

*These notes refer to the Pensions Act (Northern Ireland)
2015 (c.5) which received Royal Assent on 23 June 2015*

Pensions Act (Northern Ireland) 2015

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 6 – Private Pensions

Section 32: Automatic transfer of pension benefits etc

Schedule 17: Automatic transfer of pension benefits etc

Section 32 introduces Schedule 17 which contains a duty for the Department to make regulations to establish a system of automatic transfers of pension benefits.

Paragraph 1 of Schedule 17 outlines this system, setting out that the regulations must provide that where an active member of an ‘automatic transfer scheme’ has ‘transferable benefits’ in another pension scheme (the ‘transferable benefits scheme’), then the automatic transfer process set out in the Schedule must be followed.

The transfer will be from a money purchase scheme or a pension scheme of a prescribed description (sub-paragraph (5)) that the member is no longer contributing to (sub-paragraph (4)(c)), into another money purchase scheme or a pension scheme of a prescribed description (sub-paragraph 2) of which the individual is an active member. This will only apply if certain criteria are met including that the benefits to be transferred have been accruing since a certain date (sub-paragraph (4)(e)) and are worth less than a prescribed amount (sub-paragraph (4)(f)). It is expected that the amount will be initially set at £10,000.

In addition, Schedule 17 sets out that regulations will provide that trustees or managers of ‘automatic transfer schemes’ must find out whether members have transferable benefits in other schemes (paragraph 2). The regulations must make provision about disclosure of information and they may, in particular, permit or require a person to disclose information to another person to help that other person comply with their duties, which will include providing information on an individual’s transferable benefits to any central database (paragraph 9(1) and (2)).

The regulations must also provide that a prescribed person must give information to the member (paragraph 5) and must provide that the member has a right to opt out of the automatic transfer (paragraph 4) unless there is a requirement for consent by the member before the transfer is made. The

information provided to members will include details about the automatic transfer, their right to opt out, or need for consent (as applicable), and may contain other information, for example, about the pension scheme.

Where ‘transferable benefits’ are identified and the individual has not opted out, or has provided consent (whichever is applicable), the trustees or managers must notify the ‘transferable benefits scheme’ (paragraph 3), the ‘transferable benefits scheme’ must then transfer those benefits (paragraph 6) and the ‘automatic transfer scheme’ must give the member rights equivalent to those benefits (paragraph 7). Other functions may be required of the trustees or managers of either scheme (paragraph 12), for example, to acknowledge the transfer.

Further to these core features, Schedule 17 sets out a number of areas that regulations may cover. For example, regulations may be made to:

- provide for the manner in which cash equivalents are to be calculated and verified by the ‘transferable benefits scheme’ (paragraph 8);
- allow for the enforcement of the automatic transfer duties by the Pensions Regulator, including the imposition of compliance notices and penalties for non-compliance (paragraph 10) and record keeping requirements (paragraph 11);
- require the Department or the Pensions Regulator to establish and operate a database containing information relating to people who have or have had ‘transferable benefits’ (paragraph 9(3)); or
- allow certain provisions within the regulations to override scheme rules (paragraph 16). For example, if scheme rules prevented an automatic transfer scheme from accepting a transfer.

Part 2 provides that regulations may be made to consolidate multiple pots belonging to one member in the same scheme, providing for an asset transfer if necessary, for example, where an individual has two employments over their working life and the employers both use the same multi-employer scheme (paragraph 13).

Section 33: Power to prohibit offer of incentives to transfer pension rights

Section 34: Expiry of power in section 33

Section 33 allows the Department to make regulations to prohibit a person from offering a financial or similar incentive to another person with the intention of inducing a member of a salary-related occupational pension scheme to transfer their rights out of that pension scheme into another pension scheme or arrangement. Regulations may provide that the prohibition applies to the offer of an incentive by the person who will provide the incentive, or by another person, for example, an agent. It also provides for penalties to be introduced if the prohibition is contravened.

Section 34 provides that Section 33 will be repealed seven years after the section has come into operation if the powers granted have not been exercised.

Section 35: Short service benefit for scheme member with money purchase benefits

This section provides that where all of the benefits to be provided by a scheme are money purchase benefits, there will be an entitlement to a ‘short service benefit’ immediately after a member has completed thirty days’ qualifying membership of the scheme (section 35(1), (2) and (3)).

The effect of the section is that, in such cases, the ability to make a refund of contributions (“short service refund”) to members who give up their membership within two years will no longer be available under section 97AB of the Pension Schemes Act, because the member will have accrued rights to benefit under the scheme. Such a person will, however, still have the right to ask the occupational pension scheme to transfer the value of his pension to another pension provider under Chapter 4 of Part 4 of that Act.

This will only apply to those who first become active members of a scheme after this section comes into force, and those members who re-joined the scheme after that date having had a previous period of pensionable service under the scheme and who received a contribution refund or a cash transfer sum (section 35(3)).

Section 36: Automatic re-enrolment: exceptions where automatic enrolment deferred

Employers must automatically enrol workers who satisfy age and earnings criteria into a qualifying workplace pension scheme. However, they are allowed to postpone automatic enrolment by up to three months.

Where an employer has an open defined benefit or hybrid scheme which they intend to use for automatic enrolment, they may instead, and subject to certain conditions, defer automatic enrolment for jobholders who satisfy those conditions until the end of a transitional period in September 2017. At the end of that transitional period the individual must be automatically enrolled, provided that he or she satisfies the age and earnings conditions. However, an employer deferring automatic enrolment until the end of the transitional period may use the waiting period afterwards if they choose, which would postpone auto-enrolment by up to a further three months.

Automatic enrolment by the employer is compulsory: pension saving by the worker is not. An individual who decides not to continue saving into the scheme they have been automatically enrolled into may opt out within a specified window. This window is one month from the later of the date that the individual becomes an active member of the scheme and the date he or she is given the enrolment information by the employer. If, however, he or she continues to save into the scheme but subsequently decides to withdraw, he or she may cancel his or her active membership at any time.

The employer must carry out an automatic re-enrolment exercise approximately every three years to re-enrol those who opted out or cancelled their membership.

The cyclical automatic re-enrolment dates are employer specific. Deferral dates and immediate re-enrolment dates are specific to the worker.

Under the Pensions (No. 2) Act, the employer's re-enrolment duty could result in the permitted deferral or postponement period being curtailed as an employer's cyclical re-enrolment date could fall within a period where an individual's automatic enrolment date has legitimately been deferred or postponed. Section 36 removes the duty of the employer to automatically re-enrol an eligible individual if automatic enrolment has been postponed for a period of up to three months (section 36(2)) or deferred to the end of the transitional period in the case of a defined benefit or hybrid scheme (section 36(3)).

Section 37: Automatic enrolment: powers to create general exceptions

Under sections 3, 5, 7 and 9 of the Pensions (No. 2) Act, employers are obliged to automatically enrol (and re-enrol) workers who satisfy age and earnings criteria into a qualifying workplace pension scheme and make joining arrangements for workers who opt in or apply to join a pension arrangement.

Automatic enrolment and pension saving is not always appropriate. It may impose nugatory work on the employer and in some circumstances could cause an individual to incur a financial penalty.

There are some limited exceptions to the enrolment duty but there is no general power to exclude prescribed types of workers, or workers in prescribed circumstances from the scope of automatic enrolment. However, a prescribed exclusion may carry an increased employer monitoring burden. This section inserts a new section in to the Pensions (No. 2) Act to provide a general power to create exceptions to the employer duties which includes the power to prescribe that a duty is turned into a power. Where such a power was conferred on an employer, it would mean that in prescribed circumstances an employer need not automatically enrol a worker but may choose to do so. The section subsumes the existing power to exclude in section 5(4) of the Pensions (No. 2) Act and Article 268A of the 2005 Order (both of which are repealed) and amends section 10 of the Pensions (No. 2) Act to allow automatic enrolment information to be more appropriately targeted.

Regulations under the new section cannot provide for an employer to be excluded from the automatic enrolment duty on the basis of their size.

The inserted section also includes a power to re-instate the automatic enrolment duty if the circumstances that triggered the exclusion change.

Section 38: Alternative quality requirements for UK defined benefits schemes

To be a qualifying defined benefits scheme capable of being used under automatic enrolment, a pension scheme must currently either be contracted-out of the state second pension or meet the 'test scheme standard' in relation to all jobholders concerned. The test scheme is a hypothetical scheme used as a

benchmark against which a scheme can be tested. To qualify, the scheme must provide benefits to members which are broadly equivalent to, or better than, those which would be provided under a test scheme.

This section amends the Pensions (No. 2) Act to enable the Department, by regulations, to prescribe that a defined benefits scheme satisfies the quality requirements in one of three ways, as set out in new section 23A(1):

- Subsection (1)(a) provides for an alternative defined benefits quality requirement to be satisfied in relation to a jobholder if the scheme in question is of a prescribed description and satisfies the money purchase quality requirement in relation to that jobholder, i.e. the scheme provides a total contribution of 8 per cent of qualifying earnings with at least 3 per cent contributed by the employer;
- Subsections (1)(b) and (1)(c) provide for alternative defined benefits quality requirements to be satisfied if the cost to the scheme of funding the future accrual of active members' benefits was at least a prescribed rate. The rate is to be expressed as a prescribed percentage of members' relevant earnings over a relevant period either on an aggregate (scheme) level or at an individual level for at least 90 per cent of the relevant members.

Subsection (3) of new section 23A provides that the prescribed percentage in both of the cost of future accruals tests in (1)(b) and 1(c) must be at least 8 per cent, in line with the minimum level for total contributions into a qualifying money purchase scheme.

Section 39: Automatic enrolment: transitional period for hybrid schemes

On 19th December 2012 the Government announced its intention to introduce retrospective legislation to clarify the law which sets out transitional arrangements for implementing automatic enrolment into workplace pension arrangements.

The transitional provisions differ depending on whether the jobholder is enrolled into a money purchase pension arrangement or is offered membership of a defined benefit pension arrangement. If the former is the case, then both employer and employee minimum contributions are phased in over a transitional period. If the latter, the employer can defer automatic enrolment until the end of a transitional period.

Under the current legislation, where a pension scheme offers both money purchase and defined benefit pensions under a single scheme (known as a hybrid scheme) an employer can postpone automatic enrolment for a jobholder who is eligible only to accrue money purchase benefits under a hybrid scheme.

The amendments in section 39(1) to (5) state that postponement under section 30 of the Pensions (No. 2) Act only applies where a defined benefit pension is offered to a jobholder (whether offered under a hybrid scheme or a defined benefit scheme). Employers offering money purchase benefits under a hybrid scheme will still be able to use the transitional arrangements under section 29 of

the Pensions (No. 2) Act, which permit a gradual phasing in of the contribution requirements over a transitional period.

The legislation has retrospective effect. Section 39(6) and (7) set out that any employer who has deferred automatic enrolment under section 30 of the Pensions (No. 2) Act for a jobholder who is entitled only to membership of a money purchase arrangement under a hybrid scheme will need to automatically enrol that jobholder. They will also need to backdate employer contributions to 19th December 2012 (or their staging date if that is later). The jobholder will be able to choose whether they wish to pay their own contributions for the same period.

Section 40: Penalty notices under sections 40 and 41 of the Pensions (No. 2) Act etc.

Under the Pensions (No. 2) Act, the Pensions Regulator has the power to issue a penalty notice for failure to comply with information notices (which are issued when the Pensions Regulator requires specific information). Currently, the Regulator could issue a penalty notice under that power for non-compliance with a notice that sought information in connection with the Regulator's general compliance functions, as set out in the 2005 Order.

Under this section, penalty notices can only be used for non-compliance with information notices issued in relation to the Regulator's compliance function concerning employer duties, as set out in Part 1 of the Pensions (No. 2) Act.

In exercising its power to issue information notices under Article 67 of the 2005 Order, the Regulator can ask for an explanation of the relevant information or require the recipient to explain in person at the Regulator's offices. This power was previously available for information notices issued relating only to some of the Regulator's new employer compliance functions. Section 40 extends this to include all of the Regulator's employer compliance functions as set out in Part 1 of the Pensions (No. 2) Act.

Section 41: Unpaid scheme contributions

In the event that an employer becomes insolvent, the Pension Schemes Act enables scheme trustees or managers to claim an amount of any unpaid pension contributions from the Department, payable out of the National Insurance Fund. The contributions comprise those due from the employer either on his or her own account to fund benefits for, or in respect of, one or more employees, or on behalf of an employee, if a contribution has been deducted from wages.

Workers and agency workers are currently excluded from this protection, so if their employer became insolvent certain jobholders entering pension scheme membership as a result of the workplace pension reforms would not receive the protection detailed above.

This section amends the definitions in the Pension Schemes Act, and the references to employees in the Pension Schemes Act, to include workers and

agency workers and so extend this protection for relevant scheme contributions to be paid from the National Insurance Fund in the event of an employer becoming insolvent.

Section 42: Power to restrict charges or impose requirements in relation to schemes

Schedule 18: Power to restrict charges or impose requirements in relation to schemes

Section 42 and Schedule 18 allow the Department to make regulations to restrict charges or impose requirements on certain pension schemes. Schedule 18 allows for the making of regulations which set limits on or prohibit particular types of administration charges, or set requirements relating to the administration or governance of the scheme.

The regulations will apply to pension schemes of a type specified in the regulations. Different provision could be made for different types of scheme. For example, different charges may be allowed depending on the type or use of scheme. They will also allow for the inclusion of schemes that are closed to new members or to new accruals. The duty to meet these standards would fall on the manager or trustee of each applicable scheme.

The provision allows the regulations to say that a scheme which does not comply cannot be a qualifying scheme for automatic enrolment purposes. Provisions about standards that must be complied with in order for a scheme to be used as a qualifying scheme will continue to be enforced via the employer compliance regime under the Pensions (No. 2) Act.

Schedule 18 also allows regulations to cover the enforcement of the quality standards by the Pensions Regulator (paragraph 3), including the imposition of compliance notices and penalties for non-compliance. As with other civil penalties, it will be a criminal offence to pay these penalties from scheme funds (paragraph 10). The compliance regime may also include the Financial Conduct Authority regulating compliance in contract-based schemes under the powers in the Financial Services and Markets Act 2000. The Schedule also provides that the regulations may allow certain provisions of the regulations to override scheme rules (paragraph 6). For example, if scheme rules currently prescribe a type or level of charge which is prohibited.

Section 43: Disclosure of information about transaction costs to members etc

Section 43 places duties on the Department (in relation to occupational pension schemes) to make regulations that require the disclosure of certain information about the transaction costs incurred by money purchase pension schemes. In addition, duties would be imposed in a similar way to require information on transaction costs and administrative charges to be published. The duties are set out in amendments to section 109 of the Pension Schemes (NI) Act.

Section 44: Power to require pension levies to be paid in respect of past periods

The Pension Protection Fund (PPF) pays compensation to members of pension schemes where the employer becomes insolvent leaving the scheme underfunded. There are two levies which eligible schemes must pay: the risk-based pension protection levy, which goes towards PPF compensation, and the administration levy, which goes towards the PPF's running costs. A limited number of schemes have the benefit of a Crown guarantee, meaning that if a scheme has an insolvent employer and becomes under-funded government will meet the liabilities of the scheme or the employer in respect of the whole or part of the scheme.

On 11th February 2009 the European Commission ruled that the BT Pension Scheme's exemption from payment of the levies to the PPF, arising from the Crown guarantee, constituted unlawful State aid and must stop. Following this, in 2010 Regulations were made to ensure future compliance in payment of these two levies.

This section provides for regulations to be made allowing the Articles of the 2005 Order relevant to payment of pension levies and associated regulations to have effect as if the Regulations made in 2010 had always had effect. Regulations made under the section will allow the recovery of levies due in respect of the tax years 2005/06 to 2009/10. This will apply to those schemes covered by a Crown guarantee where an exemption from payment of the levies would give rise to incompatible State aid.

Section 45: Prohibition and suspension orders: directors of corporate trustees

Schedule 19: Prohibition orders: consequential amendments

The Pensions Regulator has the power to suspend and prohibit trustees from acting as trustees in the future if they are not deemed to be a fit and proper person to be a trustee of a scheme. Under the current rules, if a prohibited trustee becomes the director of a company which acts as a trustee of a scheme (a corporate trustee) there is no restriction on the ability of that company to operate as a corporate trustee.

This section inserts a new Article into the 1995 Order to forbid a company from being a trustee if one or more of its directors have been prohibited by the Regulator. If the director(s) who has/have been prohibited subsequently leave(s) the board of the company, the prohibition will be immediately lifted. In addition, the company is allowed to apply to the Regulator for the prohibition to be waived.

The Regulator has the power to suspend a trustee "pending consideration being given to the institution of proceedings against him for an offence involving dishonesty or deception" (Article 4(1)(aa) of the 1995 Order).

Section 45(3) to (5) allows the Pensions Regulator to suspend a corporate trustee where it or one of its directors could be suspended under Article 4(1)(aa) of the 1995 Order.

Section 46: Pensions Regulator's objectives

This section sets out an additional objective for the Pensions Regulator, which states that when carrying out its functions in relation to scheme funding the Pensions Regulator should minimise any adverse impact on the sustainable growth of sponsoring employers. This objective is in addition to the Regulator's existing five objectives, set out in Article 4(1) of the 2005 Order.

Section 47: Maximum period between scheme returns to be 5 years for micro schemes

All occupational pension schemes are required to complete a scheme return at least once every three years. This is sent to the Pensions Regulator and provides up to date information about the scheme.

This section increases the maximum period between scheme returns to five years for schemes that have no more than four members (the number of members is determined either by the information sent to register the scheme or the last scheme return).

Section 48: Pension Protection Fund: increased compensation cap for long service

Schedule 20: Pension Protection Fund: increased compensation cap for long service

The PPF pays compensation to members of non-money purchase, occupational pension schemes where the employer becomes insolvent, leaving the scheme underfunded. Anyone under the scheme's normal pensionable age when the employer becomes insolvent is paid compensation based on 90 per cent of their expected scheme pension subject to a maximum cap- 'the compensation cap'.

Section 48 and Schedule 20 provide for a revised compensation cap dependent on a person's age and length of pensionable service when the person first becomes entitled to compensation.

Paragraphs 1 to 3 of Schedule 20 amend Schedule 6 to the 2005 Order to insert new paragraph 26A. The new paragraph 26A sets out how the compensation cap will be calculated for future compensation calculations. There will be a standard amount (which is expected to be calculated in the same way as the current compensation cap amount) for anyone with pensionable service of 20 years or less. For anyone with 21 years or more pensionable service, the cap will be increased by 3 per cent for each full year, to a maximum of double the standard amount. The new paragraph also makes provision for determining pensionable service in certain situations.

Paragraphs 4 to 7 make consequential amendments to the 2005 Order.

Paragraphs 8 to 13 of Schedule 20 make transitional provision for members who are entitled to PPF compensation when the increased compensation cap for long service is introduced. Under paragraph 8(2) the PPF will be required to recalculate the protected pension rate as if the increased compensation cap for long service had been in force when the member first became entitled to compensation. The amount of compensation payable depends on the amount of the protected pension rate and the PPF must therefore re-determine the compensation and change the payment. This applies to both members of the original scheme and any of their survivors and dependants who are in receipt of compensation when the long service cap legislation comes into operation. Any increase will be effective from the date the legislation is commenced except that members who have postponed payment of their compensation will have the increase applied when they take their postponed compensation.

Any indexation that had been awarded before the legislation comes into operation will be maintained by adding the amount of indexation on to the revised compensation amount (see paragraph 8(5) of the Schedule).

There will be no backdating of compensation for any increase due to the long service compensation cap and all other elements in calculating compensation payable will be unaffected by this change:

- a) where a person commuted part of their original compensation as a lump sum, the commuted amount will be deducted as part of the redetermination;
- b) where a person had their compensation actuarially reduced because they took their compensation early, the same reduction will be applied in the redetermination;
- c) where a person had been awarded a postponement addition, that addition will not be recalculated or increased.

Paragraph 12 deals with those who received a terminal illness lump sum in the year prior to the long service cap legislation being commenced. Where the recipient is still alive when the legislation is commenced, the lump sum will be re-calculated as if the long service cap legislation had been in operation at the date of entitlement and arrears paid.

Part 3 of Schedule 20 makes transitional provision for schemes undergoing assessment or winding up on the date the increased compensation cap for long service comes into force.

Part 3 provides that, for schemes undergoing assessment for entry to the PPF when the long service cap legislation comes into operation, the valuation of the scheme's liabilities should be completed on the basis that the long service cap has not been introduced.

During an assessment period the scheme trustees continue to pay scheme pensions as they fall due but the payments must be reduced as necessary so as not

to exceed the level of compensation the PPF would pay should the scheme enter the PPF. Paragraph 14(3) would require scheme trustees to increase pension payments during the assessment period to reflect the introduction of the long service cap, where appropriate.

A scheme can ask for the decision on whether or not they enter the PPF to be reconsidered. Where a scheme entered the assessment period before the long service cap legislation is commenced and subsequently asks for such a reconsideration, paragraph 14 would require this consideration to be done on the basis that the long service cap had not been introduced.

Part 3 also provides for how the increased long service cap would apply where a scheme began wind up, or was treated as having begun wind up, before the long service cap legislation comes into operation. This could be where a scheme began to wind up without having been through a PPF assessment period, or where a scheme had been in the assessment period and left it without transferring to the PPF. Schemes winding up are required to allocate assets in accordance with the statutory priority order in Article 73 of the 1995 Order and during wind up restrict payments of pension to the amounts which the scheme will be able to satisfy on wind up under Article 73A.

In general the priority order requires the asset allocation to begin with covering the compensation that the PPF would have paid had the scheme entered the PPF. Part 3 provides that where a scheme had begun wind up before the long service cap is introduced it should continue to allocate assets and restrict pension payments on the basis that the long service cap had not been introduced. However, whilst a scheme is in a PPF assessment period, paragraph 15(4) clarifies that pension payments should be increased to reflect the introduction of the long service cap. This would mean that, in this specific situation, Article 73A would not restrict payments to pre-long service cap levels.

Paragraphs 20-22 clarify that transitional provision can be made under section 53(5), particularly, in relation to pension compensation sharing and cases where a member has multiple benefits.

Section 49: Pension Protection Fund: compensation cap to apply separately to certain benefits

This section amends paragraph 26 of Schedule 6 to the 2005 Order to bring existing legislation relating to the PPF into line with the policy intent and current practice.

The PPF pays compensation where the sponsoring employer of a defined benefit occupational pension scheme experiences an insolvency event and the scheme has insufficient funds to provide benefits at compensation levels. Where a person is under the scheme pension age at the date of the insolvency event, the compensation is based on 90 per cent of a person's accrued benefits, subject to a maximum cap.

Where a person is entitled to compensation under the PPF due to entitlement to two or more scheme benefits, paragraph 26 of Schedule 6 to the 2005 Order provides for those benefits to be added together for the purposes of applying the compensation cap. However, the policy intention is that only where both benefits are attributable to the person's pensionable service or both attributable to a pension credit arising from a divorce or dissolution settlement should they be added together for the purposes of applying the compensation cap. The PPF have been applying this policy meaning that an individual with benefits derived from different sources - for instance one benefit arising from a pension credit and another from their own service in the scheme – will have their compensation calculated separately for each and the compensation cap applied separately to each. Changing the current practice could lead to significantly lower payments to some individuals.

This section amends paragraph 26 of Schedule 6 to the 2005 Order so that both the primary and secondary legislation supports the policy and the current practice. The amendments would be retrospective by virtue of subsections (7) and (8) of the new section, to cover payments which may already have been made.