

Pensions Regulator Tribunal (Transfer of Functions) Bill

[AS INTRODUCED]

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TO

Transfer the functions of the Pensions Regulator Tribunal; and for connected purposes.

BE IT ENACTED by being passed by the Northern Ireland Assembly and assented to by Her Majesty as follows:

Transfer of functions of the Pensions Regulator Tribunal

1. The functions of the Pensions Regulator Tribunal are transferred to the First-tier Tribunal and the Upper Tribunal, with the question as to which of them is to exercise the functions in a particular case being determined by or under Tribunal
5 Procedure Rules.

Power to make ancillary provisions etc.

2.—(1) The Department may by order make such incidental, supplementary, consequential, transitional or saving provisions as it considers necessary or expedient for the purposes of, in consequence of, or for giving full effect to this
10 Act or any provision of it, or in connection with the coming into operation of any provision of this Act.

(2) An order under this section may amend, repeal or modify any statutory provision.

(3) An order under this section—

- 15 (a) must be laid before the Assembly after being made; and
(b) takes effect on such date as may be specified in the order, but (without prejudice to the validity of anything done thereunder or to the making of a new order) ceases to have effect upon the expiration of a period of six months from that date unless at some time before the expiration of that
20 period the order is approved by a resolution of the Assembly.

Consequential, transitional and saving provisions etc.

3.—(1) Schedule 1 (which makes minor and consequential amendments) has effect.

(2) Schedule 2 (which contains transitional and saving provisions) has effect.

(3) Schedule 3 (which contains repeals) has effect.

Interpretation

4. In this Act—

“the Department” means the Department for Social Development; 5

“First-tier Tribunal” and “Upper Tribunal” mean those tribunals established under section 3 of the Tribunals, Courts and Enforcement Act 2007 (c. 15);

“statutory provision” has the meaning given by section 1(f) of the Interpretation Act (Northern Ireland) 1954 (c. 33); 10

“Tribunal Procedure Rules” has the same meaning as in the Tribunals, Courts and Enforcement Act 2007.

Commencement

5.—(1) Sections 2 and 4 to 6 come into operation on the day after the day on which this Act receives Royal Assent. 15

(2) The other provisions of this Act come into operation on such day or days as the Department may by order appoint.

Short title

6. This Act may be cited as the Pensions Regulator Tribunal (Transfer of Functions) Act (Northern Ireland) 2009. 20

SCHEDULES

SCHEDULE 1

Section 3(1).

AMENDMENTS

The Pension Schemes (Northern Ireland) Act 1993 (c. 49)

- 5 1. In section 170(1)(d) of the Pension Schemes (Northern Ireland) Act 1993 (levies towards certain expenditure) for “the Pensions Regulator Tribunal” substitute “a tribunal in relation to a decision of the Regulatory Authority”.

The Pensions (Northern Ireland) Order 1995 (NI 22)

2. The Pensions (Northern Ireland) Order 1995 is amended as follows.
- 10 3. In Article 3 (prohibition orders)—
- (a) in paragraph (4)—
 - (i) in sub-paragraph (a) for “the Tribunal” substitute “a tribunal”; and
 - (ii) in sub-paragraph (b) for “the Tribunal’s determination” substitute “the determination of the tribunal concerned”; and
 - 15 (b) omit paragraph (8).
4. In Article 4 (suspension orders)—
- (a) in paragraph (5A)—
 - (i) in sub-paragraph (a) for “the Tribunal” substitute “a tribunal”; and
 - (ii) in sub-paragraph (b) for “the Tribunal’s determination” substitute “the
 - 20 (b) omit paragraph (7).

The Pensions Act 2004 (c. 35)

5. The Pensions Act 2004 is amended as follows.
6. For the cross-heading preceding section 102 (the Pensions Regulator Tribunal) substitute “*References to a tribunal*”.
7. Omit section 102 (the Pensions Regulator Tribunal).
8. In section 106(1) (legal assistance scheme) for “the Tribunal” substitute “a tribunal in relation to a decision of the Regulator”.
9. In section 310(4) (admissibility of statements) after paragraph (n) of the definition of “information requirement” add—
- 30 “(o) Tribunal Procedure Rules so far as applying to decisions of the Regulator;”.
10. In section 318(1) (general interpretation) omit the definition of “the Tribunal”.
- 35 11. Omit Schedule 4 (the Pensions Regulator Tribunal).

The Pensions (Northern Ireland) Order 2005 (NI 1)

12. The Pensions (Northern Ireland) Order 2005 is amended as follows.
13. In Article 2(2) (interpretation)—
- (a) after the definition of “enactment” insert—
““First-tier Tribunal” and “Upper Tribunal” mean those tribunals established under section 3 of the Tribunals, Courts and Enforcement Act 2007;”;
 - (b) after the definition of “statutory provision” insert—
““Tribunal Procedure Rules” has the same meaning as in the Tribunals, Courts and Enforcement Act 2007.”; and
 - (c) omit the definition of “the Tribunal”.
14. In Article 91 (standard procedure)—
- (a) in paragraph (5)(a) omit “(see Article 97(1))”; and
 - (b) at the end add—
“(7) In this Article “the Tribunal”, in relation to any reference under paragraph (3), means—
(a) the First-tier Tribunal, in any case where it is determined by or under Tribunal Procedure Rules that the First-tier Tribunal is to hear the reference;
(b) the Upper Tribunal, in any other case.”.
15. In Article 94 (compulsory review)—
- (a) in paragraph (8)(a) omit “(see Article 97(1))”; and
 - (b) at the end add—
“(13) In this Article “the Tribunal”, in relation to any reference under paragraph (7), means—
(a) the First-tier Tribunal, in any case where it is determined by or under Tribunal Procedure Rules that the First-tier Tribunal is to hear the reference;
(b) the Upper Tribunal, in any other case.”.
16. For the cross-heading preceding Article 97 (the Pensions Regulator Tribunal) substitute “*References to a tribunal*”.
17. Before Article 97 insert—
- “Offences**
- 96A.—(1) This Article applies in respect of proceedings before a tribunal in relation to a decision of the Regulator.
- (2) A person is guilty of an offence if that person, without reasonable excuse, refuses or fails—
- (a) to attend following the issue of a summons by the tribunal, or
 - (b) to give evidence.

(3) A person guilty of an offence under paragraph (2) is liable on summary conviction to a fine not exceeding level 5 on the standard scale.

(4) A person is guilty of an offence if that person, without reasonable excuse—

5 (a) alters, suppresses, conceals or destroys a document which that person is or is liable to be required to produce for the purposes of proceedings before the tribunal, or

(b) refuses to produce a document when so required.

(5) A person guilty of an offence under paragraph (4) is liable—

10 (a) on summary conviction, to a fine not exceeding the statutory maximum;

(b) on conviction on indictment, to imprisonment for a term not exceeding two years or a fine or both.

15 (6) In this Article “document” includes information recorded in any form and, in relation to information recorded otherwise than in a legible form, references to its production include references to producing a copy of the information in a legible form, or in a form from which it can readily be produced in a legible form.”.

18. In Article 97 (references to the Tribunal)—

20 (a) in the heading for “to the Tribunal” substitute “in relation to decisions of the Regulator”;

(b) omit paragraphs (1) to (2);

(c) after paragraph (2) insert—

25 “(2A) This Article applies to references to a tribunal in relation to a decision of the Regulator.”;

(d) in paragraph (3) for “the Tribunal” substitute “the tribunal concerned”;

(e) in paragraphs (4) and (5)—

30 (i) for “the Tribunal” (in the first place) substitute “the tribunal concerned”; and

(ii) for “the Tribunal” (in the second place) substitute “it”; and

(f) in paragraphs (6)(d) and (7) to (9) for “Tribunal” substitute “tribunal concerned”.

19. Omit Article 98 (appeal on a point of law).

20. Omit Article 99 (redetermination etc. by the Tribunal).

35 21. In Article 282(4) (admissibility of statements) after paragraph (n) of the definition of “information requirement” add—

“(o) Tribunal Procedure Rules so far as applying to decisions of the Regulator;”.

40 22. In paragraph 44(b)(ii) of Schedule 2 (the reserved regulatory functions - functions under this Order) for “the Tribunal” substitute “a tribunal”.

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23. In Schedule 3 (restricted information held by the Regulator: certain permitted disclosures to facilitate exercise of functions) after the entry for the Pensions Regulator Tribunal insert—

“The First-tier Tribunal.	Functions relating to decisions of the Regulator.	
The Upper Tribunal.	Functions relating to decisions of the Regulator.”.	5

24. In Schedule 7 (restricted information held by the Board: certain permitted disclosures to facilitate exercise of functions) after the entry for the Pensions Regulator Tribunal insert—

“The First-tier Tribunal.	Functions relating to decisions of the Regulator.	
The Upper Tribunal.	Functions relating to decisions of the Regulator.”.	10

The Companies Act 2006 (c. 46)

25. The Companies Act 2006 is amended as follows.

26. In Part A of Part 2 of Schedule 2 (specified persons, descriptions of disclosures etc. for the purposes of section 948 - specified descriptions of disclosures) in paragraph 50 for “the Pensions Regulator Tribunal” substitute “a tribunal in relation to a decision of the Pensions Regulator”. 15

27. In paragraph 73 of Schedule 11A (specified persons, descriptions, disclosures etc. for the purposes of section 1224A - specified descriptions of disclosures) for “the Pensions Regulator Tribunal” substitute “a tribunal in relation to a decision of the Pensions Regulator”. 20

The Pensions (No. 2) Act (Northern Ireland) 2008 (c. 13)

28. The Pensions (No. 2) Act (Northern Ireland) 2008 is amended as follows.

29. In section 40(5)(g) (fixed penalty notices) for “the Pensions Regulator Tribunal” substitute “a tribunal”.

30. In section 41(2)(b) and (6)(f) (escalating penalty notices) for “the Pensions Regulator Tribunal” substitute “a tribunal”. 25

31. In section 44 (references to the Pensions Regulator Tribunal)—

- (a) in the heading for “the Pensions Regulator Tribunal” substitute “First-tier Tribunal or Upper Tribunal”;
- (b) in subsections (1) and (3) for “the Pensions Regulator Tribunal” substitute “the Tribunal”; and 30
- (c) after subsection (4) insert—

“(4A) In this section “the Tribunal”, in relation to a reference under this section, means—

- (a) the Upper Tribunal, in any case where it is determined by or under Tribunal Procedure Rules that the Upper Tribunal is to hear the reference;
- (b) the First-tier Tribunal, in any other case.”. 35

32. In section 53 (review of notices and references to Pensions Regulator Tribunal) in the heading and in subsection (2) for “Pensions Regulator Tribunal” substitute “First-tier Tribunal or Upper Tribunal”.

33. In section 117(1) (interpretation)—

- 5 (a) after the definition of “the Employment Rights Order” insert—
- ““First-tier Tribunal” and “Upper Tribunal” mean those tribunals established under section 3 of the Tribunals, Courts and Enforcement Act 2007;”;
- (b) after the definition of “statutory provision” add—
- 10 ““Tribunal Procedure Rules” has the same meaning as in the Tribunals, Courts and Enforcement Act 2007.”.

SCHEDULE 2

Section 3(2).

TRANSITIONAL AND SAVING PROVISIONS

15 1. Any proceedings before the Pensions Regulator Tribunal which are pending immediately before the transfer date shall continue on and after the transfer date as proceedings before the Upper Tribunal.

2.—(1) The following sub-paragraphs apply where proceedings are continued in the Upper Tribunal by virtue of paragraph 1.

20 (2) Where a hearing began before the transfer date but was not completed by that date, the Upper Tribunal must be comprised for the continuation of that hearing of the person or persons who began it.

(3) The Upper Tribunal may give any direction to ensure that proceedings are dealt with fairly and, in particular, may—

- 25 (a) apply any provision in procedural rules which applied to the proceedings before the transfer date; or
- (b) disapply provisions of Tribunal Procedure Rules.

(4) In sub-paragraph (3) “procedural rules” means provision (whether called rules or not) regulating practice or procedure before a tribunal.

30 (5) Any direction or order given or made in proceedings which is in force immediately before the transfer date remains in force on and after that date as if it were a direction or order of the Upper Tribunal.

(6) A time period which has started to run before the transfer date and which has not expired shall continue to apply.

35 (7) An order for costs may only be made if, and to the extent that, an order could have been made before the transfer date.

3. Where an appeal lies to a court from any decision made by the Pensions Regulator Tribunal before the transfer date, that right of appeal has not been exercised, and the time to exercise that right of appeal has not expired prior to the transfer date, section 13 of the Tribunals, Courts and Enforcement Act 2007 (c. 40 15) (right to appeal to Court of Appeal) shall apply as if the decision were a decision made on or after the transfer date by the Upper Tribunal.

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4. Any case to be remitted by a court on or after the transfer date and which, if it had been remitted before the transfer date, would have been remitted to the Pensions Regulator Tribunal, shall be remitted to the Upper Tribunal.

5. A decision made by the Pensions Regulator Tribunal before the transfer date is to be treated on or after the transfer date as a decision of the Upper Tribunal. 5

6. In this Schedule “transfer date” means the date on which the functions of the Pensions Regulator Tribunal are transferred to the Upper Tribunal by section 1.

Section 3(3).

SCHEDULE 3

REPEALS

Short Title	Extent of repeal	
The Pensions (Northern Ireland) Order 1995 (NI 22)	Article 3(8). Article 4(7).	10
The Pensions Act 2004 (c. 35)	Section 102. In section 318(1), the definition of “the Tribunal”. Schedule 4.	15
The Pensions (Northern Ireland) Order 2005 (NI 1)	In Article 2(2), the definition of “the Tribunal”. Article 30(d). In Article 91(5)(a), the words “(see Article 97(1))”. In Article 94(8)(a), the words “(see Article 97(1))”. Article 97(1) to (2). Article 98. Article 99.	20 25
The Tribunals, Courts and Enforcement Act 2007 (c. 15)	In Schedule 10, paragraph 40.	30
The Pensions Act 2008 (c. 30)	Section 44(5), (8) and (9).	
The Pensions (No. 2) Act (Northern Ireland) 2008 (c. 13)	Section 44(5) and (6).	35

