

PENSIONS ACT 2008

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 1: Pension scheme membership for jobholders

Chapter 5: Duty to establish a pension scheme

Section 67: Duty to establish a pension scheme

156. *Section 67* places a duty on the Secretary of State to establish a pension scheme. That scheme will be a trust, which is generally how occupational pension schemes are established. All trusts are run by trustees. The corporate trustee established by *section 75* must be a trustee of the scheme when the scheme is established (see section 68(1)). There may be other trustees. The trustees will be required as a matter of trust law to act within the terms of the trust in the best interests of its beneficiaries.
157. The trustees must ensure that the scheme is tax registered under Chapter 2 of Part 4 of the FA 2004, which will allow tax relief on pension contributions and investment returns. In general terms, members will be able to access their savings in the same way as members of any other tax registered money purchase pension scheme – including by taking a tax free lump sum. The scheme must be an automatic enrolment scheme (see section 17) in relation to any jobholder who is employed by a participating employer and who must be enrolled under section 3 (automatic enrolment), section 5 (automatic re-enrolment), section 7 (jobholder’s right to opt in) or section 9 (workers without qualifying earnings).
158. The scheme must be established by order made by statutory instrument which under section 143 will be subject to the draft affirmative resolution procedure (that is, a draft must be laid before, and approved by, both Houses of Parliament before it can be made). This Order will set out the legal framework of the scheme and is the equivalent of a trust deed. In addition, the scheme may have a separate set of Rules, also equivalent to part of the trust deed, for its operation. These Rules will not be subject to a formal Parliamentary procedure but must be compatible with the Order and cannot be made about certain provisions of the scheme, listed at *subsection (12)*.