

## **PENSIONS ACT 2008**

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### **EXPLANATORY NOTES**

#### **COMMENTARY ON SECTIONS**

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

#### ***39A Section 38 contribution notice: transfer of members of the scheme***

404. *Paragraph 9* inserts a new section 39A into the PA 2004.
405. *Subsection (1)* provides that the new section applies where the Regulator is of the opinion that in relation to a scheme (known as “the initial scheme”), one of the tests for issuing a contribution notice under section 38 are met, and the other conditions in that section for issuing such a notice are also met, and further that the accrued rights of at least two persons have been transferred out of the scheme to one or more other work-based pension schemes (that is, a “transferee scheme”).
406. *Subsection (2)* of the new section provides that where the section applies, the Regulator may issue a contribution notice in relation to any transferee scheme. It further provides that references in sections 40 and 41 to the scheme are to the transferee scheme.
407. *Subsection (3)* provides that, except where subsection (5) applies, references to the scheme in section 39 are references to either the initial scheme or the transferee scheme whichever the Regulator considers most appropriate.
408. *Subsection (4)* provides that where section 39 has effect in relation to the transferee scheme, references in that section to the debt under section 75 of the PA 1995 is to be taken as a reference to so much of that debt as is to be attributable to those members of the transferee scheme who were members of the initial scheme.
409. *Subsection (5)* makes provision for the Secretary of State to introduce regulations to permit the Regulator to calculate the sum specified in the contribution notice in a different way from that specified under 39 where appropriate, to take account of transfers into schemes to which section 75 of the 1995 Act does not apply (section 75 of the 1995 Act establishes the debts from employers to pension schemes).
410. *Subsection (6)* enables the Pensions Regulator to issue a direction to the trustees of managers of a transferee scheme requiring them to take certain steps to ensure that the sum payable under the contribution notice is applied for the benefit of the affected members (that is, those who have transferred in from the affected initial scheme).
411. *Subsection (7)* provides that failure by the trustees or managers to take all reasonable steps to comply with a direction under subsection (6) may attract a civil penalty under section 10 of the 1995 Act.