

PENSIONS ACT 2008

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Schedule 9 – contribution notices and financial support directions under Pensions Act 2004

38A Section 38 contribution notice: meaning of “material detriment test”

369. *Subsection (1)* of new section 38A enables the Pensions Regulator to issue a contribution notice where it is of the opinion that an act or failure to act has detrimentally affected in a material way the likelihood of the accrued scheme benefits being received (the “material detriment test”).
370. *Subsection (2)* sets out for the purposes of section 38A what are accrued scheme benefits.
371. *Subsection (3)* defines “the relevant time” in the case of an act or a failure to act and specifies that in the case of acts or failures to act forming part of a series, any reference to the act or failure is a reference to the last of those acts or failures.
372. *Subsection (4)* provides that the Regulator must have regard to such matters as it considers relevant in considering whether the material detriment test is met; this includes certain specified matters where relevant.
373. *Subsection (5)* defines “scheme obligation”, which includes actual or contingent obligations towards the scheme or relevant transferee scheme.
374. *Subsection (6)(a)* defines “relevant transferee scheme”, and *subsection 6(b)* provides that references to the assets or liabilities of any relevant transferee scheme relate to those assets or liabilities only in relation to persons who were members of the scheme before the relevant time.
375. *Subsection (7)* provides that for the purposes of subsection 6(a) a transfer of accrued rights of members of a scheme to another pension scheme includes a reference to the extinguishing of those accrued rights as a result of an obligation to make a payment or asset transfer to the other scheme.
376. *Subsection (8)* defines “work-based pension scheme” and provides that any reference to rights which have accrued be read in accordance with section 67(A)(6) and (7) of the PA 1995.
377. *Subsection (9)* provides that certain provisions of the PA 2004 (relating to the Pension Protection Fund and the Financial Assistance Scheme) are to be disregarded for the purposes of deciding whether an act or failure has had a detrimental effect under this section.
378. *Subsection (10)* provides the Secretary of State with a regulation-making power to amend any provision of subsections (4) to (8).