

PENSIONS ACT 2011

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 3: Occupational pension schemes

Miscellaneous

Section 25: Payment of surplus to employer: transitional power to amend scheme

148. *Section 25* amends section 251 of the PA 2004. Section 251 provided trustees with a transitional power to confirm or amend powers in scheme rules to make payments to the employer in the light of changes to the taxation regime for pension schemes, and to the requirements relating to payments of surplus to employers as stated in section 37 of the PA 1995.
149. *Section 251* came into force from 6 April 2006. It specifically allowed trustees to pass a resolution to confirm or amend powers in their scheme's rules to make payments to the employer, or allow them to cease to be exercisable. Trustees were required to pass a resolution within five years of the commencement of the provision (before 6 April 2011) and to satisfy prescribed requirements for notifying scheme members.
150. This section ensures that section 251 does not apply to payments which trustees can make without having to satisfy the general requirements relating to payments of surplus in section 37 of the PA 1995. It extends the transitional period during which section 251 will apply to 6 April 2016. This will allow trustees more time to review any powers in their scheme's rules to make payments to the employer, decide how such powers should be exercised in the future, and take whatever action they consider is necessary under section 251.

Section 26: Contribution notices and financial support directions

151. *Section 26* amends sections 38, 43 and 96 of the PA 2004. Section 38 provides the Pensions Regulator with the power to issue a contribution notice where certain conditions are satisfied. Section 43 provides the Pensions Regulator with the power to issue a financial support direction where certain conditions are satisfied. Section 96 describes the standard procedure for consideration of certain of the Pensions Regulator's functions.
152. At present the Regulator must determine to exercise its regulatory functions to issue a contribution notice or a financial support direction within certain statutory periods. The amendments to sections 38 and 43 provide that those periods end with the Regulator giving a warning notice of its intention to exercise its regulatory functions instead of ending with the determination to exercise the relevant regulatory function. The amendment to section 96 also creates a power to prescribe a period after giving a warning notice beyond which the Regulator cannot exercise the relevant regulatory function.

Section 27: Technical amendment to Schedule 4 to the Pensions Act 2007

153. *Section 27* amends a consequential amendment made to Schedule 4 to the PSA 1993 and contained within paragraph 60 of Schedule 4 to the PA 2007.
154. Where an employer becomes bankrupt, the amount of debt (in respect of the contributions owed to a salary-related contracted out pension scheme) is calculated according to the rebate percentages specified in Schedule 4 to the PSA 1993. The consequential amendment as currently drafted would substitute out of date rebate percentages into Schedule 4 to the PSA 1993. This amendment will ensure the most recent rebate percentages are retained in that Schedule.

Section 28: Technical amendment to section 42(6) of the Pension Schemes Act 1993

155. *Section 28* amends an inaccurate cross-reference in section 42(6) of the PSA 1993. A missed consequential amendment, in provisions which amended Schedule 4 to the PSA 1993 contained within the PA 1995 and the WRPA 1999, means that the power in section 42(6) is unclear.
156. The power specified previously allowed the percentages stated in Schedule 4 to the PSA 1993 (in respect of contributions owed by bankrupt employers of salary-related contracted-out schemes) to be changed in line with changes to the rebate percentages. The amendment will ensure that this power is clear and refers to the correct paragraphs in Schedule 4 which contains the rebate percentages.