

PENSIONS ACT 2008

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Chapter 8: Application and interpretation

Section 88: “Employer”, “worker” and related expressions

227. This section defines the terms “employer”, “worker” and other related expressions for Part 1 of this Act.

Section 89: Agency workers

228. Under this section, agency workers, who would not otherwise fall within the definition of “worker”, are treated as workers for the purposes of the employer duty (automatic enrolment, automatic re-enrolment and opting in). The agency or the principal for whom the worker works will be the relevant “employer” depending on which is responsible for paying the worker, or if that cannot be determined, on whichever one actually pays the worker.

Section 90: Directors

229. This section provides that a director with a contract of employment is included as a worker for the purposes of the employer duty and a director with any other contract or letter is not included.

Section 91: Crown employment

Section 92: Armed Forces

Section 93: House of Lords staff

Section 94: House of Commons staff

Section 95: Police

230. These sections make provision about how Part 1 of this Act applies in relation to some specific types of worker or employer.
231. *Sections 91, 93, 94 and 95* set out specific classes of people who fall to be treated as workers for the purposes of these provisions. As such, the employer duty will apply to these specific groups in the same way as it applies in relation to other employment and other workers. The only exception is for employment by or under the Crown where there is no criminal liability placed on the Crown. However, the Regulator is enabled to apply to the High Court for a declaration that there has been a failure by the Crown to comply with duties referred to in section 45(1) which, though not giving rise to criminal liability, is unlawful.
232. *Section 92* sets out the specific exclusion of the armed forces from these provisions.

Section 96: Persons working on vessels

233. *Section 96* provides that persons employed in any capacity on board a ship are not workers for the purposes of Part 1 unless regulations make provision to that effect. The section goes on to provide an affirmative regulation-making power to apply the provisions of Part 1 in relation to persons employed on a ship.

Section 97: Persons in offshore employment

234. *Section 97* provides an affirmative power to make Orders in Council to set out those persons engaged in offshore employment to whom the provisions of Part 1 will apply.

Section 98: Extension of definition of worker

235. This section provides that the definition of “worker” may be extended to include individuals who are not currently captured if a new definition arose within policy parameters which did not fall within the existing employer duty obligation. Such individuals would be deemed to be subject to a worker’s contract of a prescribed kind, working for a person of a prescribed description, who would be deemed to be the employer for the purposes of automatic enrolment.

Section 99: Interpretation of Part

236. This section sets out the meaning of particular words and phrases used throughout this Part.