

SCHEDULES

SCHEDULE 4

OCCUPATIONAL AND PERSONAL PENSION SCHEMES

PART I

PROTECTING PENSIONS

Occupational pensions: independent trustee where employer insolvent, etc.

1. After the Article 63B of the Pensions Order inserted by paragraph 10 insert the following Articles—

“Requirement for independent trustee where employer becomes insolvent, etc.

63C.—(1) This Article applies in relation to an occupational pension scheme which is constituted by trust deed—

- (a) if a person (“the practitioner”) commences to act as an insolvency practitioner in relation to a company which, or an individual who, is the employer of persons in the description or category of employment to which the scheme relates; or
- (b) if the official receiver becomes—
 - (i) the liquidator or provisional liquidator of a company which is the employer of any such persons, or
 - (ii) the receiver and the manager, or the trustee, of the estate of a bankrupt who is the employer of any such persons.

(2) If and so long as this Article applies to a scheme, it shall be the duty of the practitioner or official receiver—

- (a) to satisfy himself that at all times at least one of the trustees of the scheme is an independent person; and
- (b) if at any time he is not so satisfied, to appoint under this sub-paragraph, or to secure the appointment of, an independent person as a trustee of the scheme;

but this paragraph is subject to paragraph (5).

(3) For the purposes of paragraph (2) a person is “independent” only if—

- (a) he has no interest in the assets of the employer or of the scheme, otherwise than as trustee of the scheme;
- (b) he is neither connected with, nor an associate of—
 - (i) the employer;
 - (ii) any person acting as an insolvency practitioner in relation to the employer;or

(iii) the official receiver, acting in any of the capacities mentioned in paragraph (1)(b) in relation to the employer; and

(c) he satisfies such other requirements as may be prescribed;

and any reference in this Article or Article 63D to an “independent trustee” shall be construed accordingly.

(4) Articles 4 and 7 of the Insolvency (Northern Ireland) Order 1989 (connected and associated persons) shall apply for the purposes of paragraph (3)(b) as they apply for the purposes of that Order.

(5) Where, apart from this paragraph, the duties imposed by paragraph (2) in relation to a scheme would fall to be discharged at the same time by two or more persons acting in different capacities, those duties shall be discharged—

(a) if the employer is a company, by the person or persons acting as the company’s liquidator, provisionsal liquidator or administrator; or

(b) if the employer is an individual, by the person or persons acting as his trustee in bankruptcy or interim receiver of his property.

(6) If the practitioner or official receiver neglects or refuses to discharge any duty imposed upon him by paragraph (2) in relation to a scheme, any member of the scheme may apply to the High Court for an order requiring him to discharge his duties under that paragraph.

(7) Where this Article applies in relation to a scheme, it shall cease to do so—

(a) if some person other than the employer mentioned in paragraph (1) becomes the employer of persons in the description or category of employment to which the scheme relates; or

(b) if at any time neither the practitioner nor the official receiver is acting in relation to the employer;

but nothing in this paragraph affects the application of this Article in relation to the scheme on any subsequent occasion when the conditions specified in paragraph (1)(a) or (b) are satisfied in relation to the scheme.

(8) In this Article—

“acting as an insolvency practitioner” shall be construed in accordance with Article 3 of the Insolvency (Northern Ireland) Order 1989;

“bankrupt” has the meaning given by Article 9(1) of the Insolvency (Northern Ireland) Order 1989;

“company” means a company within the meaning given by Article 3(1) of the Companies (Northern Ireland) Order 1986 or a company which may be wound up under Part VI of the Insolvency (Northern Ireland) Order 1989 (unregistered companies);

“the official receiver” has the meaning given by Article 2(2) of the Insolvency (Northern Ireland) Order 1989.

(9) References in this Article to an individual include references to a partnership.

Independent trustees: further provisions

63D.—(1) If and so long as Article 63C applies in relation to a scheme, no independent trustee of the scheme shall be removed from being a trustee by virtue only of any provision of the scheme.

(2) If a trustee appointed under paragraph (2)(b) of that Article ceases to be an independent trustee, then—

- (a) he shall forthwith give written notice of that fact to the practitioner or official receiver by whom the duties under that provision fall to be discharged; and
- (b) he shall cease to be a trustee of the scheme, unless the circumstances are such that upon his cessation there would be no other trustee of the scheme, in which case he shall not cease by virtue of this paragraph to be a trustee until such time as another trustee is appointed.

(3) A trustee appointed under paragraph (2)(b) of that Article shall be entitled to be paid out of the scheme's resources his reasonable fees for acting in that capacity and any expenses reasonably incurred by him in doing so, and to be so paid in priority to all other claims falling to be met out of the scheme's resources.

(4) If, immediately before the appointment of an independent trustee under paragraph (2)(b) of that Article, there is no trustee of the scheme other than the employer, the employer shall cease to be a trustee upon the appointment of the independent trustee.

(5) If and so long as Article 63C applies in relation to a scheme—

- (a) any power vested in the trustees or managers of the scheme and exercisable at their discretion shall be exercisable only by the independent trustee; and
- (b) any power—
 - (i) which the scheme confers on the employer (otherwise than as trustee or manager of the scheme), and
 - (ii) which is exercisable by him at his discretion but only as trustee of the power, shall be exercisable only by the independent trustee; but if, in either case, there is more than one independent trustee, the power shall also be exercisable with the consent of at least half of those trustees by any person who could exercise it apart from this paragraph.

(6) Notwithstanding anything in Article 133 of the Insolvency (Northern Ireland) Order 1989 (court orders for inspection, etc.), if and so long as Article 63C applies in relation to a scheme, it shall be the duty of the practitioner or official receiver to provide the trustees of the scheme, as soon as practicable after the receipt of a request, with any information which the trustees may reasonably require for the purposes of the scheme.

(7) Any expenses incurred by the practitioner or official receiver in complying with a request under paragraph (6) shall be recoverable by him as part of the expenses incurred by him in the discharge of his duties; and he shall not be required under that paragraph to take any action which involves expenses that cannot be so recovered, unless the trustees of the scheme undertake to meet them.

(8) The provisions of Article 63C and this Article, and of any regulations made under that Article or this Article, override any provision of a scheme to the extent that it conflicts with them.

(9) The Department may make regulations modifying Article 63C and this Article in their application—

- (a) to any occupational pension scheme which applies to earners in employments under different employers;
- (b) to any occupational pension scheme of which there are no members who are in pensionable service under the scheme, as defined in paragraph 3 of Schedule 3; or
- (c) to any case where a partnership is the employer, or one of the employers, in relation to an occupational pension scheme.

(10) Article 63C and this Article (other than this paragraph) shall not apply in relation to an occupational pension scheme of a prescribed description.”.