

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

Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

(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.

Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

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

Employer to make good deficiencies on winding up

2. After the Article 68A of the Pensions Order inserted by Article 13 insert the following Article—

“Deficiencies in the assets of a scheme on winding up

68B.—(1) If, in the case of an occupational pension scheme which is not a money purchase scheme, the value at the applicable time of the scheme’s liabilities, as determined in accordance with regulations, exceeds the value of its assets, as so determined, then—

- (a) an amount equal to the excess shall be treated as a debt due from the employer to the trustees of the scheme; and
- (b) if that debt has not been discharged before the default time then, for the purposes of the law relating to winding up or bankruptcy as it applies in relation to the employer, it shall be taken to arise at the default time.

(2) In this Article—

“the applicable time” means the earlier of—

- (a) any time when the scheme is being wound up which falls before the default time; or
- (b) the default time;

“the default time” means—

- (a) where the employer is a company, immediately before the company goes into liquidation, within the meaning of Article 6(2) of the Insolvency (Northern Ireland) Order 1989;
- (b) where the employer is an individual, immediately before the commencement of his bankruptcy, within the meaning of Article 252 of that Order;

“the employer” means the employer of persons in the description or category of employment to which the scheme relates;

“money purchase scheme” has the same meaning as it has in Article 68A.

(3) The power to make regulations conferred by paragraph (1) includes power to provide—

- (a) that, in calculating the value of the scheme’s liabilities, any provision of the scheme which limits the amount of its liabilities by reference to the amount of its assets is to be disregarded;
- (b) that the value of the scheme’s liabilities or assets is to be calculated and verified in such manner as may, in the particular case, be approved—
 - (i) by a prescribed person,
 - (ii) by a person with prescribed professional qualifications or experience, or
 - (iii) by a person approved by the Department,or that their value is to be calculated and verified in accordance with guidance prepared by a prescribed body.

(4) This Article is without prejudice to any other right or remedy which the trustees may have in respect of the deficiency.

Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

(5) A debt due by virtue only of this Article shall not be regarded as a preferential debt for the purposes of the Insolvency (Northern Ireland) Order 1989.

(6) The Department may make regulations modifying this Article in its application—

- (a) to any occupational pension scheme which applies to earners in employments under different employers;
- (b) to any case where a partnership is the employer, or one of the employers, in relation to an occupational pension scheme;
- (c) 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
- (d) to any case where the assets and liabilities of the scheme are transferred to another occupational pension scheme.

(7) The provisions of this Article and of any regulations made under it override any provision of a scheme to the extent that it conflicts with this Article or those regulations.”.

Investment of scheme’s resources

3. After Article 63 of the Pensions Order and the cross-heading “Other provisions” insert the following Article—

“Restrictions on investment of scheme’s resources in employer-related assets

63A.—(1) An occupational pension scheme shall comply with such restrictions as may be prescribed with respect to the proportion of its resources that may at any time be invested in, or in any description of, employer-related investments.

(2) In this Article—

“employer-related investments” means—

- (a) shares or other securities issued by the employer or by any person who is connected with, or an associate of, the employer;
- (b) land which is occupied or used by, or subject to a lease in favour of, the employer or any such person;
- (c) property (other than land) which is used for the purposes of any business carried on by the employer or any such person;
- (d) loans to the employer or any such person;

“the employer” means the employer of persons in the description or category of employment to which the scheme in question relates;

“securities” means any asset, right or interest falling within paragraph 1, 2, 4 or 5 of Schedule 1 to the Financial Services Act 1986.

(3) If and to the extent that any sums due and payable by a person to the trustees or managers of a scheme remain unpaid, those sums shall be regarded for the purposes of this Article as loans made to that person by the trustees or managers, and resources of the scheme shall be regarded as invested accordingly.

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

Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

Revaluation of preserved pensions

4.—(1) For the definition of “qualifying pensionable service” in paragraph 2(3) of Schedule 1A to the Pensions Order (which includes revaluation of accrued rights referable to service before 1st January 1985) substitute the following definition—

““qualifying pensionable service” means—

- (a) where the termination of pensionable service occurs after the commencement of this paragraph of this definition, the whole of the member’s pensionable service, as defined in this sub-paragraph; and
- (b) in any other case, so much of any such service as falls on or after 1st January 1985.”.

(2) In paragraph 3 of that Schedule (average salary benefits), in sub-paragraph (5) (definition of “salaries”), for the words from “means” to “terminated” substitute

“means, subject to sub-paragraph (5A), the member’s salaries for the period between the date when his pensionable service commenced and the date when it terminated”.

(3) After that sub-paragraph insert the following sub-paragraph—

“(5A) Where the member’s pensionable service terminated before the commencement of this sub-paragraph, sub-paragraph (5) shall have effect with the substitution for the words from “means” to “terminated” of “means the member’s salaries for the period between 1st January 1985 and the date when his pensionable service terminated”.”.