



# Welfare Reform and Pensions Act 1999

## 1999 CHAPTER 30

### PART II

#### PENSIONS: GENERAL

##### *Payments by employers to pension schemes*

#### **9 Monitoring of employers' payments to personal pension schemes**

In Part VI of the Pension Schemes Act 1993 (further requirements for protection of scheme members), after section 111 there shall be inserted—

##### **“111A Monitoring of employers' payments to personal pension schemes**

- (1) This section applies where—
  - (a) an employee is a member of a personal pension scheme; and
  - (b) direct payment arrangements exist between the employee and his employer.
- (2) In this section “direct payment arrangements” means arrangements under which contributions fall to be paid by or on behalf of the employer towards the scheme—
  - (a) on the employer's own account (but in respect of the employee); or
  - (b) on behalf of the employee out of deductions from the employee's earnings.
- (3) The employer must secure that there is prepared, maintained and from time to time revised a record of the direct payment arrangements which complies with subsection (4).
- (4) The record must—
  - (a) show the rates and due dates of contributions payable under the direct payment arrangements, and

- (b) satisfy prescribed requirements.
- (5) The employer must, within the prescribed period after the preparation or any revision of the record, send a copy of the record or (as the case may be) of the revised record to the trustees or managers of the scheme.
- (6) Except in prescribed circumstances, the trustees or managers of the scheme must, where any contribution shown by the record to be payable under the direct payment arrangements has not been paid on or before its due date, give notice of that fact, within the prescribed period, to the Regulatory Authority and the employee.
- (7) The trustees or managers of the scheme must before the end of prescribed intervals send the employee a statement setting out the amounts and dates of the payments made under the direct payment arrangements during a prescribed period.
- (8) If—
- (a) the employer fails to take all such steps as are reasonable to secure compliance with subsection (3) or (5), or
  - (b) a contribution payable under the direct payment arrangements is not paid to the trustees or managers of the scheme on or before its due date,
- section 10 of the Pensions Act 1995 (power of the Regulatory Authority to impose civil penalties) applies to the employer.
- (9) If subsection (6) or (7) is not complied with, section 10 of the Pensions Act 1995 applies to any trustee or manager of the scheme who has failed to take all such steps as are reasonable to secure compliance.
- (10) If—
- (a) subsection (6) or (7) is not complied with, and
  - (b) the scheme—
    - (i) is established under a trust, and
    - (ii) is or has been registered under section 2 of the Welfare Reform and Pensions Act 1999 (stakeholder schemes),section 3 of the Pensions Act 1995 (power of the Regulatory Authority to remove trustees) applies to any trustee of the scheme who has failed to take all such steps as are reasonable to secure compliance.
- (11) A person shall not be required by virtue of subsection (8)(b) above to pay a penalty under section 10 of the Pensions Act 1995 in respect of a failure if in respect of that failure he has been—
- (a) required to pay a penalty under that section by virtue of section 3(7) of the Welfare Reform and Pensions Act 1999 (failures in respect of stakeholder pensions), or
  - (b) convicted of an offence under subsection (12) below.
- (12) A person is guilty of an offence if he is knowingly concerned in the fraudulent evasion of the direct payment arrangements so far as they are arrangements for the payment by him or any other person of any such contribution towards the scheme as is mentioned in subsection (2)(b).
- (13) A person guilty of an offence under subsection (12) is liable—

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- (a) on summary conviction, to a fine not exceeding the statutory maximum; and
  - (b) on conviction on indictment, to imprisonment for a term not exceeding seven years or a fine or both.
- (14) No prosecution shall be brought against the Crown for an offence under subsection (12), but that subsection applies to persons in the public service of the Crown as to other persons.
- (15) In this section “due date”, in relation to a contribution payable under the direct payment arrangements, means—
- (a) if the contribution falls to be paid on the employer’s own account, the latest day under the arrangements for paying it;
  - (b) if the contribution falls to be paid on behalf of the employee, the last day of a prescribed period.
- (16) Regulations may provide for this section to apply with such modifications as may be prescribed in a case where—
- (a) the direct payment arrangements give effect to a requirement arising under subsection (5) of section 3 of the Welfare Reform and Pensions Act 1999 (deduction and payment of employee’s contributions to stakeholder scheme), and
  - (b) in accordance with regulations under that subsection, that requirement is for the employer to pay contributions to a person prescribed by such regulations (instead of to the trustees or managers of the scheme).
- (17) Nothing in this section shall be taken as varying the provisions of the direct payment arrangements or as affecting their enforceability.

### **111B Obtaining information for purposes of section 111A and corresponding Northern Ireland legislation**

- (1) Any person appearing to the Regulatory Authority to be a person who holds, or is likely to hold, information which is relevant to the issue—
- (a) whether any provision made by or under section 111A is being, or has been, complied with by an employer or the trustees or managers of a personal pension scheme,
  - (b) whether, in the case of any direct payment arrangements existing between an employee and his employer, there has been such a failure to pay a contribution as is mentioned in subsection (8)(b) of that section, or
  - (c) whether an offence has been committed under subsection (12) of that section in relation to any such arrangements,
- must, if required to do so by the Regulatory Authority by notice in writing, produce any document which is so relevant.
- (2) To comply with subsection (1) the document must be produced in such a manner, at such a place and within such a period as may be specified in the notice.
- (3) An inspector may, for the purposes of investigating any of the matters set out in subsection (1)(a) to (c), at any reasonable time enter premises liable to inspection and, while there—

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- (a) may make such examination and inquiry as may be necessary for such purposes,
  - (b) may require any person on the premises to produce for his inspection, or secure the production for his inspection of, any document relevant—
    - (i) to compliance with any provision made by or under section 111A, or with the direct payment arrangements, or
    - (ii) to the issue whether an offence has been committed under subsection (12) of that section in relation to those arrangements, and
  - (c) may, as to any matter so relevant, 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.
- (4) An inspector applying for admission to any premises in pursuance of subsection (3) must, if so required, produce his certificate of appointment.
- (5) For the purposes of subsection (3) premises are liable to inspection if the inspector has reasonable grounds to believe that—
- (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 kept there, or
  - (c) either of the following is being carried out there, namely—
    - (i) the administration of the employer’s business, the arrangements or the scheme, or
    - (ii) work connected with the administration of the employer’s business, the arrangements or the scheme,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.
- (6) Section 100 of the Pensions Act 1995 (warrants) shall have effect as if references to section 98(1) or 99(1)(b) of that Act included references to subsection (1) or (3)(b).
- (7) Sections 101 to 103 of that Act (penalties, savings and reports) shall have effect as if references which are or include references to section 98 or 99 of that Act included references to this section.
- (8) In this section—
- “direct payment arrangements” has the same meaning as in section 111A;
  - “document” includes information recorded in any form, and any reference to production of a document, in relation to information recorded otherwise than in legible form, is to producing a copy of the information in legible form;
  - “inspector” means a person appointed by the Regulatory Authority as an inspector.

- (9) References in this section to, or to any provision of, section 111A include references to corresponding provisions of Northern Ireland legislation; and in this section as it has effect in relation to those corresponding provisions, “employee” and “employer” have the meaning they have for the purposes of those provisions.”