the Pensions Compensation Board**

- (1) The Pensions Compensation Board is hereby dissolved.
- (2) An order under section 245 appointing the day on which subsection (1) is to come into force may provide—
- (a) for all property, rights and liabilities to which the Pensions Compensation Board is entitled or subject immediately before that day to become property, rights and liabilities of the Board, and 35
- (b) for any function of the Pensions Compensation Board falling to be exercised on or after that day, or which fell to be exercised before that day but has not been exercised, to be exercised by the Board. 40

- (3) Information obtained by the Board by virtue of an order under this section is to be treated as “restricted information” for the purposes of sections 159 to 165 (disclosure of information).
- (4) Where the Pensions Compensation Board’s disclosure under section 114(3) of the Pensions Act 1995 (c. 26) of information to which subsection (3) applies was subject to any express restriction, the Board’s powers of disclosure under sections 160 to 165, in relation to that information, are subject to the same restriction. 5

*Service of notifications etc and electronic working*

**227 Service of notifications and other documents 10**

- (1) This section applies where provision made (in whatever terms) by or under this Act authorises or requires –
  - (a) a notification to be given to a person, or
  - (b) a document of any other description (including a copy of a document) to be sent to a person. 15
- (2) The notification or document may be given to the person in question –
  - (a) by delivering it to him,
  - (b) by leaving it at his proper address, or
  - (c) by sending it by post to him at that address.
- (3) The notification or document may be given or sent to a body corporate by being given or sent to the secretary or clerk of that body. 20
- (4) The notification or document may be given or sent to a firm by being given or sent to –
  - (a) a partner in the firm, or
  - (b) a person having the control or management of the partnership business. 25
- (5) The notification or document may be given or sent to an unincorporated body or association by being given or sent to a member of the governing body of the body or association.
- (6) For the purposes of this section and section 7 of the Interpretation Act 1978 (c. 30) (service of documents by post) in its application to this section, the proper address of a person is –
  - (a) in the case of a body corporate, the address of the registered or principal office of the body,
  - (b) in the case of a firm, or an unincorporated body or association, the address of the principal office of the firm, body or association, 35
  - (c) in the case of any person to whom the notification or other document is given or sent in reliance on any of subsections (3) to (5), the proper address of the body corporate, firm or (as the case may be) other body or association in question, and 40
  - (d) in any other case, the last known address of the person in question.
- (7) In the case of –
  - (a) a company registered outside the United Kingdom,
  - (b) a firm carrying on business outside the United Kingdom, or

- (c) an unincorporated body or association with offices outside the United Kingdom,  
the references in subsection (6) to its principal office include references to its principal office within the United Kingdom (if any).
- (8) In this section “notification” includes notice; and references in this section to sending a document to a person include references to making an application to him. 5
- (9) This section has effect subject to section 228.

## 228 Notification and documents in electronic form

- (1) This section applies where – 10
- (a) section 227 authorises the giving or sending of a notification or other document by its delivery to a particular person (“the recipient”), and
  - (b) the notification or other document is transmitted to the recipient –
    - (i) by means of an electronic communications network, or
    - (ii) by other means but in a form that nevertheless requires the use of apparatus by the recipient to render it intelligible. 15
- (2) The transmission has effect for the purposes of this Act as a delivery of the notification or other document to the recipient, but only if the requirements imposed by or under this section are complied with.
- (3) Where the recipient is a relevant authority – 20
- (a) it must have indicated its willingness to receive the notification or other document in a manner mentioned in subsection (1)(b),
  - (b) the transmission must be made in such manner, and satisfy such other conditions, as it may require, and
  - (c) the notification or other document must take such form as it may require. 25
- (4) Where the person making the transmission is a relevant authority, it may (subject to subsection (5)) determine –
- (a) the manner in which the transmission is made, and
  - (b) the form in which the notification or other document is transmitted. 30
- (5) Where the recipient is a person other than a relevant authority –
- (a) the recipient, or
  - (b) the person on whose behalf the recipient receives the notification or other document,
- must have indicated to the person making the transmission the recipient’s willingness to receive notifications or documents transmitted in the form and manner used. 35
- (6) An indication given to any person for the purposes of subsection (5) –
- (a) must be given to that person in such manner as he may require,
  - (b) may be a general indication or one that is limited to notifications or documents of a particular description, 40
  - (c) must state the address to be used and must be accompanied by such other information as that person requires for the making of the transmission, and

- (d) may be modified or withdrawn at any time by a notice given to that person in such manner as he may require.
  - (7) An indication, requirement or determination given, imposed or made by a relevant authority for the purposes of this section is to be given, imposed or made by being published in such manner as it considers appropriate for bringing it to the attention of the persons who, in its opinion, are likely to be affected by it. 5
  - (8) Where both the recipient and the person making the transmission are relevant authorities –
    - (a) subsections (3) and (4) do not apply, and 10
    - (b) the recipient must have indicated to the person making the transmission the recipient’s willingness to receive notifications or documents transmitted in the form and manner used.
  - (9) Subsection (8) of section 227 applies for the purposes of this section as it applies for the purposes of that section. 15
  - (10) In this section, “relevant authority” means the Regulator, the Board or the Secretary of State.
  - (11) In this section and section 229, “electronic communications network” has the same meaning as in the Communications Act 2003 (c. 21).
- 229 Timing and location of things done electronically** 20
- (1) The Secretary of State may by order make provision specifying, for the purposes of any enactment contained in, or made under, this Act, the manner of determining –
    - (a) the times at which things done under that enactment by means of electronic communications networks are done, and 25
    - (b) the places at which such things are so done, and at which things transmitted by means of such networks are received.
  - (2) The provision made under subsection (1) may include provision as to the country or territory in which an electronic address is to be treated as located.
  - (3) An order made by the Secretary of State may also make provision about the manner of proving in any legal proceedings –
    - (a) that something done by means of an electronic communications network satisfies the requirements of an enactment contained in, or made under, this Act for the doing of that thing, and 30
    - (b) the matters mentioned in subsection (1)(a) and (b). 35
  - (4) An order under this section may provide for such presumptions to apply (whether conclusive or not) as the Secretary of State considers appropriate.

*General*

**230 Overriding requirements**

- (1) Where any provision mentioned in subsection (2) conflicts with the provisions of an occupational or personal pension scheme –
  - (a) the provision mentioned in subsection (2), to the extent that it conflicts, overrides the provisions of the scheme, and 40

- (b) the scheme has effect with such modifications as may be required in consequence of paragraph (a).
- (2) The provisions referred to in subsection (1) are those of—
- (a) any order made by the Regulator under Part 1;
  - (b) any regulations made under section 21(7); 5
  - (c) Part 2 (other than Chapter 1), any subordinate legislation made under that Part and any direction given under section 106 or 119;
  - (d) Part 3 and any order made by the Regulator under section 188;
  - (e) any regulations under section 194;
  - (f) sections 196 and 197, any regulations made under sections 196 to 198 and any arrangements under sections 196 and 197; 10
  - (g) sections 200 and 201 and any regulations under sections 200 to 202;
  - (h) section 204;
  - (i) any regulations under section 231, 238(6) or 241(2) and any order under section 245(5). 15
- (3) Subsection (1) is without prejudice to section 28(1) (overriding effect of freezing orders made by the Regulator) and section 119(9) (overriding effect of requirement to wind up pension scheme under Part 2).
- (4) In the case of a company to which section 197 (requirement for member-nominated directors of corporate trustees) applies, where any provision mentioned in subsection (5) conflicts with the provisions of the company’s memorandum or articles of association—
- (a) the provision mentioned in subsection (5), to the extent that it conflicts, overrides the provisions of the memorandum or articles, and
  - (b) the memorandum or articles have effect with such modifications as may be required in consequence of paragraph (a). 25
- (5) The provisions referred to in subsection (4) are those of—
- (a) section 197;
  - (b) any regulations made under section 197 or 198;
  - (c) any arrangements under section 197. 30

### **231 Modification of this Act in relation to hybrid or multi-employer schemes**

- (1) Regulations may modify any of the provisions mentioned in subsection (2) as it applies in relation to—
- (a) hybrid schemes;
  - (b) multi-employer schemes. 35
- (2) The provisions referred to in subsection (1) are those of—
- (a) Part 1 (the Pensions Regulator),
  - (b) Part 2 (the Board of the Pension Protection Fund), other than Chapter 1,
  - (c) section 194 (combined pension forecasts), and
  - (d) sections 203 and 204 (pension protection). 40
- (3) In this section—
- “hybrid scheme” means an occupational pension scheme—
- (a) which is not a money purchase scheme, but
  - (b) where some of the benefits that may be provided are—

- (i) money purchase benefits attributable to voluntary contributions of the members, or
  - (ii) other money purchase benefits; and
- “multi-employer scheme” means an occupational pension scheme in relation to which there is more than one employer.

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### 232 Offences by bodies corporate and partnerships

- (1) Where an offence under this Act committed by a body corporate is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, a director, manager, secretary or other similar officer of the body, or a person purporting to act in any such capacity, he as well as the body corporate is guilty of the offence and liable to be proceeded against and punished accordingly. 10
- (2) Where the affairs of a body corporate are managed by its members, subsection (1) applies in relation to the acts and defaults of a member in connection with his functions of management as to a director of a body corporate. 15
- (3) Where an offence under this Act committed by a Scottish partnership is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, a partner, he as well as the partnership is guilty of the offence and liable to be proceeded against and punished accordingly.

### 233 Admissibility of statements

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- (1) A statement made by a person in compliance with an information requirement is admissible in evidence in any proceedings, so long as it also complies with any requirements governing the admissibility of evidence in the circumstances in question.
- (2) But in proceedings to which this subsection applies – 25
  - (a) no evidence relating to the statement may be adduced, and
  - (b) no question relating to it may be asked,by or on behalf of the prosecution or (as the case may be) the Regulator, unless evidence relating to it is adduced, or a question relating to it is asked, in the proceedings by or on behalf of that person. 30
- (3) Subsection (2) applies to –
  - (a) criminal proceedings in which that person is charged with a relevant offence, or
  - (b) proceedings as a result of which that person may be required to pay a financial penalty under or by virtue of – 35
    - (i) section 168 of the Pension Schemes Act 1993 (c. 48) (breach of regulations) or section 10 of the Pensions Act 1995 (c. 26) (civil penalties), or
    - (ii) any provision in force in Northern Ireland corresponding to a provision mentioned in sub-paragraph (i). 40
- (4) In this section –

“information requirement” means any statement made in compliance with any duty imposed by or by virtue of –

  - (a) section 39 (duties of trustees or managers to provide scheme return); 45

- (b) section 45 (duty to report breaches of the law);
  - (c) section 46 (requirement to provide information to the Regulator);
  - (d) section 49 (inspection of premises: powers of inspectors to examine etc); 5
  - (e) section 52(2)(d) (power of inspector entering under warrant to require a person to provide an explanation of a document);
  - (f) section 152 (information to be provided to the Board);
  - (g) section 153 (notices requiring provision of information to the Board); 10
  - (h) section 154 (entry of premises: powers of appointed persons to examine etc);
  - (i) section 156(2)(d) (power of inspector entering under warrant to require a person to provide an explanation of a document);
  - (j) section 170 (power to make order enabling PPF Ombudsman to obtain information, documents etc); 15
  - (k) section 173 or 174 (disclosure of information on references made to PPF Ombudsman);
  - (l) section 185 (failure to make payments in accordance with schedule of contributions); 20
  - (m) paragraph 19 of Schedule 1 (power to make regulations enabling Regulator to summon persons to give evidence before it);
  - (n) paragraph 11 of Schedule 3 (the Pensions Regulator Tribunal: evidence); 25
- “relevant offence” means any offence other than one under –
- (a) section 51 (neglect or refusal to provide information etc to the Regulator);
  - (b) section 54 (providing false or misleading information to the Regulator); 30
  - (c) section 155 (neglect or refusal to produce information etc to the Board);
  - (d) section 157 (providing false or misleading information to the Board);
  - (e) any provision in force in Northern Ireland corresponding to a provision mentioned in paragraphs (a) to (d); 35
  - (f) section 5 of the Perjury Act 1911 (c. 6) (false statements made otherwise than on oath);
  - (g) section 44(2) of the Criminal Law (Consolidation) (Scotland) Act 1995 (c. 39) (false statements made otherwise than on oath); 40
  - (h) Article 10 of the Perjury (Northern Ireland) Order 1979 (S.I. 1979/1714 (N.I. 19)).

## 234 Protected items

- (1) A person may not be required under or by virtue of this Act to produce, disclose or permit the inspection of protected items. 45
- (2) For this purpose “protected items” means –
  - (a) communications between a professional legal adviser and his client or any person representing his client which fall within subsection (3);

- (b) communications between a professional legal adviser, his client or any person representing his client and any other person which fall within subsection (3) (as a result of paragraph (b) of that subsection);
- (c) items which—
  - (i) are enclosed with, or referred to in, such communications, 5
  - (ii) fall within subsection (3), and
  - (iii) are in the possession of a person entitled to possession of them.
- (3) A communication or item falls within this subsection if it is made—
  - (a) in connection with the giving of legal advice to the client, or
  - (b) in connection with, or in contemplation of, legal proceedings and for the purpose of those proceedings. 10
- (4) A communication or item is not a protected item if it is held with the intention of furthering a criminal purpose.

### 235 Liens

If a person claims a lien on a document, its production under any provision made by or by virtue of this Act does not affect the lien. 15

### 236 Crown application

- (1) In this section “the relevant provisions” means—
  - (a) Parts 1 to 5,
  - (b) sections 230, 231, 233, 234, 235, 237, 238, 241(2) and 245(5). 20
- (2) The relevant provisions apply to a pension scheme managed by or on behalf of the Crown as they apply to other pension schemes; and, accordingly, references in those provisions to a person in his capacity as a trustee or manager of, or person prescribed in relation to, a pension scheme include the Crown, or a person acting on behalf of the Crown, in that capacity. 25
- (3) The relevant provisions apply to persons employed by or under the Crown in like manner as if such persons were employed by a private person; and references in those Parts to a person in his capacity as an employer include the Crown, or a person acting on behalf of the Crown in that capacity.
- (4) This section does not apply to any of the relevant provisions under or by virtue of which a person may be prosecuted for an offence; but such a provision applies to persons in the public service of the Crown as it applies to other persons. 30
- (5) Nothing in the relevant provisions applies to Her Majesty in Her private capacity (within the meaning of the Crown Proceedings Act 1947 (c. 44)). 35

### *Regulations and orders*

### 237 Breach of regulations

The following provisions of the Pensions Act 1995 (c. 26) apply to regulations under this Act as if they were regulations made by virtue of Part 1 of that Act—

- (a) section 10(3) to (9) (power to impose civil penalties for contravention of regulations under Part 1 of that Act); 40

- (b) section 116 (power to provide for contravention of regulations under that Part to be criminal offence).

### 238 Subordinate legislation (general provisions)

- (1) Any power conferred by this Act to make subordinate legislation is exercisable by statutory instrument, except any order-making power conferred on the Regulator. 5
- (2) Any power conferred by this Act to make subordinate legislation may be exercised –
- (a) either in relation to all cases to which the power extends, or in relation to those cases subject to specified exceptions, or in relation to any specified cases or descriptions of case; 10
- (b) so as to make, as respects the cases in relation to which it is exercised –
- (i) the full provision to which the power extends or any lesser provision (whether by way of exceptions or otherwise), 15
- (ii) the same provision for all cases in relation to which the power is exercised, or different provision for different cases or different descriptions of case or different provision as respects the same case or description of case for different purposes of this Act, or
- (iii) any such provision either unconditionally or subject to any specified condition. 20
- (3) Any power conferred by this Act to make subordinate legislation –
- (a) if it is expressed to be exercisable for alternative purposes, may be exercised in relation to the same case for any or all of those purposes, and 25
- (b) if it is conferred for the purposes of any one provision of this Act, is without prejudice to any power to make subordinate legislation for the purposes of any other provision.
- (4) A power conferred by this Act to make subordinate legislation includes power to provide for a person to exercise a discretion in dealing with any matter. 30
- (5) Any power conferred by this Act to make subordinate legislation also includes power to make such incidental, supplementary, consequential or transitional provision as appears to the authority making the subordinate legislation to be expedient.
- (6) Regulations may, for the purposes of or in connection with the coming into force of any provisions of this Act, make any such provision as could be made by virtue of section 245(5) by an order bringing those provisions into force. 35

### 239 Parliamentary control of orders and regulations

- (1) Subject to subsections (2) and (3), a statutory instrument containing regulations or an order or rules under this Act is subject to annulment in pursuance of a resolution of either House of Parliament. 40
- (2) A statutory instrument which contains –
- (a) regulations under section 91(1) or (3) (administration levy in respect of expenditure relating to the Board of the Pension Protection Fund);

- (b) regulations under section 129 (modification of Chapter 3 where liabilities discharged during the assessment period);
  - (c) regulations under section 136 (the initial levy);
  - (d) regulations under section 137 (pension protection levies);
  - (e) an order under section 140(1) (the levy ceiling); 5
  - (f) an order under section 170 (the PPF Ombudsman);
  - (g) regulations under section 173 (reference of reviewable matter to the PPF Ombudsman);
  - (h) regulations under section 174 (investigation by PPF Ombudsman of complaints of maladministration); 10
  - (i) regulations under section 194 (combined pension forecasts);
  - (j) regulations under section 195 (information and advice to employees);
  - (k) regulations which make provision by virtue of section 237(b) (power to provide for contravention of regulations to be criminal offence);
  - (l) an order under section 242(2)(a) (power to make consequential amendments to Acts); 15
  - (m) an order under paragraph 23(7) of Schedule 7 (power to vary percentage of periodic compensation that can be commuted);
  - (n) an order under paragraph 25(7) of that Schedule (orders specifying the maximum permitted rate of periodic compensation from the Pension Protection Fund); 20
  - (o) an order under paragraph 30(1) of that Schedule (power to vary percentage paid as compensation from the Pension Protection Fund); or must not be made unless a draft of the instrument has been laid before and approved by a resolution of each House of Parliament. 25
- (3) Subsection (1) does not apply to –
- (a) an order under section 65(9) (commencement of code of practice);
  - (b) an order under section 98(2) (schemes winding up before day appointed by order not eligible schemes for purposes of Part 2);
  - (c) an order under section 144(9) (order appointing day after which losses of non-trust schemes are relevant for fraud compensation purposes); or 30
  - (d) an order under section 245 (commencement).

## 240 Consultations about regulations

- (1) Before the Secretary of State makes any regulations by virtue of this Act (other than Part 6), he must consult such persons as he considers appropriate. 35
- (2) Subsection (1) does not apply –
  - (a) to regulations contained in a statutory instrument made for the purpose only of consolidating other instruments revoked by it,
  - (b) in a case where it appears to the Secretary of State that by reason of urgency consultation is inexpedient, 40
  - (c) to regulations contained in a statutory instrument made before the end of the period of six months beginning with the coming into force of the provision of this Act by virtue of which the regulations are made, or
  - (d) to regulations contained in a statutory instrument which –
    - (i) states that it contains only regulations which are consequential upon a specified enactment, and 45
    - (ii) is made before the end of the period of six months beginning with the coming into force of that enactment.

*Interpretation***241 General interpretation**

- (1) In this Act, unless the context otherwise requires –
- “active member” has the meaning given by section 124(1) of the Pensions Act 1995 (c. 26); 5
  - “the Board” has the meaning given by section 81;
  - “contravention” includes failure to comply;
  - “direct payment arrangements”, in relation to a personal pension scheme, has the same meaning as in section 111A of the Pension Schemes Act 1993 (c. 48); 10
  - “earnings” has the meaning given by section 181(1) of the Pension Schemes Act 1993;
  - “employee” has the meaning given by section 181(1) of the Pension Schemes Act 1993;
  - “employer” – 15
    - (a) in relation to an occupational pension scheme, means the employer of persons in the description or category of employment to which the scheme in question relates (but see subsection (2)), and
    - (b) in relation to a personal pension scheme, where direct payment arrangements exist in respect of one or more members of the scheme who are employees, means an employer with whom those arrangements exist; 20
  - “enactment” includes an enactment comprised in subordinate legislation (within the meaning of the Interpretation Act 1978 (c. 30)); 25
  - “managers”, in relation to an occupational or personal pension scheme (other than a scheme established under a trust), means the persons responsible for the management of the scheme;
  - “member”, in relation to an occupational pension scheme, means any active, deferred, pensioner or pension credit member within the meaning of section 124(1) of the Pensions Act 1995 (c. 26) (but see subsection (3)); 30
  - “modifications” includes additions, omissions and amendments, and related expressions are to be construed accordingly;
  - “money purchase benefit” has the meaning given by section 181(1) of the Pension Schemes Act 1993; 35
  - “money purchase scheme” has the meaning given by section 181(1) of the Pension Schemes Act 1993;
  - “occupational pension scheme” has the meaning given by section 1 of the Pension Schemes Act 1993; 40
  - “pension credit” has the meaning given by section 124(1) of the Pensions Act 1995;
  - “personal pension scheme” has the meaning given by section 1 of the Pension Schemes Act 1993;
  - “prescribed” means prescribed by regulations; 45
  - “professional adviser”, in relation to an occupational pension scheme, has the meaning given by section 47(1) of the Pensions Act 1995;
  - “regulations” means regulations made by the Secretary of State;
  - “the Regulator” has the meaning given by section 1.

- (2) Regulations may, in relation to occupational pension schemes, extend for the purposes of Parts 1, 2, 4 and 5 and this Part the meaning of “employer” to include persons who have been the employer in relation to the scheme.
- (3) Regulations may for any purpose of any provision of this Act—
  - (a) prescribe the persons who are to be regarded as members or prospective members of an occupational or personal pension scheme, and 5
  - (b) make provision as to the times at which and circumstances in which a person is to be treated as becoming, or as ceasing to be, such a member or prospective member. 10

*Miscellaneous and supplementary*

**242 Minor and consequential amendments**

- (1) Schedule 11 (which makes minor and consequential amendments) has effect.
- (2) The Secretary of State may by order make provision consequential on this Act amending, repealing or revoking (with or without savings) any provision of— 15
  - (a) an Act passed before or in the same session as this Act, or
  - (b) an instrument made under an Act before the passing of this Act.

**243 Repeals and revocations**

The enactments mentioned in Schedule 12 are repealed or revoked to the extent specified. 20

**244 Pre-consolidation amendments**

- (1) The Secretary of State may by order make such modifications of—
  - (a) this Act,
  - (b) the Pension Schemes Act 1993 (c. 48),
  - (c) the Pensions Act 1995 (c. 26), 25
  - (d) Parts 1 to 4 of the Welfare Reform and Pensions Act 1999 (c. 30), and
  - (e) Chapter 2 of Part 2 of the Child Support, Pensions and Social Security Act 2000 (c. 19),as in his opinion facilitate, or are otherwise desirable in connection with, the consolidation of those enactments or any of them. 30
- (2) No order is to be made under this section unless a Bill for repealing and re-enacting—
  - (a) the enactments modified by the order, or
  - (b) enactments relating to matters connected with the matters to which enactments modified by the order relate, 35has been presented to either House of Parliament.
- (3) An order under this section is not to come into force until immediately before the commencement of the Act resulting from that Bill.

**245 Commencement**

- (1) Subject to subsections (2) to (4), the provisions of this Act come into force in accordance with provision made by the Secretary of State by order.
- (2) The following provisions come into force on the day this Act is passed –
- (a) in Part 4, sections 191, 192 and 193 and Schedule 9 (provisions relating to retirement planning); 5
  - (b) in Part 5, section 215 (exemption from statutory revaluation requirement);
  - (c) in Part 6 –
    - (i) section 220 (entitlement to more than one state pension), 10
    - (ii) section 221(3) (commencement of amendments of state pension deferment provisions made by Pensions Act 1995 (c. 26)),
    - (iii) section 222 (disclosure of state pension information), except subsections (4) and (5)(b), and
    - (iv) section 223 (claims for certain benefits following termination of reciprocal agreement with Australia); 15
  - (d) in this Part (miscellaneous and general) –
    - (i) sections 227 to 229 (service of notifications etc and electronic working), and
    - (ii) this section and sections 236, 238 (other than subsection (6)), 239, 240, 241 (other than subsections (2) and (3)) and 246 to 248; 20
  - (e) the repeal by this Act of section 50(2) of the Welfare Reform and Pensions Act 1999 (c. 30).
- (3) Section 221 (and Schedule 10) (deferral of retirement pensions and shared additional pensions), other than the provisions coming into force in accordance with subsection (2) – 25
- (a) come into force on the day this Act is passed so far as is necessary for enabling the making of any regulations for which they provide, and
  - (b) otherwise, come into force on 6th April 2005.
- (4) The repeals by this Act of section 134(3) of, and paragraph 21(14) of Schedule 4 to, the Pensions Act 1995 come into force on 6th April 2005. 30
- (5) Without prejudice to section 238(5), the power to make an order under this section includes power –
- (a) to make transitional adaptations or modifications –
    - (i) of the provisions brought into force by the order, or 35
    - (ii) in connection with those provisions, of any provisions of Parts 1 to 5 of this Act or of the Pension Schemes Act 1993 (c. 48), the Pensions Act 1995, Parts 1, 2 or 4 of the Welfare Reform and Pensions Act 1999 or Chapter 2 of Part 2 of the Child Support, Pensions and Social Security Act 2000 (c. 19), or 40
  - (b) to save the effect of any of the repealed provisions of those Acts, or those provisions as adapted or modified by the order, as it appears to the Secretary of State expedient, including different adaptations or modifications for different periods.

**246 Extent**

45

- (1) This Act extends to England, Wales and Scotland.

- (2) The following provisions of this Act also extend to Northern Ireland –
- (a) in Part 1 (the Regulator) –
    - (i) sections 1, 2, 4 (other than subsection (2)(b)), 8, 9, 10, 12, 34, 76 and 80, and
    - (ii) in Schedule 1, paragraphs 1 to 19, 20(1) to (3) and (7), 21 (other than paragraph (b)), 22 to 25 and 27 to 35, and section 3 so far as it relates to those provisions, and 5
    - (iii) Schedule 4,
  - (b) in Part 2 (the Board) –
    - (i) sections 81, 82, 83, 86, 87, 88, 89, 92, 93, 170 and 172, and 10
    - (ii) Schedule 5,
  - (c) in Part 4 (retirement planning), sections 191 and 192 and paragraph 2 of Schedule 9 (and section 193 so far as it relates to that paragraph),
  - (d) in Part 5 (personal and occupational pension schemes: miscellaneous provisions), section 211(2)(b), 15
  - (e) in Part 6 (state pensions), section 223, and
  - (f) in this Part –
    - (i) sections 224, 225, 226 and 233,
    - (ii) sections 227 to 229, 232, 236, 238, 239 and 241 so far as those provisions have effect for the purposes of provisions which themselves extend to Northern Ireland, and 20
    - (iii) this section and sections 244, 245, 247 and 248.
- (3) An amendment or repeal contained in this Act has the same extent as the enactment to which it relates and sections 193 (except so far as it relates to paragraph 2 of Schedule 9), 242 and 243 have effect accordingly. 25

#### 247 Northern Ireland

An Order in Council under paragraph 1(1) of the Schedule to the Northern Ireland Act 2000 (c. 1) (legislation for Northern Ireland during suspension of devolved government) which contains a statement that it is made only for purposes corresponding to those of this Act – 30

- (a) is not subject to paragraph 2 of that Schedule (affirmative resolution of both Houses of Parliament), but
- (b) is subject to annulment in pursuance of a resolution of either House of Parliament.

#### 248 Short title

This Act may be cited as the Pensions Act 2004. 35

## SCHEDULES

### SCHEDULE 1

Section 3

#### THE PENSIONS REGULATOR

##### PART 1

#### MEMBERS OF THE REGULATOR 5

##### *Terms of appointment and tenure of members*

- 1 (1) The members of the Regulator appointed by the Secretary of State under section 2(1)(a) or (c) are to be appointed on such terms and conditions as are determined by the Secretary of State.
- (2) Subject to sub-paragraph (3), such a member – 10
  - (a) is to hold and vacate office in accordance with the terms and conditions of his appointment, and
  - (b) may resign or be removed from office in accordance with those terms and conditions.
- (3) A person must cease to be a member of the Regulator where – 15
  - (a) in the case of the chairman, he ceases to hold that office or becomes a member of the staff of the Regulator;
  - (b) in the case of any other non-executive member, he becomes a member of the staff of the Regulator;
  - (c) in the case of an executive member appointed under section 2(1)(c), he ceases to be a member of the staff of the Regulator. 20
- 2 Where a person ceases to be employed as Chief Executive, he ceases to be a member of the Regulator.
- 3 No person is to be prevented from being a member of the Regulator (whether as chairman or otherwise) merely because he has previously been such a member. 25

##### *Remuneration etc of members*

- 4 The Regulator may pay, or make provision for paying, its non-executive members such remuneration as the Secretary of State may determine.
- 5 The Regulator may – 30
  - (a) pay to or in respect of any person who is or has been a non-executive member such pension, allowances or gratuities as the Secretary of State may determine, or

- (b) make such payments as the Secretary of State may determine towards provision for the payment of a pension, allowance or gratuity to or in respect of such a person.
- 6 Where –
- (a) a non-executive member ceases to be a member otherwise than on the expiry of his term of office, and 5
- (b) it appears to the Secretary of State that there are circumstances which make it right for that person to receive compensation, the Regulator may make a payment to that person of such amount as the Secretary of State may determine. 10

## PART 2

### STAFF OF THE REGULATOR

#### *The staff*

- 7 (1) The staff of the Regulator consists of –
- (a) the Chief Executive of the Regulator appointed under paragraph 8, 15
- (b) the other employees of the Regulator appointed under paragraph 9, and
- (c) any additional staff made available by the Secretary of State under paragraph 10.
- (2) No member of the Board of the Pension Protection Fund is eligible for appointment as a member of the staff of the Regulator. 20

#### *The Chief Executive*

- 8 (1) The Regulator is to employ a person as its Chief Executive.
- (2) The Chief Executive’s main function is to be responsible for securing that the functions of the Regulator are exercised efficiently and effectively. 25
- (3) The first appointment of a Chief Executive –
- (a) is to be made by the Secretary of State, and
- (b) is to be on such terms and conditions as to remuneration and other matters as are determined by the Secretary of State.
- (4) Subsequent appointments of a Chief Executive – 30
- (a) are to be made by the Regulator with the approval of the Secretary of State, and
- (b) are to be on such terms and conditions as to remuneration and other matters as are determined by the Regulator with the approval of the Secretary of State. 35
- (5) By virtue of section 9(2) (functions exercisable by the Non-Executive Committee), the function conferred on the Regulator by sub-paragraph (4)(b) is exercisable on its behalf by the Non-Executive Committee.

#### *Other employees*

- 9 (1) Other employees of the Regulator may be appointed by the Regulator with the approval of the Secretary of State as to numbers. 40

- (2) Any such appointments are to be on such terms and conditions as to remuneration and other matters as are determined by the Regulator with the approval of the Secretary of State.

*Additional staff etc*

- 10 (1) The Secretary of State may make available to the Regulator such additional staff and such other facilities as he considers appropriate. 5
- (2) The availability of such staff and facilities may be on such terms as to payment by the Regulator as the Secretary of State may determine.

PART 3

MEMBERS OF THE DETERMINATIONS PANEL 10

*Nomination of the chairman of the Panel*

- 11 (1) On each occasion when the Regulator is required to appoint a person as chairman of the Determinations Panel, the chairman of the Regulator must establish a committee (in this Schedule referred to as “the appointments committee”). 15
- (2) The appointments committee must consist of—
- (a) a chairman appointed by the chairman of the Regulator from the non-executive members of the Regulator, and
- (b) one or more persons appointed by the chairman of the Regulator.
- (3) At least one of the persons appointed under sub-paragraph (2)(b) must be a person who is not a member of the Regulator. 20
- (4) Subject to sub-paragraph (3), a person appointed under sub-paragraph (2)(b) may be a person who is not a member of the Regulator.
- (5) But a person appointed under sub-paragraph (2)(b) must not be a person who is a member of the staff of the Regulator. 25
- (6) The committee must nominate a person suitable for appointment as chairman of the Panel.

*Terms of appointment and tenure of members of the Panel*

- 12 (1) The members of the Determinations Panel are to be appointed on such terms and conditions as are determined by the Regulator with the approval of the Secretary of State. 30
- (2) Subject to sub-paragraph (3) such a member—
- (a) is to hold and vacate office in accordance with the terms and conditions of his appointment, and
- (b) may resign or be removed from office in accordance with those terms and conditions. 35
- (3) A person must cease to be a member of the Panel where—
- (a) in the case of the chairman, he ceases to hold that office, or
- (b) in the case of any member, he becomes a member of the Regulator or a member of the staff of the Regulator. 40

- 13 No person is to be prevented from being a member of the Panel (whether as chairman or otherwise) merely because he has previously been a member of the Panel.

*Remuneration etc of members of the Panel*

- 14 The Regulator may pay, or make provision for paying, the members of the Determinations Panel such remuneration as the Secretary of State may determine. 5
- 15 The Regulator may –
- (a) pay to or in respect of any person who is or has been a member of the Panel such pension, allowances or gratuities as the Secretary of State may determine, or 10
  - (b) make such payments as the Secretary of State may determine towards provision for the payment of a pension, allowance or gratuity to or in respect of such a person.
- 16 Where – 15
- (a) a member of the Panel ceases to be a member otherwise than on the expiry of his term of office, and
  - (b) it appears to the Secretary of State that there are circumstances which make it right for that person to receive compensation,
- the Regulator may make a payment to that person of such amount as the Secretary of State may determine. 20

PART 4

PROCEEDINGS AND DELEGATION ETC

*Committees*

- 17 (1) The Regulator may establish committees for any purpose. 25
- (2) Any committee so established may establish sub-committees.
- (3) The members of such committees or sub-committees may include persons who are not members of the Regulator.
- (4) The members of such sub-committees may include persons who are not members of the committee. 30
- (5) But the majority of the members of a committee or a sub-committee must consist of persons who are members of the Regulator or members of the staff of the Regulator.
- (6) Sub-paragraphs (2) to (5) do not apply to –
- (a) the Non-Executive Committee or any of its sub-committees (see section 8), or 35
  - (b) the Determinations Panel or any of its sub-committees (see section 10).
- (7) Subject to that, references in this Schedule to the committees of the Regulator are to – 40
- (a) the Non-Executive Committee and any of its sub-committees,
  - (b) the Determinations Panel and any of its sub-committees,
  - (c) the appointments committee, and

- (d) any committees or sub-committees established under this paragraph.

*Procedure*

- 18 (1) The Regulator may determine –
- (a) its own procedure (including quorum), and 5
  - (b) the procedure (including quorum) of any of its committees (other than the Determinations Panel and any of that Panel’s sub-committees).
- (2) The Determinations Panel may determine –
- (a) its own procedure (including quorum), and 10
  - (b) the procedure (including quorum) of any of its sub-committees.
- (3) This paragraph is subject to –
- (a) sections 67 to 78 (procedure in relation to the regulatory functions) and any corresponding provisions in force in Northern Ireland, and
  - (b) any regulations made by the Secretary of State under paragraph 19. 15
- 19 (1) The Secretary of State may make regulations –
- (a) as to the procedure (including quorum) to be followed by the Regulator or any of its committees;
  - (b) as to the manner in which the functions of the Regulator are to be exercised. 20
- (2) Such regulations may in particular –
- (a) make provision as to the hearing of parties, the taking of evidence and the circumstances (if any) in which a document of any prescribed description is to be treated for the purposes of any proceedings before the Regulator, as evidence, or conclusive evidence, of any prescribed matter; 25
  - (b) make provision as to the manner in which parties to any proceedings before the Regulator may or are to be represented for the purposes of the proceedings;
  - (c) provide for enabling the Regulator to summon persons – 30
    - (i) to attend proceedings before the Regulator and give evidence (including evidence on oath) for any purposes of proceedings in connection with a determination whether to exercise, or the exercise of, a regulatory function (or any corresponding function under any provisions in force in Northern Ireland corresponding to this Act), or 35
    - (ii) to produce any documents required by the Regulator for those purposes.
- (3) In this paragraph references to proceedings before the Regulator include references to proceedings before the Determinations Panel and any of the Panel’s sub-committees. 40

*Delegation*

- 20 (1) The Regulator may authorise –
- (a) any executive member of the Regulator,
  - (b) any other member of the staff of the Regulator, or 45

- (c) any of its committees (other than the appointments committee, the Determinations Panel and any of that Panel’s sub-committees), to exercise such of the Regulator’s functions, in such circumstances, as the Regulator may determine.
- (2) But sub-paragraph (1) does not apply to— 5
- (a) the non-executive functions of the Regulator listed in section 9(3) (which must be discharged by the Non-Executive Committee by virtue of section 9(2)),
  - (b) the duty of the Regulator to appoint the chairman and other members of the Determinations Panel under section 10, 10
  - (c) the duty of the Regulator to determine the terms and conditions of their appointments under paragraph 12(1), and
  - (d) the functions of the Regulator which are exercisable only by the Panel by virtue of—
    - (i) section 11(1) (the power in certain circumstances to determine whether to exercise the functions listed in Schedule 2 and to exercise them) or any corresponding provision in force in Northern Ireland, or 15
    - (ii) section 73(8) (the functions concerning the compulsory review of certain determinations) or any corresponding provision in force in Northern Ireland. 20
- (3) The Regulator may authorise the appointments committee to exercise the power under paragraph 18 to determine the committee’s own procedure (including quorum).
- (4) The Regulator may authorise the Determinations Panel, in such circumstances as the Regulator may determine, to exercise on behalf of the Regulator— 25
- (a) the power to determine whether to exercise one or more of the regulatory functions listed in sub-paragraph (5), and
  - (b) where the Panel so determines to exercise the regulatory function in question, the power to exercise it. 30
- (5) The regulatory functions mentioned in sub-paragraph (4) are—
- (a) the power to issue an improvement notice under section 14;
  - (b) the power to issue a third party notice under section 15;
  - (c) the power under section 2(3)(a) of the Welfare Reform and Pensions Act 1999 (c. 30) to refuse to register a scheme under section 2 of that Act; 35
  - (d) the power to appoint a trustee under any of the following provisions of section 7 of the Pensions Act 1995 (c. 26)—
    - (i) subsection (1) where a trustee is removed by reason of his disqualification; 40
    - (ii) subsection (3)(b);
  - (e) the power to give directions under section 72B of that Act facilitating a winding up.
- (6) The Regulator may also authorise the Determinations Panel, in such circumstances as the Regulator may determine, to exercise on behalf of the Regulator such functions (other than those mentioned in sub-paragraph (2)(a) to (c)) as the Regulator considers necessary for the effective exercise by the Panel of— 45

- 
- (a) a function of the Regulator which it is authorised to exercise by virtue of sub-paragraph (4),
- (b) a function of the Regulator mentioned in sub-paragraph (2)(d) (functions exercisable only by the Panel), or
- (c) a function of the Panel under section 67(3), section 73(9) or paragraph 18(2) of this Schedule (procedure). 5
- (7) This paragraph is subject to any regulations made by the Secretary of State under paragraph 21.
- 21 The Secretary of State may make regulations – 10
- (a) limiting the extent to which any of the functions mentioned in subsection (6) of section 9 may be delegated by the Non-Executive Committee to any of its members or any of its sub-committees under that subsection; 10
- (b) limiting the extent to which any of the functions mentioned in subsection (8) of section 11 may be delegated by the Determinations Panel to any of its members or any of its sub-committees under that subsection; 15
- (c) limiting the extent to which functions of the Regulator may be delegated under paragraph 20;
- (d) limiting the delegation under paragraph 20 of any power to delegate contained in that paragraph; 20
- (e) permitting the Regulator in prescribed circumstances to delegate to prescribed persons prescribed functions of the Regulator.

*Application of seal and proof of instruments*

- 22 (1) The fixing of the common seal of the Regulator must be authenticated by the signature of a person authorised for that purpose by the Regulator (whether generally or specifically). 25
- (2) Sub-paragraph (1) does not apply in relation to any document which is or is to be signed in accordance with the law of Scotland.
- 23 A document purporting to be duly executed under the seal of the Regulator or purporting to be signed on its behalf – 30
- (a) is to be received in evidence, and
- (b) is to be taken to be so executed or signed unless the contrary is proved.

PART 5 35

FUNDING AND ACCOUNTS

*Funding*

- 24 *The Secretary of State may pay the Regulator out of money provided by Parliament such sums as he may determine towards its expenses.*
- 25 (1) The Secretary of State may make regulations authorising the Regulator to charge fees to meet the costs incurred by the Regulator in connection with applications made for the modification of an occupational pension scheme – 40
- (a) under section 69 of the Pensions Act 1995 (c. 26), or
- (b) under any corresponding provision in force in Northern Ireland.

- (2) Regulations under sub-paragraph (1) may prescribe, or authorise the Regulator to determine, the time at which any fee is due.
- (3) Any fee which is owed to the Regulator by virtue of regulations under this paragraph may be recovered as a debt due to the Regulator.
- 26 (1) *Section 175 of the Pension Schemes Act 1993 (c. 48) (levies towards certain expenditure) is amended as follows.* 5
- (2) *In subsection (1) omit “or” at the end of paragraph (b) and for paragraph (c) substitute –*
- “(c) *of the Regulatory Authority (including the establishment of the Authority under the Pensions Act 2004), or* 10
- “(d) *of the Lord Chancellor in meeting the costs of the legal assistance scheme established by virtue of section 80 of the Pensions Act 2004 (legal assistance in connection with proceedings before the Pensions Regulator Tribunal),”.*
- (3) *In subsection (3), in paragraph (a), for the words from “any amounts paid” to the end of the paragraph substitute “ –* 15
- (i) *any amounts paid to the Secretary of State under section 168(4) of this Act or section 10 of the Pensions Act 1995 (civil penalties), and*
- (ii) *any fees paid to the Authority under paragraph 25 of Schedule 1 to the Pensions Act 2004 (fees for applications to modify under section 69 of the 1995 Act), and”* 20

#### Accounts

- 27 (1) The Regulator must – 25
- (a) keep proper accounts and proper records in relation to the accounts, and
- (b) prepare in respect of each financial year a statement of accounts.
- (2) Each statement of accounts must comply with any directions given by the Secretary of State with the approval of the Treasury as to – 30
- (a) the information to be contained in it and the manner in which it is to be presented;
- (b) the methods and principles according to which the statement is to be prepared;
- (c) the additional information (if any) which is to be provided for the information of Parliament. 35
- (3) The Regulator must send a copy of each statement of accounts –
- (a) to the Secretary of State, and
- (b) to the Comptroller and Auditor General,
- before the end of the month of August next following the financial year to which the statement relates. 40
- (4) The Comptroller and Auditor General must –
- (a) examine, certify and report on each statement of accounts which he receives under sub-paragraph (3), and
- (b) lay a copy of each statement and of his report before each House of Parliament. 45
- (5) In this paragraph “financial year” means –

- (a) the period beginning with the date on which the Regulator is established and ending with the next following 31st March, and
- (b) each successive period of 12 months.

*Other expenses*

- 28 (1) The Regulator may – 5
- (a) pay, or make provision for paying, persons attending proceedings before the Regulator at its request such travelling and other allowances (including compensation for loss of remunerative time) as the Secretary of State may determine, and
  - (b) pay, or make provision for paying, persons from whom the Regulator may decide to seek advice, as being persons considered by the Regulator to be specially qualified to advise it on particular matters, such fees as the Regulator may determine. 10
- (2) In this paragraph references to proceedings before the Regulator include references to proceedings before any committee of the Regulator. 15

## PART 6

## STATUS AND LIABILITY ETC

*Status*

- 29 (1) The Regulator is not to be regarded – 20
- (a) as the servant or agent of the Crown, or
  - (b) as enjoying any status, privilege or immunity of the Crown.
- (2) Accordingly, the Regulator’s property is not to be regarded as property of, or held on behalf of, the Crown.

*Validity*

- 30 The validity of any proceedings of the Regulator (including any proceedings of any of its committees) is not to be affected by – 25
- (a) any vacancy among the members of the Regulator or of any of its committees,
  - (b) any defect in the appointment of any member of the Regulator or of any of its committees, or 30
  - (c) any defect in the appointment of the Chief Executive.

*Disqualification*

- 31 Schedule 1 to the House of Commons Disqualification Act 1975 (c. 24) is amended as follows –
- (a) in Part 2 (bodies whose members are disqualified) at the appropriate place insert – 35  
“The Pensions Regulator.”, and
  - (b) in Part 3 (other disqualifying offices) at the appropriate place insert – 40  
“Member of the Determinations Panel established by the Pensions Regulator under section 10 of the Pensions Act 2004.”

- 32 Schedule 1 to the Northern Ireland Assembly Disqualification Act 1975 (c. 25) is amended as follows –
- (a) in Part 2 (bodies whose members are disqualified) at the appropriate place insert –  
“The Pensions Regulator.”, and 5
  - (b) in Part 3 (other disqualifying offices) at the appropriate place insert –  
“Member of the Determinations Panel established by the Pensions Regulator under section 10 of the Pensions Act 2004.” 10

*The Parliamentary Commissioner for Administration*

- 33 In Schedule 2 to the Parliamentary Commissioner Act 1967 (c. 13)(departments and authorities subject to investigation), at the appropriate place insert –  
“The Pensions Regulator.” 15

*The Superannuation Act 1972*

- 34 (1) The persons to whom section 1 of the Superannuation Act 1972 (c. 11) (persons to or in respect of whom benefits may be provided by schemes under that section) applies are to include –  
the chairman of the Regulator 20  
the employees of the Regulator.
- (2) The Regulator must pay to the Minister for the Civil Service, at such times as he may direct, such sums as he may determine in respect of the increase attributable to sub-paragraph (1) in the sums payable out of money provided by Parliament under that Act. 25

*Exemption from liability in damages*

- 35 (1) Neither the Regulator nor any person who is a member of the Regulator, a member of any of its committees, or a member of its staff is to be liable in damages for anything done or omitted in the exercise or purported exercise of the functions of the Regulator conferred by, or by virtue of, this or any other enactment. 30
- (2) Any person who is –  
(a) the chairman of the Regulator,  
(b) the Chief Executive of the Regulator, or  
(c) the chairman of the Determinations Panel, 35  
is not to be liable in damages for anything done or omitted in the exercise or purported exercise of any function conferred on the office in question by, or by virtue of, this Act or any provisions in force in Northern Ireland corresponding to this Act.
- (3) Any person who is a member of the Non-Executive Committee or of any of its sub-committees is not to be liable in damages for anything done or omitted in the discharge or purported discharge of the duty to prepare a report under section 9(4) on the discharge of the non-executive functions. 40
- (4) Any person who is a member of the Determinations Panel is not to be liable in damages for anything done or omitted in the exercise or purported exercise of the functions of the Panel under – 45

- 
- (a) section 67(3) (procedure in relation to regulatory functions) or any corresponding provision in force in Northern Ireland,
  - (b) section 73(9) (procedure in relation to exercise of functions on a compulsory review) or any corresponding provision in force in Northern Ireland, or 5
  - (c) paragraph 18(2) of this Schedule (general procedure).
- (5) But sub-paragraphs (1) to (4) do not apply –
- (a) if it is shown that the act or omission was in bad faith, or
  - (b) so as to prevent an award of damages made in respect of an act or omission on the ground that the act or omission was unlawful as a result of section 6(1) of the Human Rights Act 1998 (c. 42). 10

## SCHEDULE 2

Section 11(4)

### THE RESERVED REGULATORY FUNCTIONS

#### PART 1

#### FUNCTIONS UNDER THE PENSION SCHEMES ACT 1993 (C. 48) 15

- 1 The power under section 99(4) to grant an extension of the period within which the trustees or managers of a scheme are to carry out certain duties.
- 2 The power under section 101J(2) to extend the period for compliance with a transfer notice.
- 3 The power under regulations made by virtue of section 168(4) to require a person to pay a penalty. 20

#### PART 2

#### FUNCTIONS UNDER THE PENSIONS ACT 1995 (C. 26)

- 4 The power to make an order under section 3 prohibiting a person from being a trustee. 25
- 5 The power to make an order under section 3(3) revoking such an order.
- 6 The power to make an order under section 4 suspending a trustee.
- 7 The power to make an order under section 4(5) revoking such an order.
- 8 The power to make an order appointing a trustee under any of the following provisions of section 7 – 30
  - (a) subsection (1) where a trustee is removed by an order under section 3 (prohibition orders);
  - (b) subsection (3)(a) or (c).
- 9 The power to require a person to pay a penalty under section 10 (including under regulations made by virtue of subsection (3) of that section). 35
- 10 The power to make an order under section 11 directing or authorising an occupational pension scheme to be wound up.
- 11 The power to give directions to trustees under section 15.

- |    |   |   |
|----|---|---|
| 12 | The power under section 29(5) to give a notice waiving a disqualification under section 29 of that Act.                                     |   |
| 13 | The power to make an order under section 69 authorising the modification of an occupational pension scheme or modifying the scheme.         |   |
| 14 | The power to make an order under section 71A modifying an occupational pension scheme with a view to ensuring that it is properly wound up. | 5 |

PART 3

FUNCTIONS UNDER THE WELFARE REFORM AND PENSIONS ACT 1999 (C. 30)

- |    |  |    |
|----|--|----|
| 15 | The power under section 2(3)(b) to remove a scheme from the register of stakeholder pension schemes. | 10 |
|----|--|----|

PART 4

FUNCTIONS UNDER THIS ACT

- |    |  |    |
|----|--|----|
| 16 | The power to make a freezing order under section 20.   |    |
| 17 | The power to make an order under section 22(3) extending the period for which a freezing order has effect.                               | 15 |
| 18 | The power to make an order under section 23 validating action taken in contravention of a freezing order.                                |    |
| 19 | The power to make an order under section 24 directing that specified steps are taken.  |    |
| 20 | The power to make an order under section 26 giving a direction where a freezing order ceases to have effect.                             | 20 |
| 21 | The power to make an order under section 27(3) directing the notification of members.  |    |
| 22 | The power to make a direction under section 50(8) extending the retention period for documents taken into possession under section 49.   | 25 |
| 23 | The power to make a direction under section 52(8) extending the retention period for documents taken into possession under that section. |    |
| 24 | The power to make an order under section 188 modifying a scheme, giving directions or imposing a schedule of contributions.              |    |
| 25 | The power to vary or revoke under section 75 –   | 30 |
|    | (a) a determination made by the Determinations Panel whether to exercise one of the other functions listed in this Schedule, or          |    |
|    | (b) an order, notice or direction made, issued or given in the exercise of one of those functions –                                      |    |
|    | (i) by the Panel, or   | 35 |
|    | (ii) by the Regulator in compliance with a direction of the Tribunal under section 77.   |    |

## SCHEDULE 3

Section 60

RESTRICTED INFORMATION HELD BY THE REGULATOR: CERTAIN PERMITTED DISCLOSURES  
TO FACILITATE EXERCISE OF FUNCTIONS

<i>Persons</i>	<i>Functions</i>	
The Secretary of State.	Functions under –	5
	(a) Part 14 of the Companies Act 1985 (c. 6),	
	(b) the Insolvency Act 1986 (c. 45),	10
	(c) Part 3 of the Companies Act 1989 (c. 40),	
	(d) Part 1 of the Export and Investment Guarantees Act 1991 (c. 67) (apart from sections 5 and 6),	15
	(e) Part 3 of the Pension Schemes Act 1993 (c. 48),	
	(f) Part 5 of the Police Act 1997 (c. 50),	20
	(g) the Financial Services and Markets Act 2000 (c. 8), or	
(h) this Act,		
	and functions of co-operating with overseas government authorities and bodies in relation to criminal matters.	25
The Bank of England.	Any of its functions.	
The Financial Services Authority.	Functions under –	
	(a) the legislation relating to friendly societies,	30
	(b) the Building Societies Act 1986 (c. 53), or	
	(c) the Financial Services and Markets Act 2000.	
The Charity Commissioners.	Functions under the Charities Act 1993 (c. 10).	35
The Pensions Regulator Tribunal.	Any of its functions.	
The Pensions Ombudsman.	Functions under –	
	(a) the Pension Schemes Act 1993, or	40
	(b) the Pension Schemes (Northern Ireland) Act 1993 (c. 49).	

<i>Persons</i>	<i>Functions</i>	
The Ombudsman for the Board of the Pension Protection Fund.	Any of his functions.	
The Comptroller and Auditor General.	Any of his functions.	5
The Auditor General for Wales.	Any of his functions.	
The Auditor General for Scotland.	Any of his functions.	
The Comptroller and Auditor General for Northern Ireland.	Any of his functions.	
The Commissioners of Inland Revenue or their officers.	Functions under—	10
	(a) the Income and Corporation Taxes Act 1988 (c. 1),	
	(b) the Taxation of Chargeable Gains Act 1992 (c. 12),	15
	(c) Part 3 of the Pension Schemes Act 1993 (c. 48),	
	(d) Part 3 of the Pension Schemes (Northern Ireland) Act 1993 (c. 49), or	20
	(e) the Income Tax (Earnings and Pensions) Act 2003 (c. 1).	
The Commissioners of Customs and Excise.	Functions under any enactment.	25
The Official Receiver or, in Northern Ireland, the Official Receiver for Northern Ireland.	Functions under the enactments relating to insolvency.	
An inspector appointed by the Secretary of State.	Functions under Part 14 of the Companies Act 1985 (c. 6).	30
A person authorised to exercise powers under—	Functions under those sections or that Article.	
(a) section 447 of the Companies Act 1985,		
(b) Article 440 of the Companies (Northern Ireland) Order 1986 (S.I. 1986/1032 (N.I. 6)), or		35
(c) section 84 of the Companies Act 1989 (c. 40).		40

<i>Persons</i>	<i>Functions</i>	
A person appointed under – (a) section 167 of the Financial Services and Markets Act 2000 (c. 8), (b) subsection (3) or (5) of section 168 of that Act, or (c) section 284 of that Act, to conduct an investigation.	Functions in relation to that investigation.	5
A body designated under section 326(1) of that Act.	Functions in its capacity as a body designated under that section.	10
A recognised investment exchange or a recognised clearing house (as defined by section 285 of that Act).	Functions in its capacity as an exchange or clearing house recognised under that Act.	
A body corporate established in accordance with section 212(1) of that Act.	Functions under the Financial Services Compensation Scheme, established in accordance with section 213 of that Act.	15
The Panel on Takeovers and Mergers.	Functions under the City Code on Takeovers and Mergers and the Rules Governing Substantial Acquisitions of Shares for the time being issued by the Panel.	20
The General Insurance Standards Council.	Functions of regulating sales and advisory and service standards in relation to insurance.	25
A recognised professional body (within the meaning of section 391 of the Insolvency Act 1986 (c. 45)).	Functions in its capacity as such a body under that Act.	
A person on whom functions are conferred by or under Part 2, 3 or 4 of the Proceeds of Crime Act 2002 (c. 29).	The functions so conferred.	30
The Counter Fraud and Security Management Service established under the Counter Fraud and Security Management Service (Establishment and Constitution) Order 2002 (S.I. 2002/3039).	Any of its functions.	35

<i>Persons</i>	<i>Functions</i>	
The Department of Enterprise, Trade and Investment in Northern Ireland.	Functions under—	
	(a) Part 15 of the Companies (Northern Ireland) Order 1986 (S.I. 1986/1032 (N.I. 6)),	5
	(b) the Insolvency (Northern Ireland) Order 1989 (S.I. 1989/2405 (N.I. 19)), or	
	(c) Part 2 of the Companies (No. 2) (Northern Ireland) Order 1990 (S.I. 1990/1504 (N.I. 10)).	10
The Department for Social Development in Northern Ireland.	Functions under Part 3 of the Pension Schemes (Northern Ireland) Act 1993 (c. 49).	15
An Inspector appointed by the Department of Enterprise, Trade and Investment in Northern Ireland.	Functions under Part 15 of the Companies (Northern Ireland) Order 1986.	20
A recognised professional body within the meaning of Article 350 of the Insolvency (Northern Ireland) Order 1989.	Functions in its capacity as such a body under that Order.	25
The Gaming Board for Great Britain.	Functions under—	
	(a) the Gaming Act 1968 (c. 65), or	
	(b) the Lotteries and Amusements Act 1976 (c. 32).	30

SCHEDULE 4

Section 76

THE PENSIONS REGULATOR TRIBUNAL

PART 1

THE TRIBUNAL

35

*The Panels*

- 1 (1) The Lord Chancellor must appoint a panel of persons for the purpose of serving as chairmen of the Tribunal (“the panel of chairmen”).
- (2) A person is qualified for membership of the panel of chairmen if—
  - (a) he has a 7 year general qualification within the meaning of section 71 of the Courts and Legal Services Act 1990 (c. 41),

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- 
- (b) he is an advocate or solicitor in Scotland of at least 7 years' standing,
  - (c) he is a member of the Bar of Northern Ireland of at least 7 years' standing, or
  - (d) he is a solicitor of the Supreme Court of Northern Ireland of at least 7 years' standing. 5
- (3) The panel of chairmen must include at least one member who is a person of the kind mentioned in sub-paragraph (2)(b).
- (4) The Lord Chancellor must also appoint a panel of persons who appear to him to be qualified by experience or otherwise to deal with matters of the kind that may be referred to the Tribunal ("the lay panel"). 10

### *The President*

- 2 (1) The Lord Chancellor must appoint one of the members of the panel of chairmen to preside over the exercise of the Tribunal's functions.
- (2) The member so appointed is to be known as the President of the Pensions Regulator Tribunal (in this Schedule referred to as "the President"). 15
- (3) The Lord Chancellor may appoint one of the members of the panel of chairmen to be the Deputy President.
- (4) The Deputy President is to have such functions in relation to the Tribunal as the President may assign to him.
- (5) The Lord Chancellor may not appoint a person to be the President or Deputy President unless that person – 20
- (a) has a 10 year general qualification within the meaning of section 71 of the Courts and Legal Services Act 1990 (c. 41),
  - (b) is an advocate or solicitor in Scotland of at least 10 years' standing,
  - (c) is a member of the Bar of Northern Ireland of at least 10 years' standing, or 25
  - (d) is a solicitor of the Supreme Court of Northern Ireland of at least 10 years' standing.
- (6) If the President ceases to be a member of the panel of chairmen, he also ceases to be the President. 30
- (7) If the Deputy President ceases to be a member of the panel of chairmen, he also ceases to be the Deputy President.
- (8) If the President is absent or otherwise unable to act, his functions may be exercised – 35
- (a) by the Deputy President, or
  - (b) if there is no Deputy President or he too is absent or otherwise unable to act, by a person appointed for that purpose from the panel of chairmen by the Lord Chancellor.

### *Terms of office etc*

- 3 (1) Subject to the provisions of this Schedule, each member of the panel of chairmen and the lay panel – 40
- (a) is to hold and vacate office in accordance with the terms and conditions of his appointment, and
  - (b) may resign or be removed from office in accordance with those terms and conditions. 45

- (2) A member of either panel is eligible for re-appointment if he ceases to hold office.

*Remuneration and allowances*

- 4      *The Lord Chancellor may pay, or make provision for paying, out of money provided by Parliament, any person in respect of his service –* 5
- (a) *as a member of the Tribunal (including service as the President or Deputy President), or*
- (b) *as a person appointed under paragraph 7(4) (appointment of experts), such remuneration and allowances as the Lord Chancellor may determine.*

*Staff* 10

- 5      (1) The Lord Chancellor may appoint such staff for the Tribunal as he may determine.
- (2) *The remuneration of the Tribunal’s staff is to be paid by the Lord Chancellor out of money provided by Parliament.*

*Expenses* 15

- 6      *The Lord Chancellor may pay, out of money provided by Parliament, such expenses of the Tribunal as the Lord Chancellor may determine.*

PART 2

CONSTITUTION OF THE TRIBUNAL

- 7      (1) On a reference to the Tribunal, the persons to act as members of the Tribunal for the purposes of the reference are to be selected from the panel of chairmen or the lay panel in accordance with arrangements made by the President for the purposes of this paragraph (“the standing arrangements”). 20
- (2) The standing arrangements must provide for at least one member to be selected from the panel of chairmen. 25
- (3) If, while a reference is being dealt with, a person serving as a member of the Tribunal in respect of the reference becomes unable to act, the reference may be dealt with –
- (a) by the other members selected in respect of the reference, or
- (b) if it is being dealt with by a single member, by such other member of the panel of chairmen as may be selected in accordance with the standing arrangements for the purposes of the reference. 30
- (4) If it appears to the Tribunal that a matter before it involves a question of fact of special difficulty, it may appoint one or more experts to provide assistance. 35
- (5) For the purposes of this Schedule, a “reference to the Tribunal” means a reference under section 77 or any corresponding provision in force in Northern Ireland.

PART 3

TRIBUNAL PROCEDURE

*General*

- |   |  |    |
|---|--|----|
| 8 | For the purpose of dealing with references, or any matter preliminary or incidental to a reference, the Tribunal must sit at such times and in such place or places as the Lord Chancellor may direct.   | 5  |
| 9 | Rules made by the Lord Chancellor under section 76 may, in particular, include provision –   |    |
|   | (a) as to the manner in which references are to be instituted;   |    |
|   | (b) for the holding of hearings in private in such circumstances as may be specified in the rules;   | 10 |
|   | (c) as to the persons who may appear on behalf of the parties;   |    |
|   | (d) for a member of the panel of chairmen to hear and determine interim matters arising on a reference;  |    |
|   | (e) for the suspension of determinations of the Regulator where the regulatory function (or any corresponding function under any enactment in force in Northern Ireland corresponding to this Act) which is the subject of the determination has already been exercised; | 15 |
|   | (f) as to the withdrawal of references;  |    |
|   | (g) as to the registration, publication and proof of decisions and orders.   | 20 |

*Practice directions*

- |    |  |  |
|----|--|--|
| 10 | The President may give directions as to the practice and procedure to be followed by the Tribunal in relation to references to it. |  |
|----|--|--|

*Evidence*

- |    |  |    |
|----|--|----|
| 11 | (1) The Tribunal may by summons require any person to attend, at such time and place as is specified in the summons, to give evidence or to produce any document in his custody or under his control which the Tribunal considers it necessary to examine. | 25 |
|    | (2) The Tribunal may –   |    |
|    | (a) take evidence on oath and for that purpose administer oaths, or  | 30 |
|    | (b) instead of administering an oath, require the person examined to make and subscribe a declaration of the truth of the matters in respect of which he is examined.  |    |
|    | (3) A person who without reasonable excuse refuses or fails –  |    |
|    | (a) to attend following the issue of a summons by the Tribunal, or   | 35 |
|    | (b) to give evidence,  |    |
|    | is guilty of an offence.   |    |
|    | (4) A person guilty of an offence under sub-paragraph (3) is liable on summary conviction to a fine not exceeding the statutory maximum.   |    |
|    | (5) A person who without reasonable excuse –   | 40 |
|    | (a) alters, suppresses, conceals or destroys a document which he is or is liable to be required to produce for the purposes of proceedings before the Tribunal, or   |    |

- (b) refuses to produce a document when so required,  
is guilty of an offence.
- (6) A person guilty of an offence under sub-paragraph (5) is liable—
  - (a) on summary conviction, to a fine not exceeding the statutory maximum; 5
  - (b) on conviction on indictment, to imprisonment for a term not exceeding two years or a fine or both.
- (7) In this paragraph “document” includes information recorded in any form and, in relation to information recorded otherwise than in a legible form, references to its production include references to producing a copy of the information— 10
  - (a) in a legible form, or
  - (b) in a form from which it can readily be produced in a legible form.

*Decisions of the Tribunal*

- 12 (1) A decision of the Tribunal may be taken by a majority. 15
- (2) The decision must state whether it was unanimous or taken by a majority.
- (3) The decision must be recorded in a document which—
  - (a) contains a statement of the reasons for the decision, and
  - (b) is signed and dated by the member of the panel of chairmen dealing with the reference. 20
- (4) The Tribunal must inform each party to the reference of its decision.
- (5) The Tribunal must as soon as reasonably practicable send a copy of the document mentioned in sub-paragraph (3)—
  - (a) to each of the parties to the reference, and
  - (b) to such other persons as appear to be directly affected by the decision. 25
- (6) The Tribunal must send the Secretary of State a copy of its decision.
- (7) In this paragraph “document” includes information recorded in any form.

*Costs*

- 13 (1) If the Tribunal considers that a party to any proceedings on a reference has acted vexatiously, frivolously or unreasonably it may order that party to pay to another party to the proceedings the whole or part of the costs or expenses incurred by the other party in connection with the proceedings. 30
- (2) If, in any proceedings on a reference, the Tribunal considers that a determination of the Regulator which is the subject of the reference was unreasonable it may order the Regulator to pay to another party to the proceedings the whole or part of the costs or expenses incurred by the other party in connection with the proceedings. 35

PART 4

- STATUS ETC 40

*Disqualification*

- 14 In Part 3 of Schedule 1 to the House of Commons Disqualification Act 1975

	(c. 24) (other disqualifying offices), at the appropriate place insert – “Any member, in receipt of remuneration, of a panel of persons who may be selected to act as members of the Pensions Regulator Tribunal.”	
15	In Part 3 of Schedule 1 to the Northern Ireland Assembly Disqualification Act 1975 (c. 25) (other disqualifying offices), at the appropriate place insert – “Any member, in receipt of remuneration, of a panel of persons who may be selected to act as members of the Pensions Regulator Tribunal.”	5
	<i>The Parliamentary Commissioner for Administration</i>	10
16	In Schedule 4 to the Parliamentary Commissioner Act 1967 (c. 13) (relevant tribunals for the purposes of section 5(7) of that Act), at the appropriate place insert – “ <i>The Pensions Regulator Tribunal constituted under section 76 of the Pensions Act 2004.</i> ”	15
	<i>Judicial Pensions and Retirement Act 1993</i>	
17	(1) The Judicial Pensions and Retirement Act 1993 (c. 8) is amended as follows. (2) In Schedule 1 (offices which may be qualifying offices), in Part 2, at the appropriate place insert – “President or Deputy President of the Pensions Regulator Tribunal.” (3) In Schedule 5 (relevant offices in relation to retirement provisions), at the appropriate place insert – “Member of the Pensions Regulator Tribunal.”	20
	<i>Disclosure of information</i>	25
18	In section 449(1) of the Companies Act 1985 (c. 6) (exceptions from restrictions on publication and disclosure), after paragraph (m) insert – “(n) for the purposes of proceedings before the Pensions Regulator Tribunal;”	
19	In section 87(2) of the Companies Act 1989 (c. 40) (exceptions from restrictions on disclosure), after paragraph (c) insert – “(d) proceedings before the Pensions Regulator Tribunal.”	30
20	In section 50(2) of the Courts and Legal Services Act 1990 (c. 41) (exceptions from restrictions on disclosure), after paragraph (s) insert – “(t) the Pensions Regulator Tribunal to discharge any of its functions.”	35

SCHEDULE 5

Section 83

THE BOARD OF THE PENSION PROTECTION FUND

PART 1

MEMBERS OF THE BOARD

*Appointment of chairman* 5

- 1 The chairman of the Board is to be appointed by the Secretary of State.

*Appointment of ordinary members*

- 2 (1) The appointments of the first five ordinary members are to be made by the Secretary of State.
- (2) Subsequent appointments of ordinary members are to be made by the Board, subject to sub-paragraph (4). 10
- (3) In making any appointment by virtue of sub-paragraph (2) the Board must act in accordance with any procedure for making such appointments that may be prescribed.
- (4) If, at any time, there are less than five ordinary members, the Secretary of State must appoint such number of ordinary members as is required to bring the number of ordinary members to five. 15

*Terms of appointment*

- 3 (1) The chairman and the ordinary members appointed by the Secretary of State are to be appointed on such terms and conditions as are determined by the Secretary of State. 20
- (2) The ordinary members appointed by the Board are to be appointed on such terms and conditions as are determined –
- (a) in the case of a non-executive member, by the chairman with the approval of the Secretary of State, and 25
- (b) in the case of an executive member, by the Chief Executive.
- (3) This paragraph is subject to paragraph 7 (remuneration of members).

*Tenure of members*

- 4 (1) Subject to the following provisions, the chairman and any ordinary member – 30
- (a) is to hold and vacate office in accordance with the terms and conditions of his appointment, and
- (b) may resign or be removed from office in accordance with those terms and conditions.
- (2) A person must cease to be a member of the Board where – 35
- (a) in the case of the chairman, he ceases to hold that office or becomes a member of the staff of the Board;
- (b) in the case of any other non-executive member, he becomes a member of the staff of the Board;

- (c) in the case of an ordinary member who is an executive member, he ceases to be a member of the staff of the Board.
- 5 Where a person ceases to be employed as Chief Executive, he ceases to be a member of the Board.
- 6 No person is to be prevented from being a member of the Board (whether as chairman or otherwise) merely because he has previously been such a member. 5
- Remuneration etc of members*
- 7 The Board may pay, or make provision for paying, its non-executive members such remuneration as the Secretary of State may determine. 10
- 8 The Board may –
- (a) pay to or in respect of any person who is or has been a non-executive member such pension, allowances or gratuities as the Secretary of State may determine, or
- (b) make such payments as the Secretary of State may determine towards provision for the payment of a pension, allowance or gratuity to or in respect of such a person. 15
- 9 Where –
- (a) a non-executive member ceases to be a member otherwise than on the expiry of his term of office, and
- (b) it appears to the Secretary of State that there are circumstances which make it right for that person to receive compensation,
- the Board may make a payment to that person of such amount as the Secretary of State may determine. 20
- Interpretation of Part 1* 25

- 10 In this Part “ordinary member” has the same meaning as in section 82.

## PART 2

### STAFF OF THE BOARD

#### *The staff*

- 11 (1) The staff of the Board consists of – 30
- (a) the Chief Executive of the Board appointed under paragraph 12,
- (b) the other employees of the Board appointed under paragraph 13, and
- (c) any additional staff made available by the Secretary of State under paragraph 14.
- (2) No member of the Regulator, or of the Determinations Panel established by the Regulator under section 10, is eligible for appointment as a member of the staff of the Board. 35

#### *The Chief Executive*

- 12 (1) The Board is to employ a person as its Chief Executive.

- (2) The Chief Executive’s main function is to be responsible for securing that the functions of the Board are discharged efficiently and effectively.
- (3) The first appointment of a Chief Executive –
  - (a) is to be made by the Secretary of State, and
  - (b) is to be on such terms and conditions as to remuneration and other matters as are determined by the Secretary of State. 5
- (4) Subsequent appointments of a Chief Executive are to be made by the Board with the approval of the Secretary of State.
- (5) Appointments under sub-paragraph (4) are to be –
  - (a) on such terms and conditions as to remuneration as may be determined by the Board with the approval of the Secretary of State, and 10
  - (b) on such other terms and conditions as may be determined by the Secretary of State.
- (6) By virtue of section 86(4), the function conferred on the Board by sub-paragraph (5)(a) is exercisable on its behalf by the Non-Executive Committee. 15

*Other employees*

- 13 (1) Other employees of the Board may be appointed by the Board with the approval of the Secretary of State as to numbers. 20
- (2) Subject to sub-paragraph (3), an appointment under sub-paragraph (1) is to be on such terms and conditions as may be determined by the Chief Executive.
- (3) The terms and conditions relating to remuneration are –
  - (a) in the case of an appointment of an employee who is also to be an executive member of the Board, to be determined by the Board with the approval of the Secretary of State, 25
  - (b) in the case of an appointment of an employee of a prescribed description, to be determined by the Board.
- (4) By virtue of section 86(4), the functions conferred on the Board by sub-paragraph (3)(a) and (b) are exercisable on its behalf by the Non-Executive Committee. 30

*Additional staff etc*

- 14 (1) The Secretary of State may make available to the Board such additional staff and such other facilities as he considers appropriate. 35
- (2) The availability of such staff and facilities may be on such terms as to payment by the Board as the Secretary of State may determine.

PART 3

PROCEEDINGS AND DELEGATION ETC

*Committees* 40

- 15 (1) The Board may establish committees for any purpose.
- (2) Any committee established by the Board may establish sub-committees.

- 
- (3) The members of such committees or sub-committees may include persons who are not members of the Board.
- (4) The members of a sub-committee may include persons who are not members of the committee.
- (5) Sub-paragraphs (3) and (4) do not apply to the Non-Executive Committee or any of its sub-committees. 5
- (6) Any sub-committee of the Non-Executive Committee may include persons who are not members of the committee, but those persons must not be executive members or other staff of the Board.
- Procedure* 10
- 16 The Board may determine—
- (a) its own procedure (including quorum), and
  - (b) the procedure (including quorum) of any of its committees or sub-committees.
- Delegation* 15
- 17 (1) The Board may authorise—
- (a) any executive member of the Board,
  - (b) any other member of its staff, or
  - (c) any of its committees or sub-committees (other than the Non-Executive Committee or any of its sub-committees),
- to exercise such of the Board’s functions, in such circumstances, as the Board may determine. 20
- (2) But sub-paragraph (1) does not apply to the non-executive functions of the Board (which must be discharged by the Non-Executive Committee by virtue of section 86(4)). 25
- Application of seal and proof of instruments*
- 18 (1) The fixing of the common seal of the Board must be authenticated by the signature of a person authorised for that purpose by the Board (whether generally or specifically).
- (2) Sub-paragraph (1) does not apply in relation to any document which is or is to be signed in accordance with the law of Scotland. 30
- 19 A document purporting to be duly executed under the seal of the Board or purporting to be signed on its behalf—
- (a) is to be received in evidence, and
  - (b) is to be taken to be so executed or signed unless the contrary is proved. 35

#### PART 4

#### ACCOUNTS

#### *Accounts*

- 20 (1) The Board must— 40

- (a) keep proper accounts and proper records in relation to the accounts, and
  - (b) prepare in respect of each financial year a statement of accounts.
- (2) Each statement of accounts must –
  - (a) contain an actuarial valuation of the Pension Protection Fund, and 5
  - (b) comply with any accounting directions given by the Secretary of State with the approval of the Treasury.
- (3) For the purposes of sub-paragraph (2) –
  - “actuarial valuation”, with respect to a fund, means a valuation, prepared and signed by the appointed actuary, of the assets and liabilities of the fund; and 10
  - “accounting direction” means a direction regarding –
    - (a) the information to be contained in a statement of accounts and the manner in which it is to be presented;
    - (b) the methods and principles according to which the statement is to be prepared; 15
    - (c) the additional information (if any) which is to be provided for the information of Parliament.
- (4) In sub-paragraph (3) –
  - (a) “the appointed actuary” means a person with prescribed qualifications who is appointed by the Board for the purposes of this paragraph, and 20
  - (b) the liabilities and assets to be taken into account in preparing the actuarial valuation, and their amount or value, are to be determined, calculated and verified by the appointed actuary in the prescribed manner. 25
- (5) The Board must send a copy of each statement of accounts –
  - (a) to the Secretary of State, and
  - (b) to the Comptroller and Auditor General,before the end of the month of August next following the financial year to which the statement relates. 30
- (6) The Comptroller and Auditor General must –
  - (a) examine, certify and report on each statement of accounts which he receives under sub-paragraph (5), and
  - (b) lay a copy of each statement and of his report before each House of Parliament. 35
- (7) In this paragraph “financial year” means –
  - (a) the period beginning with the date on which the Board is established and ending with the next following 31st March, and
  - (b) each successive period of 12 months. 40

*Other expenses*

- 21 The Board may –
  - (a) pay, or make provision for paying, persons attending proceedings of the Board at its request such travelling and other allowances (including compensation for loss of remunerative time) as the Board may determine, and 45

- (b) pay, or make provision for paying, persons from whom the Board may decide to seek advice, as being persons considered by the Board to be specially qualified to advise it on particular matters, such fees as the Board may determine.

PART 5

5

STATUS AND LIABILITY ETC

*Status*

- 22 (1) The Board is not to be regarded –
- (a) as the servant or agent of the Crown, or
  - (b) as enjoying any status, privilege or immunity of the Crown. 10
- (2) Accordingly, the Board’s property is not to be regarded as property of, or held on behalf of, the Crown.

*Validity*

- 23 The validity of any proceedings of the Board (including any proceedings of any of its committees or sub-committees) is not to be affected by – 15
- (a) any vacancy among the members of the Board or of any of its committees or sub-committees,
  - (b) any defect in the appointment of any member of the Board or of any of its committees or sub-committees, or
  - (c) any defect in the appointment of the Chief Executive. 20

*Disqualification*

- 24 In Schedule 1 to the House of Commons Disqualification Act 1975 (c. 24), in Part 2 (bodies whose members are disqualified), at the appropriate place insert –
- “The Board of the Pension Protection Fund.” 25
- 25 In Schedule 1 to the Northern Ireland Assembly Disqualification Act 1975 (c. 25), in Part 2 (bodies whose members are disqualified), at the appropriate place insert –
- “The Board of the Pension Protection Fund.”

*The Superannuation Act 1972*

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- 26 (1) The persons to whom section 1 of the Superannuation Act 1972 (c. 11) (persons to or in respect of whom benefits may be provided by schemes under that section) applies are to include –
- the chairman of the Board
  - the employees of the Board. 35
- (2) The Board must pay to the Minister for the Civil Service, at such times as he may direct, such sums as he may determine in respect of the increase attributable to sub-paragraph (1) in the sums payable out of money provided by Parliament under that Act.

*Exemption from liability in damages*

- 27 (1) Neither the Board nor any person who is a member of the Board, a member of any of its committees or sub-committees, or a member of its staff is to be liable in damages for anything done or omitted in the exercise or purported exercise of the functions of the Board conferred by, or by virtue of, this or any other enactment. 5
- (2) Any person who is the Chief Executive of the Board is not to be liable in damages for anything done or omitted in the exercise or purported exercise of any function conferred on the Chief Executive by, or by virtue of, this Act or any provisions in force in Northern Ireland corresponding to this Act. 10
- (3) Any person who is a member of the Non-Executive Committee or of any of its sub-committees is not to be liable in damages for anything done or omitted in the discharge or purported discharge of the duty to prepare a report under section 86(6) on the discharge of the non-executive functions.
- (4) Sub-paragraphs (1) to (3) do not apply – 15
- (a) if it is shown that the action or omission was in bad faith, or
- (b) so as to prevent an award of damages made in respect of an act or omission on the ground that the act or omission was unlawful as a result of section 6(1) of the Human Rights Act 1998 (c. 42).
- (5) This paragraph does not prevent the Board being required to pay compensation on a direction of the PPF Ombudsman by virtue of regulations under section 173(1) or 174. 20

SCHEDULE 6

Section 123

TRANSFER OF PROPERTY, RIGHTS AND LIABILITIES TO THE BOARD

- 1 This Schedule applies where the property, rights and liabilities of an occupational pension scheme are transferred to the Board in accordance with section 123. 25
- 2 (1) Subject to sub-paragraph (2), the property, rights and liabilities so transferred include –
- (a) property, rights and liabilities that would not otherwise be capable of being transferred or assigned, 30
- (b) property situated anywhere in the United Kingdom or elsewhere, and
- (c) rights and liabilities under the law of any part of the United Kingdom or of any country or territory outside the United Kingdom. 35
- (2) Where, but for this sub-paragraph, any rights or liabilities under a contract of employment would be transferred to the Board under section 123, this sub-paragraph operates to terminate the contract of employment on the day preceding the day on which the transfer notice is received by the trustees or managers of the scheme. 40
- 3 (1) Without prejudice to the generality of section 123 and subject to sub-paragraph (2), any legal proceedings or applications to any authority pending immediately before the transfer by or against any of the trustees or managers of the scheme in their capacity as trustees or managers shall be continued by or against the Board. 45

- (2) The liabilities transferred by section 123 do not include any liabilities in respect of an existing or future cause of action against the trustees or managers of the scheme if, disregarding the transfer, the trustees or managers would have been personally liable to meet the claim and would not have been indemnified from the assets of the scheme. 5
- 4 The transfer is binding on all persons, even if, apart from this paragraph, it would have required the consent or concurrence of any person.
- 5 No person shall have any power, in consequence of the transfer, to terminate or modify any interest or right which was vested in the trustees or managers of the scheme. 10
- 6 Any reference in any agreement, document or instrument of any description to the trustees or managers of the scheme shall have effect so far as necessary for the purposes of giving effect to the transfer as a reference to the Board.
- 7 (1) The Board must take all such steps as may be required to secure that the vesting in the Board, by virtue of section 123, of any foreign property, right or liability is effective under the relevant foreign law. 15
- (2) Until the vesting of any foreign property, right or liability in the Board is effective under the relevant foreign law, the persons who were the trustees or managers of the scheme immediately before the transfer effected by section 123 must hold that property or right for the benefit of, or discharge that liability on behalf of, the Board. 20
- (3) Nothing in this paragraph prejudices the effect under the law of England and Wales or of Scotland of the vesting in the Board, in accordance with section 123, of any foreign property, right or liability.
- (4) In this paragraph references to any foreign property, right or liability are references to any property, right or liability as respects which any issue arising in any proceedings would have to be determined (in accordance with the rules of private international law) by reference to the law of a country or territory outside the United Kingdom. 25

## SCHEDULE 7

Section 124

30

## PENSION COMPENSATION PROVISIONS

*Introductory*

- 1 This Schedule applies for the purposes of determining the compensation payable where the Board assumes responsibility for an eligible scheme (“the scheme”) in accordance with this Chapter. 35
- 2 In this Schedule references to “the assessment date” are to the date on which the assessment period in relation to the scheme, or (where there has been more than one such assessment period) the last one, began.

*Pensions in payment at assessment date*

- 3 (1) Compensation is payable in accordance with this paragraph where, immediately before the assessment date, a person is entitled to present payment of a pension under the admissible rules of the scheme. 40

- 
- (2) That person (“the pensioner”) is entitled to periodic compensation in respect of that pension (“the pension”) commencing at the assessment date and continuing for life or, in a case to which sub-paragraph (8) applies, until such time as entitlement to the pension would have ceased under the admissible rules. 5
- (3) The annual rate of the periodic compensation is the appropriate percentage of the aggregate of –
- (a) the protected pension rate, and
  - (b) any increases under paragraph 28 (annual increases in periodic compensation). 10
- (4) In sub-paragraph (3) “the appropriate percentage” means –
- (a) in a case to which sub-paragraph (7) applies, 90%, and
  - (b) in any other case, 100%.
- (5) In sub-paragraph (3) “the protected pension rate” means the annual rate of the pension, under the admissible rules, immediately before the assessment date. 15
- (6) In determining for the purposes of sub-paragraph (5) the annual rate of the pension immediately before the assessment date, any recent discretionary increase is to be disregarded if the combined effect of all recent rule changes and recent discretionary increases in respect of the scheme is that the protected liabilities of the scheme immediately before the assessment date are greater than they would have been in the absence of those changes and increases. 20
- (7) This sub-paragraph applies where the pensioner has not attained normal pension age in respect of the pension before the assessment date and his entitlement to the pension – 25
- (a) is attributable to his pensionable service under the scheme or another scheme, and
  - (b) did not arise by virtue of any provision of the admissible rules of the scheme making special provision as to early payment of pension on grounds of ill health. 30
- (8) This sub-paragraph applies where the pension was not attributable to –
- (a) the pensioner’s pensionable service under the scheme or another scheme, or
  - (b) (directly or indirectly) to a pension credit to which the pensioner became entitled under section 29(1)(b) of the Welfare Reform and Pensions Act 1999 (c. 30). 35
- (9) This paragraph does not apply if compensation is payable in respect of the pension in accordance with paragraph 5 (pension benefits postponed at assessment date). 40
- (10) This paragraph is subject to –
- paragraph 25 (compensation cap on periodic compensation), and
  - paragraph 30 (power of Secretary of State to change percentage rates by order).
- 4 (1) This paragraph applies where – 45
- (a) the pensioner dies on or after the assessment date, and
  - (b) the pension was attributable –
    - (i) to the pensioner’s pensionable service under the scheme, or

- (ii) (directly or indirectly) to a pension credit to which the pensioner became entitled under section 29(1)(b) of the Welfare Reform and Pensions Act 1999 (c. 30).
- (2) The pensioner’s widow or widower is entitled to periodic compensation commencing on the day following the pensioner’s death and continuing for life. 5
- (3) The annual rate of the periodic compensation at any time is half of the annual rate of the periodic compensation (including any increases under paragraph 28) to which the pensioner would at that time have been entitled under paragraph 3 in respect of the pension had the pensioner not died. 10
- (4) In this paragraph “the pension” and “the pensioner” are to be construed in accordance with paragraph 3.

*Pension benefits postponed at assessment date*

- 5 (1) Compensation is payable in accordance with this paragraph where immediately before the assessment date – 15
- (a) a person is entitled to present payment of a pension under the admissible rules of the scheme,
- (b) payment of that pension is postponed, and
- (c) he has attained normal pension age in relation to the pension.
- (2) That person (“the postponed pensioner”) is entitled to periodic compensation in respect of that pension (“the pension”) commencing at the assessment date and continuing for life or, in a case to which sub-paragraph (7) applies, until such time as entitlement to the pension would have ceased under the admissible rules. 20
- (3) The annual rate of the periodic compensation is 100% of the aggregate of – 25
- (a) the protected pension rate, and
- (b) any increases under paragraph 28 (annual increases in periodic compensation).
- (4) In sub-paragraph (3) “the protected pension rate” means what would have been the annual rate of the pension, under the admissible rules, if the postponement of payment had ceased immediately before the assessment date. 30
- (5) In determining for the purposes of sub-paragraph (4) the annual rate of the pension immediately before the assessment date, any recent discretionary increase is to be disregarded if the combined effect of all recent rule changes and recent discretionary increases in respect of the scheme is likely to be an increase in the amount of compensation payable in respect of the scheme under this Chapter. 35
- (6) Where the pension is attributable (directly or indirectly) to a pension credit, the reference in sub-paragraph (1)(c) to “normal pension age” is to be read as a reference to “normal benefit age”. 40
- (7) This sub-paragraph applies where the pension was not attributable to – 45
- (a) the pensioner’s pensionable service under the scheme or another scheme, or
- (b) (directly or indirectly) to a pension credit to which the pensioner became entitled under section 29(1)(b) of the Welfare Reform and Pensions Act 1999.
- (8) This paragraph is subject to –

- paragraph 23 (commutation), and  
paragraph 30 (power of Secretary of State to change percentage rates  
by order).
- 6 (1) This paragraph applies where the postponed pensioner –
- (a) dies on or after the assessment date, 5
  - (b) the pension was attributable –
    - (i) to the postponed pensioner’s pensionable service under the scheme or another scheme, or
    - (ii) (directly or indirectly) to a pension credit to which the postponed pensioner became entitled under section 29(1)(b) of the Welfare Reform and Pensions Act 1999 (c. 30). 10
- (2) The postponed pensioner’s widow or widower is entitled to periodic compensation commencing on the day following the postponed pensioner’s death and continuing for life.
- (3) The annual rate of the periodic compensation at any time is half of the annual rate of the periodic compensation (including any increases under paragraph 28) to which the postponed pensioner would at that time have been entitled under paragraph 5 in respect of the pension had the postponed pensioner not died. 15
- (4) In this paragraph “the postponed pensioner” and “the pension” are to be construed in accordance with paragraph 5. 20
- 7 (1) Compensation is payable in accordance with this paragraph where immediately before the assessment date –
- (a) a person is entitled to present payment of a lump sum under the admissible rules of the scheme (“the scheme lump sum”), 25
  - (b) payment of that lump sum is postponed, and
  - (c) he has attained normal pension age in relation to the lump sum.
- (2) That person is entitled to compensation in the form of a lump sum of an amount equal to 100% of the amount of the scheme lump sum which would have been payable had the postponement ceased immediately before the assessment date. 30
- (3) The compensation is payable at the assessment date.
- (4) Where the scheme lump sum is attributable (directly or indirectly) to a pension credit, the reference in sub-paragraph (1)(c) to “normal pension age” is to be read as a reference to “normal benefit age”. 35
- (5) This paragraph does not apply in relation to a lump sum to which a person is entitled by reason of commuting any part of a pension under the scheme.
- (6) This paragraph is subject to paragraph 30 (power to change percentage rates by order).
- Active members over normal pension age at assessment date* 40
- 8 (1) Compensation is payable in accordance with this paragraph where a person who, under the admissible rules, is (immediately before the assessment date) an active member of the scheme has, before that date, attained normal pension age in respect of his rights under the admissible rules of the scheme to a pension. 45

- (2) The active member is entitled to periodic compensation in respect of that pension (“the pension”) commencing at the assessment date and continuing for life.
- (3) The annual rate of the periodic compensation is 100% of the aggregate of –
- (a) the protected notional pension, and 5
  - (b) any increases under paragraph 28 (annual increases in periodic compensation).
- (4) In sub-paragraph (3) “the protected notional pension” means the aggregate of –
- (a) the accrued amount, and 10
  - (b) any increases in the pension to which the active member would have been entitled under the admissible rules (by virtue of the fact that the pension did not come into payment at normal pension age) if he had ceased to be an active member of the scheme immediately before the assessment date. 15
- (5) Subject to sub-paragraphs (6) and (7), the accrued amount is –

$$AR \times PE \times PS$$

where –

- AR is the active member’s annual accrual rate in respect of the pension under the admissible rules, 20
- PE is the active member’s annual pensionable earnings in respect of the pension under the admissible rules, and
- PS is the active member’s pensionable service in respect of the pension under the admissible rules in years (including any fraction of a year). 25
- (6) If the accrual rates or pensionable earnings differ in respect of different parts of the active member’s pensionable service relating to the pension, an amount is calculated in accordance with the formula in sub-paragraph (5) in respect of each of those parts and the accrued amount is the aggregate of those amounts. 30
- For this purpose the references in that sub-paragraph to the active member’s pensionable service, accrual rate and pensionable earnings are to be read as references to the part of his pensionable service in question and to his accrual rate and pensionable earnings in respect of that part.
- (7) In any case where the Board is satisfied that it is not possible to identify one or more of the elements of the formula in sub-paragraph (5), the Board may, having regard to the admissible scheme rules, determine how the accrued amount is to be calculated. 35
- (8) This paragraph is subject to –
- paragraph 23 (commutation), and 40
  - paragraph 30 (power of Secretary of State to change percentage rates by order).
- 9 (1) This paragraph applies where the active member dies on or after the assessment date.

- (2) The active member’s widow or widower is entitled to periodic compensation commencing on the day following the member’s death and continuing for life.
- (3) The annual rate of the periodic compensation at any time is half of the annual rate of the periodic compensation (including any increases under paragraph 28) to which the active member would at that time have been entitled under paragraph 8 in respect of the pension had the member not died. 5
- (4) In this paragraph “the pension” and “the active member” are to be construed in accordance with paragraph 8. 10
- 10 (1) Compensation is payable in accordance with this paragraph where an active member of the scheme has, before the assessment date, attained normal pension age in respect of his rights under the admissible rules of the scheme to a lump sum (“the scheme lump sum”).
- (2) The active member is entitled to compensation of an amount equal to 100% of the aggregate of – 15
- (a) the accrued amount, and
- (b) any increases to which the active member would have been entitled under the admissible rules (by virtue of the fact that the lump sum was not paid at normal pension age) had the active member ceased to be an active member immediately before the assessment date. 20
- (3) The compensation is payable at the assessment date.
- (4) Subject to sub-paragraphs (5) and (6), the accrued amount is –

$$AR \times PE \times PS$$

- where – 25
- AR is the active member’s annual accrual rate in respect of the scheme lump sum under the admissible rules,
- PE is the active member’s annual pensionable earnings in respect of the scheme lump sum under the admissible rules, and
- PS is the active member’s pensionable service in respect of the scheme lump sum, under the admissible rules, in years (including any fraction of a year). 30
- (5) If the accrual rates or pensionable earnings differ in respect of different parts of the active member’s pensionable service relating to the scheme lump sum, an amount is calculated in accordance with the formula in sub-paragraph (4) in respect of each of those parts and the accrued amount is the aggregate of those amounts. 35
- For this purpose the references in that sub-paragraph to the active member’s pensionable service, accrual rate and pensionable earnings are to be read as references to the part of his pensionable service in question and to his accrual rate and pensionable earnings in respect of that part. 40
- (6) In any case where the Board is satisfied that it is not possible to identify one or more of the elements of the formula in sub-paragraph (4), the Board may, having regard to the admissible scheme rules, determine how the accrued amount is to be calculated. 45

- (7) This paragraph does not apply in relation to a lump sum to which a person is entitled by reason of commuting any part of a pension under the scheme.
- (8) This paragraph is subject to paragraph 30 (power of Secretary of State to change percentage rates by order).

*Active members who have not attained normal pension age at assessment date* 5

- 11 (1) Compensation is payable in accordance with this paragraph where a person who, under the admissible rules, is (immediately before the assessment date) an active member of the scheme has not, before that date, attained normal pension age in respect of his rights under the admissible rules of the scheme to a pension. 10
- (2) If the active member survives to attain normal pension age in respect of that pension (“the pension”), he is entitled to periodic compensation in respect of the pension commencing at that age and continuing for life.
- (3) The annual rate of the periodic compensation is 90% of the aggregate of – 15
- (a) the protected notional pension, and
- (b) any increases under paragraph 28 (annual increases in periodic compensation).
- (4) In sub-paragraph (3) “the protected notional pension” means the aggregate of – 20
- (a) the accrued amount, and
- (b) the revaluation amount for the revaluation period (see paragraph 12).
- (5) Subject to sub-paragraphs (6) and (7), the accrued amount is –

$$AR \times PE \times PS$$

where – 25

AR is the active member’s annual accrual rate in respect of the pension under the admissible rules,

PE is the active member’s annual pensionable earnings in respect of the pension under the admissible rules, and

PS is the active member’s pensionable service in respect of the pension under the admissible rules in years (including any fraction of a year). 30

- (6) If the accrual rates or pensionable earnings differ in respect of different parts of the active member’s pensionable service relating to the pension, an amount is calculated in accordance with the formula in sub-paragraph (5) in respect of each of those parts and the accrued amount is the aggregate of those amounts. 35

For this purpose the references in sub-paragraph (5) to the active member’s pensionable service, accrual rate and pensionable earnings are to be read as references to the part of his pensionable service in question and to his accrual rate and pensionable earnings in respect of that part. 40

- (7) In any case where the Board is satisfied that it is not possible to identify one or more of the elements of the formula in sub-paragraph (5), the Board may,

- having regard to the admissible scheme rules, determine how the accrued amount is to be calculated.
- (8) This paragraph is subject to—  
paragraph 23 (commutation)  
paragraph 25 (compensation cap on periodic compensation), and 5  
paragraph 30 (Secretary of State’s power to change percentage rates by order).
- 12 (1) This paragraph applies for the purposes of paragraph 11(4)(b).
- (2) The revaluation period is the period which—  
(a) begins with the assessment date, and 10  
(b) ends with the day before the day on which the active member attains normal pension age in respect of the pension.
- (3) The revaluation amount for the revaluation period is—  
(a) in a case where the revaluation period is less than one month, nil, and  
(b) in any other case, the revaluation percentage of the accrued amount. 15
- (4) In sub-paragraph (3) “the revaluation percentage” means the lesser of—  
(a) the percentage increase in the general level of prices in Great Britain during the revaluation period determined in the prescribed manner, and  
(b) the maximum revaluation rate. 20
- (5) For the purposes of sub-paragraph (4)(b) “the maximum revaluation rate” in relation to the revaluation period is—  
(a) if that period is a period of 12 months, 5%, and  
(b) in any other case, the percentage that would be the percentage mentioned in sub-paragraph (4)(a) had the general level of prices in Great Britain increased at the rate of 5% compound per annum during that period. 25
- This is subject to paragraph 29 (power of Board to determine maximum revaluation rate etc).
- (6) In this paragraph “the active member”, “the accrued amount” and “the pension” are to be construed in accordance with paragraph 11. 30
- 13 (1) This paragraph applies where the active member dies on or after the assessment date.
- (2) The widow or widower of the active member is entitled to periodic compensation commencing on the day following the active member’s death and continuing for life. 35
- (3) The annual rate of the periodic compensation at any time is—  
(a) where the active member died after attaining normal pension age, half of the annual rate of the periodic compensation (including any increases under paragraph 28) to which the member would at that time have been entitled under paragraph 11 in respect of the pension had the member not died, and 40  
(b) where the active member died before attaining normal pension age, half of the annual rate of the periodic compensation (including any increases under paragraph 28) to which the member would have been entitled at normal pension age under that paragraph if—  
(i) normal pension age had been the member’s actual age immediately before the date of the member’s death, and 45

- (ii) the member had not died.
- (4) In this paragraph “the pension” and “the active member” is to be construed in accordance with paragraph 11.
- 14 (1) Compensation is payable in accordance with this paragraph where immediately before the assessment date, under the admissible rules of the scheme, an active member of the scheme has not attained normal pension age in respect of his rights to a lump sum (“the scheme lump sum”). 5
- (2) If the active member survives to attain normal pension age in respect of the scheme lump sum, he is entitled to compensation in respect of the scheme lump sum when he attains that age. 10
- (3) The amount of the compensation is 90% of the aggregate of –
- (a) the accrued amount, and
- (b) the revaluation amount for the revaluation period.
- (4) Subject to sub-paragraphs (5) and (6), the accrued amount is –

$$AR \times PE \times PS \quad 15$$

where –

- AR is the active member’s annual accrual rate in respect of the scheme lump sum under the admissible rules,
- PE is the active member’s annual pensionable earnings in respect of the scheme lump sum under the admissible rules, and 20
- PS is the active member’s pensionable service in respect of the scheme lump sum, under the admissible rules, in years (including any fraction of a year).
- (5) If the accrual rates or pensionable earnings differ in respect of different parts of the active member’s pensionable service relating to the scheme lump sum, an amount is calculated in accordance with the formula in sub-paragraph (4) in respect of each of those parts and the accrued amount is the aggregate of those amounts. 25
- For this purpose the references in that sub-paragraph to the active member’s pensionable service, accrual rate and pensionable earnings are to be read as references to the part of his pensionable service in question and to his accrual rate and pensionable earnings in respect of that part. 30
- (6) In any case where the Board is satisfied that it is not possible to identify one or more of the elements of the formula in sub-paragraph (4), the Board may, having regard to the admissible scheme rules, determine how the accrued amount is to be calculated. 35
- (7) Paragraph 12 applies for the purpose of determining the revaluation amount except that in sub-paragraph (6) of that paragraph the reference to paragraph 11 is to be read as a reference to this paragraph. 40
- (8) This paragraph is subject to –
- (a) paragraph 27 (power to impose cap on lump sum compensation), and
- (b) paragraph 30 (power to change percentage rates by order).

*Deferred members who have not attained normal pension age at assessment date*

- 15 (1) Compensation is payable in accordance with this paragraph where, under the admissible rules of the scheme, a person who is a deferred member immediately before the assessment date has not attained normal pension age, in respect of his rights to a pension under the scheme, before that date. 5
- (2) If that person (“the deferred member”) survives to attain normal pension age in respect of that pension (“the pension”), he is entitled to periodic compensation in respect of the pension commencing at that age and continuing for life.
- (3) The annual rate of the periodic compensation is 90% of the aggregate of – 10
- (a) the protected pension rate, and
  - (b) any increases under paragraph 28 (annual increases in periodic compensation).
- (4) In sub-paragraph (3) “the protected pension rate” means the aggregate of – 15
- (a) the accrued amount,
  - (b) the revaluation amount for the first revaluation period (see paragraph 16), and
  - (c) the revaluation amount for the second revaluation period (see paragraph 17).
- (5) In sub-paragraph (4) “the accrued amount” means an amount equal to the initial annual rate of the pension to which the deferred member would have been entitled in accordance with the admissible rules had he attained normal pension age when the pensionable service relating to the pension ended. 20
- (6) This paragraph is subject to – 25
- paragraph 23 (commutation),
  - paragraph 25 (compensation cap on periodic compensation), and
  - paragraph 30 (Secretary of State’s power to change percentage rates by order).
- 16 (1) This paragraph applies for the purposes of paragraph 15(4)(b).
- (2) The first revaluation period is the period which – 30
- (a) begins with the day after the day on which the deferred member’s pensionable service under the scheme in respect of the pension ended, and
  - (b) ends with the day before the assessment date.
- (3) The revaluation amount for the first revaluation period is – 35
- (a) where that period is less than one month, nil, and
  - (b) in any other case, the amount determined in the prescribed manner.
- (4) In this paragraph “the deferred member” and “the pension” are to be construed in accordance with paragraph 15.
- 17 (1) This paragraph applies for the purposes of paragraph 15(4)(c). 40
- (2) The second revaluation period is the period which –
- (a) begins with the assessment date, and
  - (b) ends with the day before the day on which the deferred member attains normal pension age in respect of the pension.
- (3) The revaluation amount for the second revaluation period is – 45
- (a) where that period is less than one month, nil, and

- (b) in any other case the revaluation percentage of the aggregate of –
- (i) the accrued amount, and
  - (ii) the revaluation amount for the first revaluation period (see paragraph 16).
- (4) In sub-paragraph (3) “the revaluation percentage” means the lesser of – 5
- (a) the percentage increase in the general level of prices in Great Britain during the second revaluation period determined in the prescribed manner, and
  - (b) the maximum revaluation rate.
- (5) For the purposes of sub-paragraph (4)(b) “the maximum revaluation rate”, 10  
in relation to the second revaluation period, is –
- (a) if that period is a period of 12 months, 5%, and
  - (b) in any other case, the percentage that would be the percentage mentioned in sub-paragraph (4)(a) had the general level of prices in Great Britain increased at the rate of 5% compound per annum 15  
during that period.
- This is subject to paragraph 29 (power of Board to determine maximum revaluation rate).
- (6) In this paragraph “the deferred member”, “the accrued amount” and “the pension” are to be construed in accordance with paragraph 15. 20
- 18 (1) This paragraph applies where –
- (a) the deferred member dies on or after the assessment date, and
  - (b) the pension was attributable to the deferred member’s pensionable service under the scheme or another scheme.
- (2) The widow or widower of the deferred member is entitled to periodic compensation commencing on the day following the deferred member’s death and continuing for life. 25
- (3) The annual rate of the periodic compensation at any time is –
- (a) where the deferred member died after attaining normal pension age, half of the annual rate of the periodic compensation (including any increases under paragraph 28) to which the deferred member would at that time have been entitled under paragraph 15 in respect of the pension had the member not died, 30
  - (b) where the deferred member died before attaining normal pension age, half of the annual rate of the periodic compensation (including any increases under paragraph 28) to which the deferred member would have been entitled at that time under paragraph 15 if – 35
    - (i) normal pension age had been the deferred member’s actual age immediately before the date of the deferred member’s death, and 40
    - (ii) the deferred member had not died.
- (4) In this paragraph “the deferred member” and “the pension” are to be construed in accordance with paragraph 15.
- 19 (1) Compensation is payable in accordance with this paragraph where, under the admissible rules of the scheme, a deferred member has not attained normal pension age in respect of his rights to a lump sum under the scheme (“the scheme lump sum”) before the assessment date. 45

- (2) If the deferred member survives to attain normal pension age in respect of the scheme lump sum, he is entitled to compensation under this paragraph on attaining that age.
- (3) The compensation is a lump sum equal to 90% of the aggregate of—
  - (a) the accrued amount, 5
  - (b) the revaluation amount for the first revaluation period, and
  - (c) the revaluation amount for the second revaluation period.
- (4) In sub-paragraph (3) “the accrued amount” means an amount equal to the amount of the scheme lump sum to which the deferred member would have been entitled in accordance with the admissible rules had normal pension age been the actual age attained by the deferred member when the pensionable service relating to the lump sum ended. 10
- (5) Paragraphs 16 and 17 apply in relation to this paragraph as if in those paragraphs—
  - (a) references to the pension were to the scheme lump sum, and 15
  - (b) “the deferred member” and “the accrued amount” had the same meaning as in this paragraph.
- (6) This paragraph does not apply in relation to a lump sum to which a person is entitled by reason of commuting any part of a pension under the scheme.
- (7) This paragraph is subject to— 20
  - (a) paragraph 27 (power to impose cap on lump sum compensation), and
  - (b) paragraph 30 (power to change percentage rates).

*Pension credit members who have not attained normal benefit age at assessment date*

- 20 (1) Paragraphs 15, 18 and 19 apply in relation to a pension credit member of the scheme who has not attained normal benefit age at the assessment date as they apply to a deferred member who has not attained normal pension age at that date, subject to the modifications in sub-paragraph (2). 25
- (2) The modifications are as follows—
  - (a) in paragraph 15(4) for the words from “the aggregate of” to the end substitute “the accrued amount”, 30
  - (b) for paragraph 15(5) substitute—
    - “(5) In sub-paragraph (4) “the accrued amount” means an amount equal to the initial annual rate of the pension which, under the admissible rules of the scheme, the deferred member is entitled to receive at normal benefit age by virtue of his pension credit rights.”, 35
  - (c) for paragraph 18(1)(b) substitute—
    - “(b) the pension was attributable (directly or indirectly) to a pension credit to which the deferred pensioner became entitled under section 29(1)(b) of the Welfare Reform and Pensions Act 1999 (c. 30).”, 40
  - (d) in paragraph 19(1), (2) and (4) the references to normal pension age are to be read as references to normal benefit age, and
  - (e) paragraph 19(5) does not apply. 45

*Survivors who do not meet conditions for scheme benefits at assessment date*

- 21 (1) Compensation is payable in accordance with this paragraph where –
- (a) a member of the scheme has died before the assessment date, and
  - (b) as a result of that death, a pension, which is attributable to the member’s pensionable service, is payable to that person’s widow or widower or any other person (“the survivor”) if conditions specified in the scheme rules are met, and 5
  - (c) the survivor first satisfies those conditions on or after that date.
- (2) The survivor is entitled to periodic compensation in respect of that pension (“the pension”) – 10
- (a) commencing if, and when, the pension would have become payable under the admissible rules, and
  - (b) continuing until such time as entitlement to the pension would have ceased under the admissible rules.
- (3) The annual rate of the periodic compensation is 100% of the aggregate of – 15
- (a) the initial rate of the pension which would have been payable in accordance with the admissible rules had the conditions mentioned in sub-paragraph (1)(c) been satisfied, immediately before the assessment date, and
  - (b) any increases under paragraph 28 (annual increases in periodic compensation). 20
- (4) This paragraph is subject to paragraph 30 (power of Secretary of State to change percentage rates by order).

*Compensation in form of dependants’ benefits*

- 22 (1) Regulations may provide for compensation to be payable, in such circumstances as may be prescribed, to or in respect of prescribed dependants of prescribed descriptions of – 25
- (a) members of the scheme, or
  - (b) persons with rights to benefits payable under the scheme in respect of members of the scheme. 30
- (2) Regulations may in particular –
- (a) provide for compensation in the form of periodic or lump sum payments,
  - (b) for periodic compensation to be payable for a prescribed period,
  - (c) apply paragraphs 28 and 29(2) (annual increases in respect of periodic compensation) in respect of compensation in the form of periodic payments (with or without modifications). 35

*Commutation of periodic compensation*

- 23 (1) In prescribed circumstances, a person entitled to periodic compensation under paragraph 5, 8, 11 or 15 may opt to commute for a lump sum a portion of the periodic compensation with effect from the time it becomes payable. 40
- (2) Except in such circumstances as may be prescribed, the portion commuted under sub-paragraph (1) must not exceed 25%.
- (3) Where a person opts to commute any part of his periodic compensation under this paragraph, the lump sum payable under sub-paragraph (1) is the 45

actuarial equivalent of the commuted portion of the periodic compensation calculated from tables designated for this purpose by the Board.

(4) The Board must publish in such manner as it considers appropriate the tables designated by it for the purposes of sub-paragraph (3).

(5) Regulations may prescribe the manner in which an option to commute periodic compensation under this paragraph may be exercised. 5

(6) This paragraph does not apply where –

(a) before the assessment date, the person concerned has received benefits under the scheme which were in the form of a lump sum (otherwise than as a result of the commutation of any part of a pension) and were attributable to his own service under the scheme, or 10

(b) immediately before the assessment date, the person concerned has rights to a lump sum under the admissible rules (otherwise than by commutation of any part of a pension) and those rights are attributable to such service. 15

(7) The Secretary of State may, by order, amend sub-paragraph (2) to substitute a different percentage for the percentage for the time being specified in that sub-paragraph.

*Early payment of compensation* 20

24 (1) Regulations may prescribe circumstances in which, and conditions subject to which, a person may become entitled to –

(a) periodic compensation under paragraph 11 or 15, or

(b) lump sum compensation under paragraph 14 or 19,

before he attains normal pension age (or, in a case to which paragraph 20 applies, normal benefit age). 25

(2) The Board must determine the amount of the actuarial reduction to be applied to compensation where a person becomes so entitled by virtue of regulations under this paragraph.

(3) Where, by virtue of this paragraph, periodic compensation is payable to a person under paragraph 11 or 15 before that person attains normal pension age – 30

(a) paragraph 12(2) applies as if the reference to the date on which the active member attains normal pension age were a reference to the date on which the compensation is payable by virtue of this paragraph, and 35

(b) paragraph 17(2)(b) applies as if the reference to the date on which the deferred member attains normal pension age were a reference to the date on which the compensation is payable by virtue of this paragraph. 40

*Compensation cap on periodic compensation*

25 (1) Sub-paragraph (2) applies where –

(a) a person is entitled to relevant periodic compensation in respect of a pension,

(b) the initial rate of the periodic compensation exceeds the maximum permitted rate, and 45

- (c) sub-paragraph (4) does not apply in relation to the periodic compensation.
- (2) Where this sub-paragraph applies, the initial rate of the periodic compensation is the maximum rate.
- (3) Sub-paragraph (4) applies where – 5
- (a) a person is entitled to relevant periodic compensation under this Schedule in respect of two or more pensions under the same scheme or two or more connected schemes, and
- (b) the aggregate initial rate (“the uncapped rate”) of the periodic compensation exceeds the maximum permitted rate. 10
- (4) Where this sub-paragraph applies –
- (a) the aggregate initial rate of that periodic compensation is the maximum permitted rate, and
- (b) the initial rate of the periodic compensation in respect of each pension is such proportion of the maximum permitted rate as the rate of that compensation would (in the absence of this paragraph) bear to the uncapped rate. 15
- (5) Where in a case to which sub-paragraph (4) applies the relevant periodic compensation first becomes payable on two or more different days, this paragraph applies with such modifications as may be prescribed. 20
- (6) For the purposes of sub-paragraph (4) a scheme is connected with another scheme if the same person is or was an employer in relation to both schemes.
- (7) In this paragraph –
- “maximum permitted rate” means –
- (a) the rate specified by the Secretary of State by order, or 25
- (b) where the person has not attained the age of 65 at the time he first becomes entitled to the periodic compensation, that rate as adjusted by the Board in accordance with actuarial adjustment factors published by it;
- “relevant periodic compensation” means periodic compensation 30
- under paragraph 3 (in a case to which sub-paragraph (7) of that paragraph applies), 11 or 15, but does not include any portion of periodic compensation commuted for a lump sum under paragraph 23.

*Increasing the compensation cap in line with earnings* 35

- 26 (1) This paragraph applies where, on a review under subsection (2) of section 148 of the Social Security Administration Act 1992 (c. 5) (review of general level of earnings obtaining in Great Britain) in a tax year, the Secretary of State concludes that the general level of earnings obtaining in Great Britain (“the new level”) exceeds the general level at the end of the period mentioned in paragraph (a) or, as the case may be, the date determined under paragraph (b) of that subsection (“the old level”). 40
- (2) The Secretary of State must make an order under sub-paragraph (7) of paragraph 25 which has the effect of increasing the rate specified for the purposes of that sub-paragraph by the percentage by which the new level is greater than the old level. 45
- (3) The order must provide for the increase to have effect on and after the 1st April next following the end of the tax year to which the review relates.

*Power to impose cap on lump sum compensation*

- 27 (1) Regulations may make provision limiting, in such circumstances as may be prescribed, the amount of lump sum compensation payable under this Schedule to a person in respect of benefits under a scheme or two or more connected schemes. 5
- (2) Regulations under sub-paragraph (1) may provide that where the person has not attained the age of 65 at the time he becomes entitled to the lump sum compensation, any limit imposed by the regulations is to be adjusted by the Board in accordance with actuarial adjustment factors published by it.
- (3) For this purpose “lump sum compensation” means – 10
- (a) compensation payable under paragraph 14 or 19, or
  - (b) compensation in the form of a lump sum under paragraph 23 (commutation) in respect of any portion of periodic compensation payable under paragraph 11 or 15.
- (4) For the purposes of sub-paragraph (1) a scheme is connected with another scheme if the same person is or was the employer in relation to both schemes. 15
- (5) Where regulations are made under this paragraph, they must make provision to secure that where paragraph 26 applies, any limit on the amount of lump sum compensation imposed by the regulations is increased, on and after the 1st April next following the end of the tax year to which the review mentioned in sub-paragraph (1) of that paragraph refers, by the percentage mentioned in sub-paragraph (2) of that paragraph. 20

*Annual increase in periodic compensation*

- 28 (1) This paragraph provides for the increases mentioned in sub-paragraph (3)(b) of paragraphs 3, 5, 8, 11, 15 and 21. 25
- (2) Where a person is entitled to periodic compensation under any of those paragraphs, he is entitled, on the indexation date, to an increase under this paragraph of –
- (a) the appropriate percentage of the amount of the underlying rate immediately before that date, or 30
  - (b) where the person first became entitled to the periodic compensation during the period of 12 months ending immediately before that date, 1/12th of that amount for each full month for which he was so entitled. 35
- Paragraph (b) is subject to sub-paragraph (4).
- (3) In sub-paragraph (2) –
- “appropriate percentage” means the lesser of –
    - (a) the percentage increase in the retail prices index for the period of 12 months ending with the 31st May last falling before the indexation date, and 40
    - (b) 2.5%;  - “indexation date” means –
    - (a) the 1st January next falling after a person first becomes entitled to the periodic compensation, and 45
    - (b) each subsequent 1st January during his lifetime;

- “underlying rate” means, in the case of periodic compensation under any of the paragraphs mentioned in sub-paragraph (1), the aggregate of –
- (a) so much of the amount mentioned in sub-paragraph (3)(a) of the paragraph in question as is attributable –
    - (i) to pensionable service under the scheme on or after 6th April 1997, or
    - (ii) to rights which are derived (directly or indirectly) from rights attributable to pensionable service on or after that date, and
  - (b) the amount within sub-paragraph (3)(b) of that paragraph immediately before the indexation date.
- (4) This paragraph is subject to paragraph 29 (Board’s power to alter rates of revaluation and indexation).
- Board’s powers to alter rates of revaluation and indexation*
- 29 (1) The Board may determine the percentage that is to be the maximum revaluation rate for the purposes of paragraphs 12(4) and 17(4), and where it does so paragraphs 12(5) and 17(5) do not apply.
- (2) The Board may also determine the percentage that is to be the appropriate percentage for the purposes of paragraph 28 (and where it does so the definition of “appropriate percentage” in paragraph 28(3) does not apply).
- (3) Before making a determination under this paragraph the Board must –
- (a) consult such persons as it considers appropriate, and
  - (b) publish details of the proposed determination in such manner as it considers appropriate and consider any representations made in respect of it.
- (4) The rate determined under this paragraph may be nil.
- (5) A determination under this paragraph may be expressed so as to have effect for a limited period.
- (6) A determination under sub-paragraph (2) may be expressed to have effect in relation to entitlement to compensation relating to all schemes (whether the Board assumed responsibility for the schemes before or after the time the determination is made).
- (7) Notice of any determination under this paragraph must be published in such manner as the Board considers appropriate.
- Secretary of State’s powers to vary percentage paid as compensation*
- 30 (1) The Secretary of State may, on the recommendation of the Board, by order amend any of the provisions of this Schedule mentioned in sub-paragraph (2) to substitute a different percentage for the percentage for the time being specified in the provision.
- (2) The provisions are paragraphs 3(4), 5(3), 7(2), 8(3), 10(2), 11(3), 14(3), 15(3), 19(3), 21(3) (percentage used to calculate periodic or lump sum compensation entitlement).
- (3) The Board may make a recommendation for the purpose of sub-paragraph (1) only in respect of a period for which it has, under paragraph 29 –

- (a) reduced the maximum revaluation rate for the purposes of paragraphs 12(4) and 17(4) to nil, and
  - (b) reduced the appropriate percentage for the purposes of paragraph 28 to nil in relation to all schemes.
- (4) Before making a recommendation for the purposes of sub-paragraph (1) the Board must – 5
- (a) consult such persons as it considers appropriate, and
  - (b) publish details of the proposed recommendation in such manner as it considers appropriate and consider any representations made in respect of it. 10
- (5) Subject to sub-paragraph (3), an order under this Schedule may have effect –
- (a) for a limited period specified in the order;
  - (b) in relation – 15
    - (i) to all payments of compensation which fall to be made after such date as may be specified in the order (whether the entitlement to the periodic compensation first arose before or after that date), or
    - (ii) only to payments of compensation to which a person first becomes entitled after such a date. 20

*Normal pension age*

- 31 (1) In this Schedule “normal pension age”, in relation to the scheme and any pension or lump sum under it, means the age specified in the admissible rules as the earliest age at which the pension or lump sum becomes payable without actuarial adjustment (disregarding any admissible rule making special provision as to early payment on the grounds of ill health). 25
- (2) Where different ages are specified in relation to different parts of a pension or lump sum –
- (a) this Schedule has effect as if those parts were separate pensions or, as the case may be, lump sums, and 30
  - (b) references in relation to a part of the pension or lump sum to the normal pension age are to be read as references to the age specified in the admissible rules as the earliest age at which that part becomes payable under the scheme without actuarial adjustment (disregarding any special provision as to early payment on grounds of ill health or otherwise). 35
- (3) In any case where the Board is satisfied that it is not possible to identify the normal pension age from the admissible rules of the scheme, it may, having regard to those rules, determine how the normal pension age is to be determined. 40

*Scheme rules, admissible rules etc*

- 32 (1) In this Schedule, in relation to the scheme, the following expressions have the meaning given by this paragraph –
- “scheme rules”,
  - “admissible rules”, 45
  - “recent rule changes”, and
  - “recent discretionary increase”.

- (2) The “scheme rules” means –
- (a) the rules of the scheme, except so far as section 129 of the Pension Schemes Act 1993, section 117 of the Pensions Act 1995 or section 230 of this Act overrides them,
  - (b) any provision of any of those Acts which overrides or modifies any of the rules of the scheme by virtue of one of the provisions mentioned in paragraph (a), and 5
  - (c) any provision which the rules of the scheme do not contain but which the scheme must contain if it is to conform with the requirements of Chapter 1 of Part 4 of the Pension Schemes Act 1993 (preservation of benefit under occupational pension schemes). 10
- (3) “The admissible rules” means the scheme rules disregarding all recent rule changes, if the combined effect of those changes and any recent discretionary increases is that the protected liabilities of the scheme immediately before the assessment date are greater than they would have been in the absence of those changes and increases. 15
- (4) Subject to sub-paragraph (5), “recent rule changes” means –
- (a) changes to the scheme rules which took effect in the period of three years ending with the assessment date, or were made in that period and took effect by reference to an earlier time, and 20
  - (b) any scheme rules which come into operation on, or operate by reference to –
    - (i) the winding up of the scheme or any associated event,
    - (ii) an insolvency event in relation to the employer or any associated event, or 25
    - (iii) any prescribed event relating to the future of the employer as a going concern.
- (5) “Recent rule changes” does not include –
- (a) changes attributable to section 129 of the Pension Schemes Act 1993, section 117 of the Pensions Act 1995 or section 230 of this Act (overriding requirements), 30
  - (b) changes required, or reasonably necessary, to comply with any enactment, and
  - (c) changes of a prescribed description.
- (6) “Recent discretionary increase” means an increase in the rate of any pension in payment or postponed pension under the scheme which took effect in the period mentioned in sub-paragraph (4)(a). 35
- (7) For the purposes of sub-paragraph (6) an increase (“the relevant increase”) in the rate of a pension in payment or postponed pension is to be disregarded to the extent that it does not exceed – 40
- (a) the amount by which the pension in question is required to be increased by virtue of –
    - (i) the admissible rules,
    - (ii) sections 13(1) and 109 of the Pension Schemes Act 1993 (c. 48)(requirement to index and pay guaranteed minimum pensions), 45
    - (iii) section 87(3) of that Act (protection of increases in guaranteed minimum pensions: “anti-franking”), or
    - (iv) section 51 of the Pensions Act 1995 (c. 26)(annual increase in rate of pension), or 50

- (b) if greater, the appropriate percentage of the rate of that pension.
- (8) For the purposes of sub-paragraph (7)(a), no increase in the rate of a pension which is made at the discretion of the trustees or managers of the scheme, the employer or any other person is to be regarded as an increase required by virtue of the admissible rules. 5
- (9) For the purposes of sub-paragraph (7)(b), “the appropriate percentage” is the percentage increase in the general level of prices in Great Britain during the period –
  - (a) beginning when the rate of the pension was last increased or, if there has been no previous increase, the date the pension first became payable (or would have been payable but for its being postponed), and 10
  - (b) ending with the time the relevant increase was made.

*Accrual rate, pensionable service and pensionable earnings*

- 33 (1) In this Schedule, in relation to a member’s entitlement to benefits under the scheme, each of the following expressions has the meaning given by this paragraph –
  - “accrual rate”,
  - “pensionable earnings”, and
  - “pensionable service”. 20
- (2) “Accrual rate” means the rate at which under the admissible rules rights to the benefits accrue over time by reference to periods of pensionable service.
- (3) “Pensionable earnings” means the earnings by reference to which the benefits are calculated under the admissible rules.
- (4) Subject to sub-paragraphs (5) and (6), “pensionable service” means – 25
  - (a) service in any description of category of employment to which the scheme applies which qualifies the member (on the assumption that it continues for the appropriate period) for benefits under the scheme,
  - (b) any service attributable to transfer credits, and 30
  - (c) service which under the admissible rules of the scheme is attributable to voluntary contributions paid by the member.
- (5) The service within sub-paragraph (4)(a) does not include service notionally attributable for any purpose of the scheme.
- (6) In determining “pensionable service” no account is to be taken of admissible rules by which a period of service can be treated for any purpose as being longer or shorter than it actually is. 35

*Other definitions*

- 34 (1) In this Schedule –
  - “deferred member”, in relation to the scheme, means a person who, under the admissible rules, has accrued rights under the scheme other than – 40
    - (a) an active member, or
    - (b) a person who in respect of his pensionable service under the scheme or by reason of transfer credits is entitled to the present payment of pension or other benefits; 45

- “normal benefit age”, in relation to the scheme and a person with rights to a pension or lump sum under it attributable (directly or indirectly) to a pension credit, means the age specified in the admissible rules as the earliest age at which that pension or lump sum becomes payable without actuarial adjustment (disregarding any scheme rule making special provision as to early payment on grounds of ill health or otherwise); 5
- “pension credit” means a credit under section 29(1)(b) of the Welfare Reform and Pensions Act 1999 (c. 30);
- “pension credit member”, in relation to the scheme, means a person who has rights under the scheme which are attributable (directly or indirectly) to a pension credit; 10
- “pension credit rights”, in relation to the scheme, means rights to future benefits under the scheme which are attributable (directly or indirectly) to a pension credit; 15
- “retail prices index” means –
- (a) the general index of retail prices (for all items) published by the Office for National Statistics, or
  - (b) where that index is not published for a month, any substituted index or figures published by that Office; 20
- “the scheme” is to be construed in accordance with paragraph 1;
- “transfer credits” means rights allowed to a member under the admissible rules of the scheme by reference to a transfer to that scheme of his accrued rights from another scheme (including any transfer credits allowed by that scheme). 25
- (2) For the purposes of this Schedule the accrued rights of a member of the scheme at any time are the rights (other than rights attributable (directly or indirectly) to a pension credit) which, in accordance with the admissible rules, have accrued to or in respect of him at that time to future benefits under the scheme. 30
  - (3) In this Schedule references to a pension or lump sum under the admissible rules of the scheme, or a right to such a pension or lump sum, do not include a pension or lump sum, or right to a pension or lump sum, which is a money purchase benefit.
  - (4) In this Schedule references to “ill health” are to be construed in accordance with regulations under this sub-paragraph. 35

## SCHEDULE 8

Section 162

## RESTRICTED INFORMATION HELD BY THE BOARD: CERTAIN PERMITTED DISCLOSURES TO FACILITATE EXERCISE OF FUNCTIONS

<i>Persons</i>	<i>Functions</i>	
The Secretary of State.	Functions under –	5
	(a) Part 14 of the Companies Act 1985 (c. 6),	
	(b) the Insolvency Act 1986 (c. 45),	10
	(c) Part 3 of the Companies Act 1989 (c. 40),	
	(d) Part 1 of the Export and Investment Guarantees Act 1991 (c. 67) (apart from sections 5 and 6),	15
	(e) Part 3 of the Pension Schemes Act 1993 (c. 48),	
	(f) Part 5 of the Police Act 1997 (c. 50),	20
	(g) the Financial Services and Markets Act 2000 (c. 8), or	
(h) this Act, and functions of co-operating with overseas government authorities and bodies in relation to criminal matters.	25	
The Bank of England.	Any of its functions.	
The Financial Services Authority.	Functions under –	
	(a) the legislation relating to friendly societies,	30
	(b) the Building Societies Act 1986 (c. 53), or (c) the Financial Services and Markets Act 2000.	
The Charity Commissioners.	Functions under the Charities Act 1993 (c. 10).	35
The Pensions Regulator Tribunal.	Any of its functions.	
The Pensions Ombudsman.	Functions under –	
	(a) the Pension Schemes Act 1993, or (b) the Pension Schemes (Northern Ireland) Act 1993 (c. 49).	40

<i>Persons</i>	<i>Functions</i>	
The Ombudsman for the Board of the Pension Protection Fund.	Any of his functions.	
The Comptroller and Auditor General.	Any of his functions.	5
The Auditor General for Wales.	Any of his functions.	
The Auditor General for Scotland.	Any of his functions.	
The Comptroller and Auditor General for Northern Ireland.	Any of his functions.	
The Commissioners of Inland Revenue or their officers.	Functions under—	10
	(a) the Income and Corporation Taxes Act 1988 (c. 1),	
	(b) the Taxation of Chargeable Gains Act 1992 (c. 12),	15
	(c) Part 3 of the Pension Schemes Act 1993 (c. 48),	
	(d) Part 3 of the Pension Schemes (Northern Ireland) Act 1993 (c. 49), or	20
	(e) the Income Tax (Earnings and Pensions) Act 2003 (c. 1).	
The Commissioners of Customs and Excise.	Functions under any enactment.	25
The Official Receiver or, in Northern Ireland, the Official Receiver for Northern Ireland.	Functions under the enactments relating to insolvency.	
An inspector appointed by the Secretary of State.	Functions under Part 14 of the Companies Act 1985 (c. 6).	30
A person authorised to exercise powers under—	Functions under those sections or that Article.	
(a) section 447 of the Companies Act 1985,		
(b) Article 440 of the Companies (Northern Ireland) Order 1986 (S.I. 1986/1032 (N.I. 6)), or		35
(c) section 84 of the Companies Act 1989 (c. 40).		40

<i>Persons</i>	<i>Functions</i>	
A person appointed under – (a) section 167 of the Financial Services and Markets Act 2000 (c. 8), (b) subsection (3) or (5) of section 168 of that Act, or (c) section 284 of that Act, to conduct an investigation.	Functions in relation to that investigation.	5
A body designated under section 326(1) of that Act.	Functions in its capacity as a body designated under that section.	10
A recognised investment exchange or a recognised clearing house (as defined by section 285 of that Act).	Functions in its capacity as an exchange or clearing house recognised under that Act.	
A body corporate established in accordance with section 212(1) of that Act.	Functions under the Financial Services Compensation Scheme, established in accordance with section 213 of that Act.	15
The Panel on Takeovers and Mergers.	Functions under the City Code on Takeovers and Mergers and the Rules Governing Substantial Acquisitions of Shares for the time being issued by the Panel.	20
The General Insurance Standards Council.	Functions of regulating sales and advisory and service standards in relation to insurance.	25
A recognised professional body (within the meaning of section 391 of the Insolvency Act 1986 (c. 45)).	Functions in its capacity as such a body under that Act.	
A person on whom functions are conferred by or under Part 2, 3 or 4 of the Proceeds of Crime Act 2002 (c. 29).	The functions so conferred.	30
The Counter Fraud and Security Management Service established under the Counter Fraud and Security Management Service (Establishment and Constitution) Order 2002 (S.I. 2002/3039).	Any of its functions.	35

<i>Persons</i>	<i>Functions</i>	
The Department of Enterprise, Trade and Investment in Northern Ireland.	Functions under –	
	(a) Part 15 of the Companies (Northern Ireland) Order 1986 (S.I. 1986/1032 (N.I. 6)),	5
	(b) the Insolvency (Northern Ireland) Order 1989 (S.I. 1989/2405 (N.I. 19)), or	
	(c) Part 2 of the Companies (No. 2) (Northern Ireland) Order 1990 (S.I. 1990/1504 (N.I. 10)).	10
The Department for Social Development in Northern Ireland.	Functions under Part 3 of the Pension Schemes (Northern Ireland) Act 1993 (c. 49).	15
An Inspector appointed by the Department of Enterprise, Trade and Investment in Northern Ireland.	Functions under Part 15 of the Companies (Northern Ireland) Order 1986.	20
A recognised professional body within the meaning of Article 350 of the Insolvency (Northern Ireland) Order 1989.	Functions in its capacity as such a body under that Order.	
The Gaming Board for Great Britain.	Functions under –	25
	(a) the Gaming Act 1968 (c. 65), or	
	(b) the Lotteries and Amusements Act 1976 (c. 32).	30

## SCHEDULE 9

Section 193

## USE AND SUPPLY OF INFORMATION: PRIVATE PENSIONS POLICY AND RETIREMENT PLANNING

*Use of information held by Secretary of State etc*

- |   |   |    |
|---|---|----|
| 1 | (1) Section 3 of the Social Security Act 1998 (c. 14) (use of information) is amended as follows.   | 35 |
|   | (2) In subsection (1), for the words from “social security” to “training” substitute “any of the matters specified in subsection (1A) below”. |    |
|   | (3) After subsection (1) insert –   |    |
|   | “(1A) The matters are –   | 40 |
|   | (a) social security, child support or war pensions;   |    |
|   | (b) employment or training;   |    |

- (c) private pensions policy;
- (d) retirement planning.”
- (4) In subsection (2)(a), for the words from “social security” to “training” substitute “any of the matters specified in subsection (1A) above”.
- (5) After subsection (4) insert – 5
  - “(5) In this section –
    - “private pensions policy” means policy relating to occupational pension schemes or personal pension schemes (within the meaning given by section 1 of the Pension Schemes Act 1993);
    - “retirement planning” means promoting financial planning for retirement.” 10

*Supply of information held by tax authorities*

- 2 (1) This paragraph applies to information which is held –
  - (a) by the Commissioners of Inland Revenue;
  - (b) by a person providing services to the Commissioners of Inland Revenue, in connection with the provision of those services; 15
  - (c) by the Commissioners of Customs and Excise;
  - (d) by a person providing services to the Commissioners of Customs and Excise, in connection with the provision of those services.
- (2) Information to which this paragraph applies may be supplied – 20
  - (a) to the Secretary of State or the Northern Ireland Department, or
  - (b) to a person providing services to the Secretary of State or the Northern Ireland Department,for use for the purposes of functions relating to private pensions policy or retirement planning. 25
- (3) An authorised officer may require information to which this paragraph applies to be supplied –
  - (a) to the Secretary of State or the Northern Ireland Department, or
  - (b) to a person providing services to the Secretary of State or the Northern Ireland Department, 30for use for the purposes of functions relating to private pensions policy or retirement planning.
- (4) In sub-paragraph (3) “authorised officer” means an officer of the Secretary of State or the Northern Ireland Department authorised for the purposes of this paragraph by the Secretary of State or the Northern Ireland Department. 35
- (5) In this paragraph –
  - “private pensions policy” means policy relating to occupational pension schemes or personal pension schemes;
  - “retirement planning” means promoting financial planning for retirement; 40
  - “the Northern Ireland Department” means the Department for Social Development in Northern Ireland.

*Supply of housing benefit and council tax benefit information*

- 3 (1) Section 122D of the Social Security Administration Act 1992 (c. 5) (supply of information by authorities administering housing benefit or council tax benefit) is amended as follows.
- (2) In subsection (1) for “or employment or training” substitute “employment or training, private pensions policy or retirement planning”. 5
- (3) After subsection (2) insert –
- “(2A) Information supplied under subsection (2) may be used for any purpose relating to private pensions policy or retirement planning.”
- (4) After subsection (5) insert – 10
- “(6) In this section –
- “private pensions policy” means policy relating to occupational pension schemes or personal pension schemes (within the meaning given by section 1 of the Pension Schemes Act 1993);
- “retirement planning” means promoting financial planning for retirement.” 15

## SCHEDULE 10

Section 221

## DEFERRAL OF RETIREMENT PENSIONS AND SHARED ADDITIONAL PENSIONS

## PART 1

- PRINCIPAL AMENDMENTS OF SOCIAL SECURITY CONTRIBUTIONS AND BENEFITS ACT 1992 20
- 1 In this Part of this Schedule “the principal Act” means the Social Security Contributions and Benefits Act 1992.
- 2 Schedule 5 to the principal Act (increase of pension where entitlement is deferred) is amended as follows.
- 3 For the heading, substitute “PENSION INCREASE OR LUMP SUM WHERE ENTITLEMENT TO RETIREMENT PENSION IS DEFERRED”. 25
- 4 Before paragraph 1 insert –
- “Choice between increase of pension and lump sum where pensioner’s entitlement is deferred*
- A1 (1) Where a person’s entitlement to a Category A or Category B retirement pension is deferred and the period of deferment is at least 12 months, the person shall, on claiming his pension or within a prescribed period after claiming it, elect in the prescribed manner either – 30
- (a) that paragraph 1 (entitlement to increase of pension) is to apply in relation to the period of deferment, or 35
- (b) that paragraph 3A (entitlement to lump sum) is to apply in relation to the period of deferment.

- (2) If no election under sub-paragraph (1) is made within the period prescribed under that sub-paragraph, the person is to be treated as having made an election under sub-paragraph (1)(b).
- (3) Regulations may enable a person who has made an election under sub-paragraph (1) (including one that the person is treated by sub-paragraph (2) as having made) to change the election in prescribed circumstances and within a prescribed time. 5
- (4) Where the Category A or Category B retirement pension includes any increase under paragraphs 5 to 6, no election under sub-paragraph (1) applies to so much of the pension as consists of that increase (an entitlement to an increase of pension in respect of such an increase after a period of deferment being conferred either by paragraphs 1 and 2 or by paragraph 2A).” 10
- 5 For paragraph 1 (increase of pension where pensioner’s entitlement is deferred) substitute – 15
- “1 (1) This paragraph applies where a person’s entitlement to a Category A or Category B retirement pension is deferred and one of the following conditions is met –
- (a) the period of deferment is less than 12 months, or
- (b) the person has made an election under paragraph A1(1)(a) in relation to the period of deferment. 20
- (2) The rate of the person’s Category A or Category B retirement pension shall be increased by an amount equal to the aggregate of the increments to which he is entitled under paragraph 2, but only if that amount is enough to increase the rate of the pension by at least 1 per cent.” 25
- 6 (1) In paragraph 2 (calculation of increment), in sub-paragraph (5)(b), for “83 or” substitute “83A or”.
- (2) In relation to any incremental period (within the meaning of Schedule 5 to the principal Act) beginning before 6th April 2010, the reference in paragraph 2(5)(b) of that Schedule to section 83A of that Act is to be read as a reference to section 83 or 84 of that Act. 30
- 7 After paragraph 2 insert –
- “2A (1) This paragraph applies where –
- (a) a person’s entitlement to a Category A or Category B retirement pension is deferred, 35
- (b) the pension includes an increase under paragraphs 5 to 6, and
- (c) the person has made (or is treated as having made) an election under paragraph A1(1)(b) in relation to the period of deferment. 40
- (2) The rate of the person’s Category A or Category B retirement pension shall be increased by an amount equal to the aggregate of the increments to which he is entitled under sub-paragraph (3).
- (3) For each complete incremental period in the person’s period of deferment, the amount of the increment shall be 1/5th per cent. of the weekly rate of the increase to which the person would have been entitled under paragraphs 5 to 6 for the period if his 45

entitlement to the Category A or Category B retirement pension had not been deferred.”

8 (1) After paragraph 3 insert –

*“Lump sum where pensioner’s entitlement is deferred*

- 3A (1) This paragraph applies where – 5
- (a) a person’s entitlement to a Category A or Category B retirement pension is deferred, and
  - (b) the person has made (or is treated as having made) an election under paragraph A1(1)(b) in relation to the period of deferment. 10
- (2) The person is entitled to an amount calculated in accordance with paragraph 3B (a “lump sum”).

*Calculation of lump sum*

- 3B (1) The lump sum is the accrued amount for the last accrual period beginning during the period of deferment. 15
- (2) In this paragraph –
- ‘accrued amount’ means the amount calculated in accordance with sub-paragraph (3);
  - ‘accrual period’ means any period of seven days beginning with a prescribed day of the week, where that day falls within the period of deferment. 20
- (3) The accrued amount for an accrual period for a person is –
- $$(A + P) \times 52 \sqrt[52]{\left(1 + \frac{R}{100}\right)}$$
- where – 25
- A is the accrued amount for the previous accrual period (or, in the case of the first accrual period beginning during the period of deferment, zero);
  - P is the amount of the Category A or Category B retirement pension to which the person would have been entitled for the accrual period if his entitlement had not been deferred; 30
  - R is the percentage rate prescribed for the purposes of this sub-paragraph.
- (4) For the purposes of the calculation of the lump sum, the amount of Category A or Category B retirement pension to which the person would have been entitled for an accrual period – 35
- (a) includes any increase under section 47(1) and any increase under paragraph 4 of this Schedule, but
  - (b) does not include – 40
    - (i) any increase under section 83A or 85 or paragraphs 5 to 6 of this Schedule,
    - (ii) any graduated retirement benefit, or
    - (iii) in prescribed circumstances, such other amount of Category A or Category B retirement pension as may be prescribed. 45

- (5) The reference in sub-paragraph (4)(a) to any increase under subsection (1) of section 47 shall be taken as a reference to any increase that would take place under that subsection if subsection (2) of that section and section 46(5) of the Pensions Act were disregarded.” 5
- (2) In relation to any accrual period (within the meaning of Schedule 5 to the principal Act as amended by this paragraph) ending before 6th April 2010 the reference in paragraph 3B(4)(b) of that Schedule to section 83A of that Act is to be read as a reference to section 83 or 84 of that Act.
- 9 After paragraph 3B (inserted by paragraph 8 of this Schedule) insert – 10
- “Choice between increase of pension and lump sum where pensioner’s deceased spouse has deferred entitlement*
- 3C (1) Subject to paragraph 8, this paragraph applies where –
- (a) a widow or widower (“W”) is entitled to a Category A or Category B retirement pension, 15
- (b) W was married to the other party to the marriage (“S”) when S died,
- (c) S’s entitlement to a Category A or Category B retirement pension was deferred when S died, and
- (d) S’s entitlement had been deferred throughout the period of 12 months ending with the day before S’s death. 20
- (2) W shall within the prescribed period elect in the prescribed manner either –
- (a) that paragraph 4 (entitlement to increase of pension) is to apply in relation to S’s period of deferment, or 25
- (b) that paragraph 7A (entitlement to lump sum) is to apply in relation to S’s period of deferment.
- (3) If no election under sub-paragraph (2) is made within the period prescribed under that sub-paragraph, W is to be treated as having made an election under sub-paragraph (2)(b). 30
- (4) Regulations may enable a person who has made an election under sub-paragraph (2) (including one that the person is treated by sub-paragraph (3) as having made) to change the election in prescribed circumstances and within a prescribed time.
- (5) The making of an election under sub-paragraph (2)(b) does not affect the application of paragraphs 5 to 6 (which relate to an increase in pension where the pensioner’s deceased spouse had deferred an entitlement to a guaranteed minimum pension).” 35
- 10 (1) Paragraph 4 (increase of pension where pensioner’s deceased spouse has deferred entitlement) is amended as follows. 40
- (2) For sub-paragraph (1) substitute –
- “(1) Subject to paragraph 8, this paragraph applies where a widow or widower (“W”) is entitled to a Category A or Category B retirement pension and was married to the other party to the marriage (“S”) when S died and one of the following conditions is met – 45
- (a) S was entitled to a Category A or Category B retirement pension with an increase under this Schedule,

- (b) W is a widow or widower to whom paragraph 3C applies and has made an election under paragraph 3C(2)(a), or
- (c) paragraph 3C would apply to W but for the fact that the condition in sub-paragraph (1)(d) of that paragraph is not met. 5
- (1A) Subject to sub-paragraph (3), the rate of W’s pension shall be increased –
- (a) in a case falling within sub-paragraph (1)(a), by an amount equal to the increase to which S was entitled under this Schedule, apart from paragraphs 5 to 6, 10
- (b) in a case falling within sub-paragraph (1)(b), by an amount equal to the increase to which S would have been entitled under this Schedule, apart from paragraphs 5 to 6, if the period of deferment had ended immediately before S’s death and S had then made an election under paragraph A1(1)(a), or 15
- (c) in a case falling within sub-paragraph (1)(c), by an amount equal to the increase to which S would have been entitled under this Schedule, apart from paragraphs 5 to 6, if the period of deferment had ended immediately before S’s death.” 20
- 11 (1) After paragraph 7 insert –
- “Entitlement to lump sum where pensioner’s deceased spouse has deferred entitlement*
- 7A (1) This paragraph applies where a person to whom paragraph 3C applies (“W”) has made (or is treated as having made) an election under paragraph 3C(2)(b). 25
- (2) W is entitled to an amount calculated in accordance with paragraph 7B (a “widowed person’s lump sum”).
- Calculation of widowed person’s lump sum* 30
- 7B (1) The widowed person’s lump sum is the accrued amount for the last accrual period beginning during the period which –
- (a) began at the beginning of S’s period of deferment, and
- (b) ended on the day before S’s death.
- (2) In this paragraph – 35
- ‘S’ means the other party to the marriage;
- ‘accrued amount’ means the amount calculated in accordance with sub-paragraph (3);
- ‘accrual period’ means any period of seven days beginning with a prescribed day of the week, where that day falls within S’s period of deferment. 40
- (3) The accrued amount for an accrual period for W is –
- $$(A + P) \times \sqrt[52]{\left(1 + \frac{R}{100}\right)}$$
- where –

- A is the accrued amount for the previous accrual period (or, in the case of the first accrual period beginning during the period mentioned in sub-paragraph (1), zero);
- P is –
- (a) the basic pension, and 5
  - (b) half of the additional pension, 5
- to which S would have been entitled for the accrual period if his entitlement had not been deferred during the period mentioned in sub-paragraph (1);
- R is the percentage rate prescribed for the purposes of this sub-paragraph. 10
- (4) For the purposes of the calculation of the widowed person’s lump sum, the amount of Category A or Category B retirement pension to which S would have been entitled for an accrual period –
- (a) includes any increase under section 47(1) and any increase under paragraph 4 of this Schedule, but 15
  - (b) does not include –
    - (i) any increase under section 83A or 85 or paragraphs 5 to 6 of this Schedule,
    - (ii) any graduated retirement benefit, or 20
    - (iii) in prescribed circumstances, such other amount of Category A or Category B retirement pension as may be prescribed.
- (5) The reference in sub-paragraph (4)(a) to any increase under subsection (1) of section 47 shall be taken as a reference to any increase that would take place under that subsection if subsection (2) of that section and section 46(5) of the Pensions Act were disregarded. 25
- (6) In any case where –
- (a) there is a period between the death of S and the date on which W becomes entitled to a Category A or Category B retirement pension, and 30
  - (b) one or more orders have come into force under section 150 of the Administration Act during that period, 35
- the amount of the lump sum shall be increased in accordance with that order or those orders.”
- (2) In relation to any accrual period (within the meaning of Schedule 5 to the principal Act) ending before 6th April 2010 the reference in paragraph 7B(4)(b) of that Schedule to section 83A of that Act is to be read as a reference to section 83 or 84 of that Act. 40
- 12 After paragraph 7B (inserted by paragraph 11 of this Schedule) insert –
- “*Supplementary*
- 7C (1) Any lump sum calculated under paragraph 3B or 7B must be rounded to the nearest penny, taking any 1/2p as nearest to the next whole penny above. 45
- (2) In prescribing a percentage rate for the purposes of paragraphs 3B and 7B, the Secretary of State must have regard to –
- (a) the national economic situation, and

- (b) any other matters which he considers relevant.”
- 13 For the heading immediately preceding paragraph 8 substitute “Married couples”.
- 14 In paragraph 8 (married couples) –
- (a) in sub-paragraph (3) for “the reference in paragraph 2(3) above” substitute “the references in paragraphs 2(3) and 3B(3) and (4)”, 5
- (b) for sub-paragraph (4) substitute –
- “(4) The conditions in paragraph 3C(1)(c) and 4(1)(a) are not satisfied by a Category B retirement pension to which S was or would have been entitled by virtue of W’s contributions. 10
- (5) Where the Category A retirement pension to which S was or would have been entitled includes an increase under section 51A(2) attributable to W’s contributions, the increase or lump sum to which W is entitled under paragraph 4(1A) or 7A(2) is to be calculated as if there had been no increase under that section. 15
- (6) In sub-paragraphs (4) and (5), “W” and “S” have the same meaning as in paragraph 3C, 4 or 7A, as the case requires.”
- 15 After Schedule 5 to the principal Act insert – 20
- “SCHEDULE 5A
- PENSION INCREASE OR LUMP SUM WHERE ENTITLEMENT TO SHARED  
ADDITIONAL PENSION IS DEFERRED
- Choice between pension increase and lump sum where entitlement to shared additional pension is deferred* 25
- 1 (1) Where a person’s entitlement to a shared additional pension is deferred and the period of deferment is at least 12 months, the person shall, on claiming his pension or within a prescribed period after claiming it, elect in the prescribed manner either –
- (a) that paragraph 2 (entitlement to increase of pension) is to apply in relation to the period of deferment, or 30
- (b) that paragraph 4 (entitlement to lump sum) is to apply in relation to the period of deferment.
- (2) If no election under sub-paragraph (1) is made within the period prescribed under that sub-paragraph, the person is to be treated as having made an election under sub-paragraph (1)(b). 35
- (3) Regulations may enable a person who has made an election under sub-paragraph (1) (including one that the person is treated by sub-paragraph (2) as having made) to change the election in prescribed circumstances and within a prescribed time. 40
- Increase of pension where entitlement deferred*
- 2 (1) This paragraph applies where a person’s entitlement to a shared additional pension is deferred and either –
- (a) the period of deferment is less than 12 months, or

- (b) the person has made an election under paragraph 1(1)(a) in relation to the period of deferment.
- (2) The rate of the person’s shared additional pension shall be increased by an amount equal to the aggregate of the increments to which he is entitled under paragraph 3, but only if that amount is enough to increase the rate of the pension by at least 1 per cent. 5

*Calculation of increment*

- 3 (1) A person is entitled to an increment under this paragraph for each complete incremental period in his period of deferment.
- (2) The amount of the increment for an incremental period shall be 1/5th per cent. of the weekly rate of the shared additional pension to which the person would have been entitled for the period if his entitlement had not been deferred. 10
- (3) Amounts under sub-paragraph (2) shall be rounded to the nearest penny, taking any 1/2p as nearest to the next whole penny. 15
- (4) Where an amount under sub-paragraph (2) would, apart from this sub-paragraph, be a sum less than 1/2p, the amount shall be taken to be zero, notwithstanding any other provision of this Act, the Pensions Act 1995 or the Administration Act.
- (5) In this paragraph “incremental period” means any period of six days which are treated by regulations as days of increment for the purposes of this paragraph in relation to the person and pension in question. 20
- (6) Where one or more orders have come into force under section 150 of the Administration Act during the period of deferment, the rate for any incremental period shall be determined as if the order or orders had come into force before the beginning of the period of deferment. 25
- (7) The sums which are the increases in the rates of shared additional pension under this section are subject to alteration by order made by the Secretary of State under section 150 of the Administration Act. 30

*Lump sum where entitlement to shared additional pension is deferred*

- 4 (1) This paragraph applies where –
- (a) a person’s entitlement to a shared additional pension is deferred, and
- (b) the person has made (or is treated as having made) an election under paragraph 1(1)(b) in relation to the period of deferment. 35
- (2) The person is entitled to an amount calculated in accordance with paragraph 5 (a “lump sum”). 40

*Calculation of lump sum*

- 5 (1) The lump sum is the accrued amount for the last accrual period beginning during the period of deferment.
- (2) In this paragraph – 45

- ‘accrued amount’ means the amount calculated in accordance with sub-paragraph (3);
- ‘accrual period’ means any period of seven days beginning with a prescribed day of the week, where that day falls within the period of deferment. 5
- (3) The accrued amount for an accrual period for a person is –
- $$(A + P) \times 52 \sqrt[52]{\left(1 + \frac{R}{100}\right)}$$
- where –
- A is the accrued amount for the previous accrual period (or, in the case of the first accrual period beginning during the period of deferment, zero); 10
- P is the amount of the shared additional pension to which the person would have been entitled for the accrual period if his entitlement had not been deferred;
- R is the percentage rate prescribed for the purposes of paragraphs 3A and 7B of Schedule 5. 15
- (4) For the purpose of the calculation of the lump sum, the amount of the shared additional pension to which the person would have been entitled for an accrual period does not include, in prescribed circumstances, such amount as may be prescribed. 20
- (5) The lump sum must be rounded to the nearest penny, taking any 1/2p as nearest to the next whole penny.”

## PART 2

## CONSEQUENTIAL AMENDMENTS

- Social Security Contributions and Benefits Act 1992 (c. 4)* 25
- 16 The Social Security Contributions and Benefits Act 1992 is amended as follows.
- 17 In section 62(1) (graduated retirement benefit) –
- (a) in paragraph (a), for “paragraphs 1 to 3” substitute “paragraphs A1 to 3B and 7C”, and 30
- (b) after paragraph (b) insert –
- “(c) for amending that section in order to make provisions corresponding to those of paragraphs 3C, 4(1) and (1A) and 7A to 7C of Schedule 5 to this Act enabling a widowed person to elect to receive a lump sum, rather than an increase in the weekly rate of retirement pension, in respect of the graduated retirement benefit of his or her deceased spouse.” 35
- 18 In section 122(1) (interpretation of Parts 1 to 6) for the definitions of “deferred” and “period of deferment” substitute – 40
- “ “deferred” and “period of deferment” –
- (a) in relation to a Category A or Category B retirement pension, have the meanings given by section 55(3), and
- (b) in relation to a shared additional pension, have the meanings given by section 55C(3);” 45

- 19 In section 176 (parliamentary control of subordinate legislation) in subsection (1) (affirmative procedure), after paragraph (b) insert—
- “(bb) regulations prescribing a percentage rate for the purposes of—
- (i) paragraph 3B(3) or 7B(3) of Schedule 5, or 5
- (ii) paragraph 5(3) of Schedule 5A;”.

*Social Security Administration Act 1992 (c. 5)*

- 20 The Social Security Administration Act 1992 is amended as follows.
- 21 In section 150 (annual up-rating of benefits)—
- (a) in subsection (1), after paragraph (d) insert— 10
- “(dza) which are lump sums to which surviving spouses will become entitled under paragraph 7A of that Schedule on becoming entitled to a Category A or Category B retirement pension;”,
- (b) in subsection (1)(da), for “section 55C of” substitute “paragraph 2 of Schedule 5A to”, and 15
- (c) in subsection (3)(b), after “(d),” insert “(dza)”.
- 22 In section 151 (up-rating – supplementary) in subsection (2)—
- (a) for “subsection (1)(d) or (e)” substitute “subsection (1)(d), (dza) or (e)”, and 20
- (b) after “apart from the order and” insert “, in the case of the sums mentioned in subsection (1)(d) or (e) of that section,”.

*Welfare Reform and Pensions Act 1999 (c. 30)*

- 23 The Welfare Reform and Pensions Act 1999 is amended as follows.
- 24 In section 50, omit subsection (2) (which amends provisions relating to the 25  
deferment of shared additional pensions and is superseded by Part 1 of this Schedule).
- 25 In section 52(2) (power to make regulations preserving rights in respect of additional pensions), in paragraph (b)—
- (a) after “increase of pension” insert “or payment of lump sum”, and 30
- (b) after “constituent element of an increase” insert “or of a lump sum”.

## PART 3

## TRANSITIONAL PROVISIONS

*Widowers’ entitlement to increase of pension or widowed person’s lump sum*

- 26 In the case of a widower who attains pensionable age before 6th April 2010, 35  
paragraphs 3C, 4 and 7A of Schedule 5 to the Social Security Contributions and Benefits Act 1992 (c. 4) (entitlement to increase of pension or widowed person’s lump sum) shall not apply unless he was over pensionable age when his wife died.

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*Transitional provision*

- 27 (1) The Secretary of State may by regulations make such transitional provision as he thinks fit in connection with the coming into force of this Schedule.
- (2) Regulations under this paragraph may, in particular, modify the preceding provisions of this Schedule in relation to cases where the retirement pension or shared additional pension of a person is deferred and the period of deferment begins before 6th April 2005 and continues on or after that day. 5
- (3) In this paragraph “deferred” and “period of deferment” are to be read in accordance with section 55 or 55C of the Social Security Contributions and Benefits Act 1992 (c. 4), as the case requires. 10

SCHEDULE 11

Section 242

MINOR AND CONSEQUENTIAL AMENDMENTS

*Superannuation Act 1972 (c.11)*

- 1 (1) Schedule 1 to the Superannuation Act 1972 (kinds of employment in relation to which pension schemes may be made) is amended as follows. 15
- (2) At the appropriate place in the list of “Other Bodies” insert—  
“*The Board of the Pension Protection Fund.*”, and  
“*The Pensions Regulator.*”
- (3) At the appropriate place in the list of “Offices” insert—  
“*Chairman of the Board of the Pension Protection Fund.*”, 20  
and  
“*Chairman of the Pensions Regulator.*”

*Social Security Administration Act 1992 (c. 5)*

- 2 In section 122AA of the Social Security Administration Act 1992 (disclosure of contributions etc information by Inland Revenue), in subsection (2)(d), for “Occupational Pensions Regulatory Authority” substitute “Pensions Regulator”. 25

*Tribunals and Inquiries Act 1992 (c. 53)*

- 3 In Schedule 1 to the Tribunals and Inquiries Act 1992 (tribunals under general supervision of the Council on Tribunals), in Part 1, in paragraph 35, after paragraph (h) insert— 30
- “(i) the Pensions Regulator established by section 1 of the Pensions Act 2004.
- (j) the Pensions Regulator Tribunal established by section 76 of that Act. 35

(k) the Ombudsman for the Board of the Pension Protection Fund in respect of his functions under section 173 of that Act.”

*Pension Schemes Act 1993 (c.48)* 5

- 4 The Pension Schemes Act 1993 is amended as follows.
- 5 In section 111A (monitoring of employers’ payments to personal pension schemes) omit subsection (10).
- 6 In section 175 (levies) –
- (a) for subsection (8) substitute – 10
- “(8) An amount payable by a person on account of a levy imposed under this section shall be a debt due from him to the Secretary of State, and an amount so payable shall be recoverable by the Secretary of State accordingly or, if the Secretary of State so determines, by the Regulatory Authority on his behalf.”, and 15
- (b) in subsection (9) for “subsections (1) and (4)” substitute “subsection (1)”.

*Pensions Act 1995 (c.26)*

- 7 The Pensions Act 1995 is amended as follows. 20
- 8 In section 7 (appointment of trustees), in subsection (1) omit “a trustee of such a scheme ceases to be a trustee”.
- 9 In section 10 (civil penalties), in subsection (5)(a) omit “as a trustee of a trust scheme”.
- 10 In section 15(4) (failure to comply with Authority’s direction) for “sections 3 and 10 apply” substitute “section 10 applies”. 25
- 11 In section 28 (consequences of prohibition on trustee being auditor of scheme etc) omit subsection (4).
- 12 In section 30 (persons disqualified: consequences) omit subsections (7) and (8). 30
- 13 Omit section 30A (accessibility of register of disqualified trustees).
- 14 In section 31 (trustees not to be indemnified for fines or civil penalties), in subsection (3) for “sections 3 and 10 apply” substitute “section 10 applies”.
- 15 In section 32 (decisions of trustees by a majority) – 35
- (a) in subsection (4) for “, 16(3)(b) and 25(2)” substitute “and 25(2) of this Act and section 196(6) of the Pensions Act 2004”, and
- (b) in subsection (5) for “sections 3 and 10 apply” substitute “section 10 applies”.
- 16 In section 36 (choosing investments), in subsection (8) for “sections 3 and 10 apply” substitute “section 10 applies”. 40

- 17 In section 37 (payment of surplus to employer), in subsection (8) for “sections 3 and 10 apply” substitute “section 10 applies”.
- 18 In section 38 (power to defer winding up), in subsection (2) –
- (a) in paragraph (a) after “scheme” insert “(other than those due to be paid before the determination is made)”, and
  - (b) in paragraph (b) omit “new”.
- 19 In section 40 (restriction on employer-related investments), in subsection (4) for “sections 3 and 10 apply” substitute “section 10 applies”.
- 20 In section 41 (provision of documents for members) –
- (a) for subsection (3) substitute –
    - “(3) The documents referred to in subsection (1)(b) are –
    - (a) any statement of funding principles prepared or revised under section 180 of the Pensions Act 2004,
    - (b) any valuation or report prepared by the actuary under section 181 of that Act,
    - (c) any certificate given by the actuary under section 182 or 184 of that Act.”, and
    - (b) in subsection (5B) for “sections 3 and 10 apply to any trustee, and section 10 applies” substitute “section 10 applies to any trustee, and”.
- 21 In section 47 (professional advisers), in subsections (3), (8) and (11) for “sections 3 and 10 apply to any trustee, and section 10 applies” substitute “section 10 applies to any trustee, and”.
- 22 In section 49 (other responsibilities of trustees, employers, etc) –
- (a) in subsection (6) for “sections 3 and 10 apply” substitute “section 10 applies”, and
  - (b) in subsection (10) –
    - (i) omit paragraph (a) and the word “and” immediately after it, and
    - (ii) in paragraph (b) for “such steps” substitute “reasonable steps to secure compliance”.
- 23 In section 49A (record of winding up decisions) omit subsection (4).
- 24 In section 68 (power of trustees to modify schemes by resolution), in subsection (2) –
- (a) in paragraph (b), for “section 16(1) or 17(2)” substitute “section 196 of the Pensions Act 2004”, and
  - (b) for paragraph (c) substitute –
    - “(c) to enable the scheme to comply with such terms and conditions as may be imposed by the Board of the Pension Protection Fund in relation to any payment made by them under section 147 or 148 of the Pensions Act 2004.”.
- 25 In section 72A (reports to Authority about winding up) omit subsection (9)(a) and “and” immediately after it.
- 26 In section 72C (duty to comply with directions for facilitating winding up) omit subsection (2).

27	In section 73 (preferential liabilities on winding up) – (a) in subsection (1), for “section 56” substitute “this section”, (b) after that subsection insert – “(1A) This section applies to an occupational pension scheme other than – (a) a money purchase scheme, or (b) a prescribed scheme or scheme of a prescribed description.”, (c) in subsection (6), omit paragraph (a) and “and” immediately after it, and (d) in subsection (9) for “section 56” substitute “this section”.	5
28	In section 74 (discharge of liabilities by insurance, etc) – (a) in subsection (1) for “section 56” substitute “this section”, and (b) after that subsection insert – “(1A) This section applies to an occupational pension scheme other than – (a) a money purchase scheme, or (b) a prescribed scheme or scheme of a prescribed description.”	15
29	In section 76 (excess assets on winding up), in subsection (6) for “sections 3 and 10 apply” substitute “section 10 applies”.	20
30	In section 77 (excess assets remaining after winding up: power to distribute), in subsection (5) for “sections 3 and 10 apply” substitute “section 10 applies”.	
31	In section 87 (schedules of payment to money purchase schemes) omit subsection (5)(a) and “and” immediately after it.	25
32	In section 88 (provision supplementary to section 87) omit subsection (4)(a) and “and” immediately after it.	
33	In section 89 (application of further provisions to money purchase schemes, in subsection (1)(a) – (a) for “sections 56 to 60” substitute “Part 3 of the Pensions Act 2004”, and (b) for “those sections” substitute “that Part”.	30
34	In section 124(3A) (when the winding up of a scheme begins) after “(3E)” insert “and to sections 24, 107 and 119 of the Pensions Act 2004”.	
	<i>Welfare Reform and Pensions Act 1999 (c.30)</i>	35
35	The Welfare Reform and Pensions Act 1999 is amended as follows.	
36	In section 1 (stakeholder pension schemes), in subsection (6), after “members etc)” insert “and of regulations under section 194 of the Pensions Act 2004 (combined pension forecasts)”.	
37	In section 2 (registration of stakeholder pension schemes) – (a) in subsection (1) for “Occupational Pensions Regulatory Authority (“the Authority”)” substitute “Authority”, and	40

- (b) in subsection (4) for the words from “Section 3” to “Act applies” substitute “Section 10 of the Pensions Act 1995 (“the 1995 Act”) (civil penalties) applies to any trustee of a pension scheme which or has been registered under this section, and”.
- 38 In section 38 (treatment in winding up) – 5
- (a) in subsection (2), for “section 56 of the Pensions Act 1995” substitute “this section”, and
- (b) after that subsection insert –
- “(2A) This section applies to an occupational pension scheme other than – 10
- (a) a money purchase scheme, or
- (b) a prescribed scheme or a scheme of a prescribed description.”
- 39 In Schedule 1 (application of enactments relating to occupational trust schemes to certain stakeholder schemes), in paragraph 1(2)(b) – 15
- (a) in sub-paragraph (iii) for “except” to the end substitute “except the reference to section 25(2) in section 32(4);”,
- (b) for sub-paragraph (v) substitute –
- “(v) section 47 (professional advisers);”, and
- (c) in sub-paragraph (vii) for “section 50” substitute “sections 50 to 50B”. 20
- 40 In Schedule 5, in paragraph 8(1)(b), for the words from “section 56” to “related schemes)” substitute “Part 3 of the Pensions Act 2004 (scheme funding)”.

## SCHEDULE 12

Section 243

## REPEALS AND REVOCATIONS 25

## PART 1

## REPEALS

<i>Short title and chapter</i>	<i>Extent of repeal</i>	
Parliamentary Commissioner Act 1967 (c. 13)	In Schedule 1, the entries relating to –	
	(a) the Occupational Pensions Regulatory Authority, and	30
	(b) the Pensions Compensation Board.	
House of Commons Disqualification Act 1975 (c.24)	In Schedule 1, in Part 2, the entries relating to –	
	(a) the Occupational Pensions Regulatory Authority, and	35
	(b) the Pensions Compensation Board.	
Northern Ireland Assembly Disqualification Act 1975 (c.25)	In Schedule 1, in Part 2, the entries relating to –	
	(a) the Occupational Pensions Regulatory Authority, and	
	(b) the Pensions Compensation Board.	40

<i>Short title and chapter</i>	<i>Extent of repeal</i>
Tribunals and Inquiries Act 1992 (c. 53)	In Schedule 1, in Part 1, paragraph 35(g) and (h).
Pension Schemes Act 1993 (c. 48)	<p>Section 6.</p> <p>In section 28 –</p> <ul style="list-style-type: none"> <li>(a) in subsection (4), paragraphs (a) and (b) and the word “and” in paragraph (c),</li> <li>(b) subsections (4A) and (4B), and</li> <li>(c) in subsection (8), the words “which must not be earlier than the member’s 60th birthday” in the definition of “the starting date”.</li> </ul> <p>In section 29(1)(aa)(ii), the words from “and is not” to “75th birthday,”.</p> <p>Section 99(6).</p> <p>Section 101J(3).</p> <p>Section 111A(10).</p> <p>Section 111B.</p> <p>Section 168A.</p> <p>In section 175, the word “or” at the end of subsection (1)(b) and subsections (4) to (7).</p>
Pensions Act 1995 (c. 26)	<p>Sections 1 and 2.</p> <p>In section 4(2), the word “and” at the end of paragraph (a).</p> <p>Section 5.</p> <p>In section 7(1), the words “a trustee of such a scheme ceases to be a trustee”.</p> <p>Section 7(4).</p> <p>In section 10(5)(a), the words “as a trustee of a trust scheme”.</p> <p>Section 11(3).</p> <p>Section 13.</p> <p>Sections 16 to 21.</p> <p>Section 28(4).</p> <p>In section 29 –</p> <ul style="list-style-type: none"> <li>(a) subsections (3), (4) and (5)(b), and</li> <li>(b) in subsection (6), the words “or revocation made”.</li> </ul> <p>In section 30 –</p> <ul style="list-style-type: none"> <li>(a) in subsection (2), paragraph (b) and the word “or” immediately preceding it, and</li> <li>(b) subsections (7) and (8).</li> </ul> <p>Section 30A.</p> <p>In section 38(2)(b), the word “new”.</p> <p>Section 48.</p> <p>In section 49, subsection (10)(a) and the word “and” immediately after it.</p> <p>Section 49A(4).</p> <p>In section 51(1), the word “and” at the end of paragraph (a).</p> <p>In section 54(3), the definition of “appropriate percentage”.</p> <p>Sections 56 to 61.</p> <p>Section 72A(9)(a) and the word “and” immediately after it.</p>



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PART 2

REVOCATIONS

<i>Title and number</i>	<i>Extent of revocation</i>
Pensions (Northern Ireland) Order 1995 (S.I. 1995/3213 (N.I. 22))	Article 78(4).

# Pensions Bill

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## B I L L

To make provision relating to pensions and financial planning for retirement and provision relating to entitlement to bereavement payments, and for connected purposes.

*Presented by Mr Secretary Smith  
supported by  
the Prime Minister, Mr Secretary Prescott,  
Mr Chancellor of the Exchequer,  
Mr Secretary Blunkett, Mr Secretary Darling,  
Mr Secretary Murphy, Ms Secretary Hewitt,  
Mr Malcolm Wicks and Mr Chris Pond.*

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*Ordered, by the House of Commons,  
to be Printed, 10th February 2004.*

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