EXPLANATORY NOTES

Pensions Dashboards (Prohibition of Indemnification) Act 2023

Chapter 14

£6.90

PENSIONS DASHBOARDS (PROHIBITION OF INDEMNIFICATION) ACT 2023

EXPLANATORY NOTES

What these notes do

These Explanatory Notes relate to the Pensions Dashboards (Prohibition of Indemnification) Act 2023 which received Royal Assent on 2 May 2023 (c. 14).

- These Explanatory Notes have been prepared by the Department for Work and Pensions in order to assist the reader in understanding the Act. They do not form part of the Act and have not been endorsed by Parliament.
- These Explanatory Notes explain what each part of the Act means in practice; provide background information on the development of policy; and provide additional information on how the Act affects existing legislation in this area.
- These Explanatory Notes might best be read alongside the Act. They are not, and are not intended to be, a comprehensive description of the Act.

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Overview of the Act

1 The primary purpose of this Act is to increase protection for pension savers by making it a criminal offence for pension scheme trustees or managers to reimburse themselves using the assets of the pension scheme in respect of penalties imposed under pensions dashboards regulations.

2 It achieves this by adding section 238G of the Pensions Act 2004 to the list of statutory provisions in section 256(1)(b) of that Act. Section 256(1)(b) prohibits any amount being paid out of the assets of an occupational or personal pension scheme for the purpose of reimbursing, or providing for the reimbursement of, any trustee or manager of the scheme in respect of a penalty they are required to pay under or by virtue of a statutory provision listed in (1)(b).

Policy background

3 Pensions dashboards are an electronic communications service, which will allow individuals to see their pensions information (including the State Pension) in one place online. Dashboards will help individuals to be reunited with lost pensions and support people in better planning for their retirement.

4 The Pensions Dashboards Regulations 2022 (“the Regulations”) set out measures that need to be put in place to enable pensions dashboards to operate effectively. The Regulations place requirements on trustees or managers of relevant occupational pension schemes to connect their scheme to the Money and Pensions Service (MaPS) digital infrastructure for dashboards. Once connected, schemes will be required to respond to requests from individuals to find and view their pensions information, which must be returned via the individual’s chosen dashboard in accordance with the Regulations and the relevant standards. The Financial Conduct Authority has published separate rules for personal and stakeholder pension schemes.

5 Pensions dashboard services will be made available to the public at a future date yet to be determined, known as the Dashboards Available Point (DAP). The Regulations provide for the Secretary of State for Work and Pensions to publish advance notice of the DAP.

6 If a trustee or manager of an occupational pension scheme fails to comply with the Regulations, the Pensions Regulator may take enforcement action which could include a financial penalty. For context, the maximum penalties for a failure or contravention of the Regulations are £5,000 if the person is an individual or £50,000 if the person is a body corporate including corporate trustees. The Regulations also allow for multiple penalty notices to be issued by the Pensions Regulator in the event of multiple compliance breaches from a single event.

7 The Act makes it a specific criminal offence for pension scheme trustees or managers to reimburse themselves using the assets of the pension scheme in respect of penalties imposed under the Regulations. It achieves this by amending section 256(1)(b) of the Pensions Act 2004 (which makes similar provision for other areas of pensions legislation) to include the relevant pensions dashboards legislation.

Legal background

8 Section 256(1)(b) of the Pensions Act 2004 (No indemnification for fines or civil penalties) provides that no amount can be paid out of the assets of an occupational or personal pension scheme for the purpose of reimbursing, or providing for the reimbursement of, any trustee or manager of the scheme in respect of a penalty which they are required to pay under or by virtue of a list of specific statutory provisions.

9 Section 1(1) (No indemnification for penalties under pension dashboards regulations) of the Act adds section 238G of the Pensions Act 2004 to this list. Section 238G (inserted into the Pensions Act 2004 by the Pension Schemes Act 2021) is the power under which compliance provisions can be made in pensions dashboards Regulations i.e. penalty notices, to ensure certain requirements on trustees or managers of relevant occupational schemes as to cooperation, connection and the provision of information are complied with (see paragraph 6 above regarding penalties).

10 By virtue of the amendment in section 256(1)(b) of the Pensions Act 2004 by section 1(1) of the Act prohibiting indemnification for penalties under pensions dashboards regulations, other provisions in section 256 also apply in respect of these dashboards penalties, including:

i. Where a trustee or manager of an occupational pension scheme is reimbursed out of the assets and knows or has reasonable grounds to believe they have been reimbursed, unless they have taken all reasonable steps to secure that they are not so reimbursed, they are guilty of an offence (section 256(4)). A person guilty of an offence is liable on summary conviction, to a fine not exceeding the statutory maximum and on conviction on indictment for a term not exceeding two years, or a fine, or both (section 256(5)).

ii. Where any amount is paid out of the assets in contravention of this prohibition, section 10 of the Pensions Act 1995 (civil penalties) applies to any trustee or manager who has failed to take all reasonable steps to secure compliance (section 256(3)).

11 Section 1(2) of the Act makes corresponding amendments to article 233(1)(b) of the Pensions (Northern Ireland) Order 2005 (S.I. 2005/255 (N.I.1)) by adding article 215G of that Order to article 233(1)(b).

Territorial extent and application

12 Section 1(1) extends and applies to England and Wales and Scotland. Section 1(2) extends and applies to Northern Ireland and section 2 extends and applies to England and Wales, Scotland and Northern Ireland.

13 See the table in Annex A for a summary of the position regarding territorial extent and application in the United Kingdom.

Commentary on provisions of Act

Section 1: No indemnification for penalties under pensions dashboards regulations

14 Subsection (1) adds section 238G of the Pensions Act 2004 to section 256(1)(b) of the Pensions Act 2004. Section 238G is the power under which compliance provisions can be made in regulations regarding pensions dashboards. The effect of which is that no amount can be paid

out of the assets of an occupational or personal scheme for the purpose of reimbursing or providing for the reimbursement of, any trustee or manager of the scheme in respect of a penalty which they are required to pay under or by virtue of the Pensions Dashboards Regulations referred to in paragraph 6 above. Where this prohibition in section 256(1) is breached, an offence is committed where the provisions of section 256(4) are satisfied.

15 Subsection (2) makes corresponding provision for Northern Ireland by amending article 233(1) of the Pensions (Northern Ireland) Order 2005 (N.I.1)), by adding article 215G of that Order to article 233(1)(b).

Section 2: Extent, commencement and short title

16 The provisions under this section are self-explanatory.

Commencement

17 Section 1(1) comes into force on such day as the Secretary of State may by regulations appoint. Section 1(2) comes into force on such a day as the Department for Communities in Northern Ireland may by order appoint.

18 Section 2 comes into force on Royal Assent.

Related documents

19 The Government's consultation on the draft Pensions Dashboards Regulations 2022 is relevant to the Act and can be read at: https://www.gov.uk/government/consultations/pensions-dashboards-consultation-on-the-draft-pensions-dashboards-regulations-2022

Annex A - Territorial extent and application in the United Kingdom

Provision	Extends to E & W and applies to England?	Extends to E & W and applies to Wales?	Extends and applies to Scotland?	Extends and applies to Northern Ireland?
Section 1(1)	Yes	Yes	Yes	No
Section 1(2)	No	No	No	Yes
Section 2	In Part	In Part	In Part	In Part

Annex B – Hansard References

20 The following table sets out the dates and Hansard references for each stage of the Act's passage through Parliament.

Stage	Date	Hansard reference
	House of Commons	
Introduction	20 June 2022	Bill as introduced Vol. 716 col. 587
Second Reading	15 July 2022	Vol. 718 col. 656
Public Bill Committee	26 October 2022	Col. 1
Third Reading	20 January 2023	Vol. 726 col. 692
	House of Lords	
Introduction	23 January 2023	Bill as introduced Vol. 827 col. 20
Second Reading	3 March 2023	Vol. 828 col. 499
Grand Committee	28 March 2023	Vol. 829 col. 130
Third Reading	21 April 2023	Vol. 829 col. 906
Royal Assent	2 May 2023	House of Commons: Vol. 732 col. 1 House of Lords: Vol. 829 col. 1391

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