



Pensions Act 2004

2004 CHAPTER 35

PART 1

THE PENSIONS REGULATOR

[^{F1}Sanctions for avoidance of employer debt etc

Textual Amendments

- F1** Ss. 58A, 58B and cross-heading inserted (1.10.2021) by Pension Schemes Act 2021 (c. 1), ss. 107(2), 131(1); S.I. 2021/950, reg. 2(3)(d) (with reg. 3(1)(4))

58A Offence of avoidance of employer debt

- (1) This section applies in relation to an occupational pension scheme other than—
- a money purchase scheme, or
 - a prescribed scheme or a scheme of a prescribed description.
- (2) A person commits an offence only if—
- the person does an act or engages in a course of conduct that—
 - prevents the recovery of the whole or any part of a debt which is due from the employer in relation to the scheme under section 75 of the Pensions Act 1995 (deficiencies in the scheme assets),
 - prevents such a debt becoming due,
 - compromises or otherwise settles such a debt, or
 - reduces the amount of such a debt which would otherwise become due,
 - the person intended the act or course of conduct to have such an effect, and
 - the person did not have a reasonable excuse for doing the act or engaging in the course of conduct.
- (3) A reference in this section to an act or course of conduct includes a failure to act.

Changes to legislation: Pensions Act 2004, Cross Heading: Sanctions for avoidance of employer debt etc is up to date with all changes known to be in force on or before 26 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes

- (4) This section does not apply to a person if the act done, or course of conduct engaged in, by the person is in accordance with the person's functions as an insolvency practitioner in relation to another person.
- (5) For the purposes of this section a reference to a debt due under section 75 of the Pensions Act 1995 includes a contingent debt under that section.
- (6) Accordingly, in the case of such a contingent debt, the reference in subsection (2)(a) to preventing a debt becoming due is to be read as including a reference to preventing the occurrence of any of the events specified in section 75(4C)(a) or (b) of the Pensions Act 1995 upon which the debt is contingent.
- (7) A person guilty of an offence under subsection (2) is liable—
 - (a) on summary conviction in England and Wales, to a fine;
 - (b) on summary conviction in Scotland, to a fine not exceeding the statutory maximum;
 - (c) on conviction on indictment, to imprisonment for a term not exceeding seven years or a fine, or both.
- (8) Proceedings for an offence under subsection (2) may be instituted in England and Wales only—
 - (a) by the Regulator or the Secretary of State, or
 - (b) by or with the consent of the Director of Public Prosecutions.
- (9) For the purposes of this section and sections 58B to 58D “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, or
 - (b) an insolvency practitioner within the meaning of section 121(9)(b) (persons of a prescribed description).

58B Offence of conduct risking accrued scheme benefits

- (1) This section applies in relation to an occupational pension scheme other than—
 - (a) a money purchase scheme, or
 - (b) a prescribed scheme or a scheme of a prescribed description.
- (2) A person commits an offence only if—
 - (a) the person does an act or engages in a course of conduct that detrimentally affects in a material way the likelihood of accrued scheme benefits being received (whether the benefits are to be received as benefits under the scheme or otherwise),
 - (b) the person knew or ought to have known that the act or course of conduct would have that effect, and
 - (c) the person did not have a reasonable excuse for doing the act or engaging in the course of conduct.
- (3) A reference in this section to an act or a course of conduct includes a failure to act.
- (4) A reference in this section to accrued scheme benefits being received is a reference to benefits the rights to which have accrued by the relevant time being received by, or in respect of, the persons who were members of the scheme before that time.

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- (5) In this section “the relevant time” means—
- (a) in the case of an act, the time of the act,
 - (b) in the case of a failure to act—
 - (i) the time when the failure occurred, or
 - (ii) where the failure continued for a period of time, the end of that period, or
 - (c) in the case of a course of conduct, the time when the course of conduct ended.
- (6) A reference in this section to rights which have accrued is to be read in accordance with section 67A(6) and (7) of the Pensions Act 1995 (reading any reference in those subsections to a subsisting right as a reference to a right which has accrued).
- (7) For the purposes of this section the benefits that may be received under the following provisions of this Act are to be disregarded—
- (a) Chapter 3 of Part 2 (the Board of the Pension Protection Fund: pension protection), and
 - (b) section 286 (the financial assistance scheme for members of certain pension schemes).
- (8) This section does not apply to a person if the act done, or course of conduct engaged in, by the person is in accordance with the person's functions as an insolvency practitioner in relation to another person (see section 58A(9)).
- (9) A person guilty of an offence under subsection (2) is liable—
- (a) on summary conviction in England and Wales, to a fine;
 - (b) on summary conviction in Scotland, to a fine not exceeding the statutory maximum;
 - (c) on conviction on indictment, to imprisonment for a term not exceeding seven years or a fine, or both.
- (10) Proceedings for an offence under subsection (2) may be instituted in England and Wales only—
- (a) by the Regulator or the Secretary of State, or
 - (b) by or with the consent of the Director of Public Prosecutions.]

[^{F2}58C Financial penalty for avoidance of employer debt

- (1) This section applies in relation to an occupational pension scheme other than—
- (a) a money purchase scheme, or
 - (b) a prescribed scheme or a scheme of a prescribed description.
- (2) Section 88A (financial penalties) applies to a person who was party to an act or deliberate failure to act the main purpose or one of the main purposes of which was—
- (a) to prevent the recovery of the whole or any part of a debt which is due from the employer in relation to the scheme under section 75 of the Pensions Act 1995 (deficiencies in the scheme assets),
 - (b) to prevent such a debt becoming due,
 - (c) to compromise or otherwise settle such a debt, or
 - (d) to reduce the amount of such a debt which would otherwise become due,
- if it was not reasonable for the person to act or fail to act in the way that the person did.

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- (3) This section does not apply where the Regulator is of the opinion that the person, in being a party to the act or failure, was acting in accordance with the person's functions as an insolvency practitioner in relation to another person (see section 58A(9)).
- (4) For the purposes of this section a reference to a debt due under section 75 of the Pensions Act 1995 includes a contingent debt under that section.
- (5) Accordingly, in the case of such a contingent debt, the reference in subsection (2) to preventing a debt becoming due is to be read as including a reference to preventing the occurrence of any of the events specified in section 75(4C)(a) or (b) of the Pensions Act 1995 upon which the debt is contingent.
- (6) For the purposes of this section the parties to an act or deliberate failure to act include those persons who knowingly assist in the act or failure.
- (7) If the Regulator is of the opinion that—
 - (a) a person was party to a series of acts or deliberate failures to act, and
 - (b) the requirements of subsection (2) are met in relation to the series,
 the series of acts or failures to act is to be regarded as an act or failure to act in relation to which the requirements of subsection (2) are met.

Textual Amendments

F2 Ss. 58C, 58D inserted (1.10.2021) by Pension Schemes Act 2021 (c. 1), ss. 107(3), 131(1); S.I. 2021/950, reg. 2(3)(d) (with reg. 3(1)(4))

58D Financial penalty for conduct risking accrued scheme benefits

- (1) This section applies in relation to an occupational pension scheme other than—
 - (a) a money purchase scheme, or
 - (b) a prescribed scheme or a scheme of a prescribed description.
- (2) Section 88A (financial penalties) applies to a person who was party to an act or deliberate failure to act that detrimentally affected in a material way the likelihood of accrued scheme benefits being received (whether the benefits are to be received as benefits under the scheme or otherwise), if—
 - (a) the person knew or ought to have known that the act or failure to act would have that effect, and
 - (b) it was not reasonable for the person to act or fail to act in the way that the person did.
- (3) This section does not apply where the Regulator is of the opinion that the person, in being a party to the act or failure, was acting in accordance with the person's functions as an insolvency practitioner in relation to another person (see section 58A(9)).
- (4) In this section a reference to accrued scheme benefits being received is a reference to benefits the rights to which have accrued by the relevant time being received by, or in respect of, the persons who were members of the scheme before that time.
- (5) In this section “the relevant time” means—
 - (a) in the case of an act, the time of the act;
 - (b) in the case of a failure to act—

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- (i) the time when the failure to act occurred, or
 - (ii) where the failure continued for a period of time, the end of that period;
- and, in the case of acts or failures to act forming part of a series, any reference in this subsection to an act or failure to act is a reference to the last of the acts or failures in that series.
- (6) A reference in this section to rights which have accrued is to be read in accordance with section 67A(6) and (7) of the Pensions Act 1995 (reading any reference in those subsections to a subsisting right as a reference to a right which has accrued).
- (7) In determining for the purposes of this section whether an act or failure to act has detrimentally affected in a material way the likelihood of accrued scheme benefits being received, the following provisions of this Act are to be disregarded—
- (a) Chapter 3 of Part 2 (the Board of the Pension Protection Fund: pension protection), and
 - (b) section 286 (the financial assistance scheme for members of certain pension schemes).
- (8) For the purposes of this section the parties to an act or deliberate failure to act include those persons who knowingly assist in the act or failure.
- (9) If the Regulator is of the opinion that—
- (a) a person was party to a series of acts or deliberate failures to act, and
 - (b) the requirements of subsection (2) are met in relation to the series,
- the series of acts or failures to act is to be regarded as an act or failure to act in relation to which the requirements of subsection (2) are met.]

Textual Amendments

F2 Ss. 58C, 58D inserted (1.10.2021) by Pension Schemes Act 2021 (c. 1), ss. 107(3), 131(1); S.I. 2021/950, reg. 2(3)(d) (with reg. 3(1)(4))

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

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

- s. 18(5A) inserted by [2014 c. 19 s. 52\(2\)](#)
- s. 18(6) words inserted by [2014 c. 19 s. 52\(3\)](#)
- s. 18(8) words inserted by [2014 c. 19 s. 52\(3\)](#)
- s. 23(1A) inserted by [2015 c. 8 Sch. 2 para. 26\(3\)](#)
- s. 23(10A) inserted by [2015 c. 8 Sch. 2 para. 26\(5\)](#)
- s. 38(1)-(1B) substituted for s. 38(1) by [2015 c. 8 Sch. 2 para. 27](#)
- s. 38(7)(da) inserted by [2021 c. 1 s. 104\(2\)](#)
- s. 43(1)-(1B) substituted for s. 43(1) by [2015 c. 8 Sch. 2 para. 28\(2\)](#)
- s. 52(1)-(1B) substituted for s. 52(1) by [2015 c. 8 Sch. 2 para. 29](#)
- s. 80(1)(a)(iib) inserted by [2021 c. 1 s. 109\(3\)](#)
- s. 102(2)(a) words in s. 102(2) renumbered as s. 102(2)(a) by [2008 c. 30 s. 44\(5\)\(a\)](#)
- s. 102(2)(b) inserted by [2008 c. 30 s. 44\(5\)\(b\)](#)
- s. 103(1A) inserted by [2008 c. 30 s. 44\(6\)](#)
- s. 117A inserted by [2008 c. 30 Sch. 10 para. 3](#)
- s. 126(1)-(1B) substituted for s. 126(1) by [2015 c. 8 Sch. 2 para. 31](#)
- s. 188(1)(ba) inserted by [2008 c. 30 Sch. 10 para. 6](#)
- s. 189A inserted by [2008 c. 30 Sch. 10 para. 7](#)
- s. 209(9) added by [2008 c. 30 Sch. 10 para. 8](#)
- s. 291(4)(f) and word inserted by [2021 c. 1 Sch. 3 para. 19\(b\)](#)
- s. 318(3)(a)(viii)-(x) inserted by [2015 c. 8 Sch. 2 para. 38\(3\)\(a\)](#)
- s. 318(3)(b)(vi)-(viii) inserted by [2015 c. 8 Sch. 2 para. 38\(3\)\(b\)](#)
- Sch. 4 para. 7(5)(b) inserted by [2008 c. 30 s. 44\(8\)\(b\)](#)
- Sch. 4 para. 13(3) inserted by [2008 c. 30 s. 44\(9\)\(b\)](#)
- Sch. 4 para. 7(5)(a) words in Sch. 4 para. 7(5) renumbered as Sch. 4 para. 7(5)(a) by [2008 c. 30 s. 44\(8\)\(a\)](#)
- Sch. 7 para. 21(2)(c)-(cc) substituted for Sch. 7 para. 21(2)(b)(c) by [2008 c. 30 Sch. 8 para. 11](#) (This amendment not applied to [legislation.gov.uk](#). Sch. 8 para. 10 (3.1.2012) omitted without ever being in force by virtue of 2011 c. 19, Sch. 4 para. 20; S.I. 2011/3034 art. 3(i)(iv))