
STATUTORY INSTRUMENTS

1995 No. 3213

The Pensions (Northern Ireland) Order 1995

PART II

OCCUPATIONAL PENSIONS

Supervision by the Authority

Prohibition orders

3.—(1) The Authority may by order prohibit a person from being a trustee of a particular trust scheme in any of the following circumstances.

(2) The circumstances are—

- (a) that the Authority are satisfied that while being a trustee of the scheme the person has been in serious or persistent breach of any of his duties under—
 - (i) this Part, other than the following provisions: Articles 51 to 54, 62 to 65 and 108 to 110, or
 - (ii) the following provisions of the Pension Schemes Act: section 2 (registration), Chapter IV of Part IV (transfer values), section 109 (information) and section 170 (levy),
- (b) that the Authority are satisfied that, while being a trustee of the scheme, this Article has applied to the person by virtue of any other provision of this Part,
- (c) that the person is a company and any director of the company is prohibited under this Article from being a trustee of the scheme, or
- (d) that the person is a director of a company which, by reason of circumstances falling within sub-paragraph (a) or (b), is prohibited under this Article from being a trustee of the scheme and the Authority are satisfied that the acts or defaults giving rise to those circumstances were committed with the consent or connivance of, or attributable to any neglect on the part of, the director; or any other prescribed circumstances.

(3) The making of an order under paragraph (1) against a person who is a trustee of the scheme in question has the effect of removing him.

(4) The Authority may, on the application of any person against whom an order under paragraph (1) is in force, by order revoke the order, but a revocation made at any time cannot affect anything done before that time.

Suspension orders

4.—(1) The Authority may by order suspend a trustee of a trust scheme—

- (a) pending consideration being given to the making of an order against him under Article 3(1),

- (b) where proceedings have been instituted against him for an offence involving dishonesty or deception and have not been concluded,
 - (c) where a petition has been presented to the court for an order adjudging him bankrupt, or for the sequestration of his estate, and proceedings on the petition have not been concluded,
 - (d) where the trustee is a company, if a petition for the winding up of the company has been presented to the court and proceedings on the petition have not been concluded,
 - (e) where an application has been made to the court for a disqualification order against him under Part II of the Companies (Northern Ireland) Order 1989(1) or for such an order under any corresponding enactment for the time being in force in Great Britain and proceedings on the application have not been concluded, or
 - (f) where the trustee is a company and, if any director were a trustee, the Authority would have power to suspend him under sub-paragraph (b), (c) or (e).
- (2) An order under paragraph (1)—
- (a) if made by virtue of sub-paragraph (a), has effect for an initial period not exceeding twelve months, and
 - (b) in any other case, has effect until the proceedings in question are concluded;

but the Authority may by order extend the initial period referred to in sub-paragraph (a) for a further period of twelve months, and any order suspending a person under paragraph (1) ceases to have effect if an order is made against that person under Article 3(1).

(3) An order under paragraph (1) has the effect of prohibiting the person suspended, during the period of his suspension, from exercising any functions as trustee of any trust scheme to which the order applies; and the order may apply to a particular trust scheme, a particular class of trust schemes or trust schemes in general.

(4) An order under paragraph (1) may be made on one of the grounds in sub-paragraphs (b) to (e) whether or not the proceedings were instituted, petition presented or application made (as the case may be) before or after the coming into operation of that paragraph.

(5) The Authority may, on the application of any person suspended under paragraph (1), by order revoke the order, either generally or in relation to a particular scheme or a particular class of schemes; but a revocation made at any time cannot affect anything done before that time.

(6) An order under this Article may make provision as respects the period of the trustee's suspension for matters arising out of it, and in particular for enabling any person to execute any instrument in his name or otherwise act for him and for adjusting any rules governing the proceedings of the trustees to take account of the reduction in the number capable of acting.

Removal of trustees: notices

5.—(1) Before the Authority make an order under Article 3 against a person without his consent, the Authority must, unless he cannot be found or has no known address, give him not less than one month's notice of their proposal, inviting representations to be made to them within a time specified in the notice.

(2) Where any such notice is given, the Authority must take into consideration any representations made to them about the proposals within the time specified in the notice.

(3) Before making an order under Article 3 against a person, the Authority must give notice of their intention to do so to each of the trustees of the scheme, except that person (if he is a trustee) and any trustee who cannot be found or has no known address.

(4) Where the Authority make an order under Article 4 against a person, they must—

(1) 1989 NI 18.

- (a) immediately give notice of that fact to that person, and
- (b) as soon as reasonably practicable, give notice of that fact to the other trustees of any trust scheme to which the order applies, except any trustee who cannot be found or has no known address.

(5) For the purposes of section 24(1) of the Interpretation Act (Northern Ireland) 1954(2) (service of documents by post) in its application to this Article, the last known address of any person is his latest address known to the Authority.

Removal or suspension of trustees: consequences

6.—(1) A person who purports to act as trustee of a trust scheme while prohibited from being a trustee of the scheme under Article 3 or suspended in relation to the scheme under Article 4 is guilty of an offence and liable—

- (a) on summary conviction, to a fine not exceeding the statutory maximum, and
- (b) on conviction on indictment, to a fine or imprisonment or both.

(2) An offence under paragraph (1) may be charged by reference to any day or longer period of time; and a person may be convicted of a second or subsequent offence under that paragraph by reference to any period of time following the preceding conviction of the offence.

(3) Things done by a person purporting to act as trustee of a trust scheme while prohibited from being a trustee of the scheme under Article 3 or suspended in relation to the scheme under Article 4 are not invalid merely because of that prohibition or suspension.

(4) Nothing in Article 3 or 4 or this Article affects the liability of any person for things done, or omitted to be done, by him while purporting to act as trustee of a trust scheme.

Appointment of trustees

7.—(1) Where a trustee of a trust scheme is removed by an order under Article 3, or a trustee of such a scheme ceases to be a trustee by reason of his disqualification, the Authority may by order appoint another trustee in his place.

(2) Where a trustee appointed under paragraph (1) is appointed to replace a trustee appointed under Article 23(1)(b), Articles 22 to 26 shall apply to the replacement trustee as they apply to a trustee appointed under Article 23(1)(b).

(3) The Authority may also by order appoint a trustee of a trust scheme where they are satisfied that it is necessary to do so in order—

- (a) to secure that the trustees as a whole have, or exercise, the necessary knowledge and skill for the proper administration of the scheme,
- (b) to secure that the number of trustees is sufficient for the proper administration of the scheme, or
- (c) to secure the proper use or application of the assets of the scheme.

(4) The Authority may also appoint a trustee of a trust scheme in prescribed circumstances.

(5) The power to appoint a trustee by an order under this Article includes power by such an order—

- (a) to determine the appropriate number of trustees for the proper administration of the scheme,
- (b) to require a trustee appointed by the order to be paid fees and expenses out of the scheme's resources,

(c) to provide for the removal or replacement of such a trustee.

(6) Regulations may make provision about the descriptions of persons who may or may not be appointed trustees under this Article.

Appointment of trustees: consequences

8.—(1) An order under Article 7 appointing a trustee may provide that an amount equal to the amount (if any) to which paragraph applies is to be treated for all purposes as a debt due from the employer to the trustees.

(2) This paragraph applies to any amount which has been paid to the trustee so appointed out of the resources of the scheme and has not been reimbursed by the employer.

(3) Subject to paragraph (4), a trustee appointed under Article 7 shall, unless he is the independent trustee and Article 22 applies in relation to the scheme, have the same powers and duties as the other trustees.

(4) An order under Article 7 may make provision—

(a) for restricting the powers or duties of a trustee so appointed, or

(b) for powers or duties to be exercisable by a trustee so appointed to the exclusion of other trustees.

Removal and appointment of trustees: property

9. Where the Authority have power under this Part to appoint or remove a trustee, they may exercise the same jurisdiction and powers as are exercisable by the High Court for vesting any property in, or transferring any property to, trustees in consequence of the appointment or of the removal.

Civil penalties

10.—(1) Where the Authority are satisfied that by reason of any act or omission this Article applies to any person, they may by notice in writing require him to pay, within a prescribed period, a penalty in respect of that act or omission not exceeding the maximum amount.

(2) In this Article, “the maximum amount” means—

(a) £5,000 in the case of an individual and £50,000 in any other case, or

(b) such lower amount as may be prescribed in the case of an individual or in any other case,

and the Department may by order amend sub-paragraph (a) by substituting higher amounts for the amounts for the time being specified in that sub-paragraph.

(3) Regulations made by virtue of this Part may provide for any person who has contravened any provision of such regulations to pay, within a prescribed period, a penalty under this Article not exceeding an amount specified in the regulations; and the regulations must specify different amounts in the case of individuals from those specified in other cases and any amount so specified may not exceed the amount for the time being specified in the case of individuals or, as the case may be, others in paragraph (2)(a).

(4) An order made under paragraph (2) or regulations made by virtue of paragraph (3) do not affect the amount of any penalty recoverable under this Article by reason of an act or omission occurring before the order or, as the case may be, regulations are made.

(5) Where—

(a) apart from this paragraph, a penalty under this Article is recoverable from a body corporate by reason of any act or omission of the body as a trustee of a trust scheme, and

(b) the act or omission was done with the consent or connivance of, or is attributable to any neglect on the part of, any persons mentioned in paragraph (6),
this Article applies to each of those persons who consented to or connived in the act or omission or to whose neglect the act or omission was attributable.

(6) The persons referred to in paragraph (5)(b) are—

- (a) any director, manager, secretary, or other similar officer of the body corporate, or a person purporting to act in any such capacity, and
- (b) where the affairs of the body corporate are managed by its members, any member in connection with his functions of management.

(7) Where the Authority requires any person to pay a penalty by virtue of paragraph (5), they may not also require the body corporate in question to pay a penalty in respect of the same act or omission.

(8) A penalty under this Article is recoverable by the Authority.

(9) The Authority must pay to the Department any penalty recovered under this Article.

Powers to wind up schemes

11.—(1) Subject to paragraphs (2) to (7), the Authority may by order direct or authorise an occupational pension scheme to be wound up if they are satisfied that—

- (a) the scheme, or any part of it, ought to be replaced by a different scheme,
- (b) the scheme is no longer required, or
- (c) it is necessary in order to protect the interests of the generality of the members of the scheme that it be wound up.

(2) The Authority may not make an order under this Article on either of the grounds referred to in paragraph (1)(a) or (b) unless they are satisfied that the winding up of the scheme—

- (a) cannot be achieved otherwise than by means of such an order, or
- (b) can only be achieved in accordance with a procedure which—
 - (i) is liable to be unduly complex or protracted, or
 - (ii) involves the obtaining of consents which cannot be obtained, or can only be obtained with undue delay or difficulty,

and that it is reasonable in all the circumstances to make the order.

(3) An order made under this Article on either of the grounds referred to in paragraph (1)(a) or (b) may be made only on the application of—

- (a) the trustees or managers of the scheme,
- (b) any person other than the trustees or managers who has power to alter any of the rules of the scheme, or
- (c) the employer.

(4) An order under this Article authorising a scheme to be wound up must include such directions with respect to the manner and timing of the winding up as the Authority think appropriate having regard to the purposes of the order.

(5) The winding up of a scheme in pursuance of an order of the Authority under this Article is as effective in law as if it had been made under powers conferred by or under the scheme.

(6) An order under this Article may be made and complied with in relation to a scheme—

- (a) in spite of any enactment or rule of law, or any rule of the scheme, which would otherwise operate to prevent the winding up, or

- (b) except for the purpose of the Authority determining whether they are satisfied as mentioned in paragraph (2), without regard to any such enactment, rule of law or rule of the scheme as would otherwise require, or might otherwise be taken to require, the implementation of any procedure or the obtaining of any consent, with a view to the winding up.
- (7) In the case of a public service pension scheme—
 - (a) an order under paragraph (1) directing or authorising the scheme to be wound up may only be made on the grounds referred to in sub-paragraph (c), and
 - (b) such an order may, as the Authority think appropriate, adapt, amend or repeal any enactment in which the scheme is contained or under which it is made.

Powers to wind up public service schemes

12.—(1) The appropriate authority may by order direct a public service pension scheme to be wound up if they are satisfied that—

- (a) the scheme, or any part of it, ought to be replaced by a different scheme, or
- (b) the scheme is no longer required.

(2) Paragraph (2) of Article 11 applies for the purposes of this Article as it applies for the purposes of that, but as if references to the Authority were to the appropriate authority.

(3) In this Article, “the appropriate authority”, in relation to a scheme, means such Minister of the Crown or government department as may be designated by the Treasury or the Department of Finance and Personnel as having responsibility for the particular scheme.

(4) An order under this Article must include such directions with respect to the manner and timing of the winding up as the appropriate authority thinks appropriate.

(5) Such an order may, as the appropriate authority thinks appropriate, adapt, amend or repeal any enactment in which the scheme is contained or under which it is made.

Injunctions

13. If, on the application of the Authority, the High Court is satisfied that—

- (a) there is a reasonable likelihood that a particular person will do any act which constitutes a misuse or misappropriation of assets of an occupational pension scheme, or
- (b) that a particular person has done any such act and that there is a reasonable likelihood that he will continue or repeat the act in question or do a similar act,

the Court may grant an injunction restraining him from doing so.

Restitution

14. If, on the application of the Authority, the High Court is satisfied—

- (a) that a power to make a payment, or distribute any assets, to the employer, has been exercised in contravention of Article 37, 76 or 77, or
- (b) that any act or omission of the trustees or managers of an occupational pension scheme was in contravention of Article 40,

the Court may order the employer and any other person who appears to the Court to have been knowingly concerned in the contravention to take such steps as the Court may direct for restoring the parties to the position in which they were before the payment or distribution was made, or the act or omission occurred.

Directions

15.—(1) The Authority may, where in the case of any trust scheme the employer fails to comply with any requirement included in regulations by virtue of Article 49(5), direct the trustees to make arrangements for the payment to the members of the benefit to which the requirement relates.

(2) The Authority may—

(a) where in the case of any trust scheme an annual report is published, direct the trustees to include a statement prepared by the Authority in the report, and

(b) in the case of any trust scheme, direct the trustees to send to the members a copy of a statement prepared by the Authority.

(3) A direction under this Article must be given in writing.

(4) Where a direction under this Article is not complied with, Articles 3 and 10 apply to any trustee who has failed to take all such steps as are reasonable to secure compliance.

Member-nominated trustees and directors

Requirement for member-nominated trustees

16.—(1) The trustees of a trust scheme must (subject to Article 17) secure—

(a) that such arrangements for persons selected by members of the scheme to be trustees of the scheme as are required by this Article are made, and

(b) that those arrangements, and the appropriate rules, are implemented.

(2) Persons who become trustees under the arrangements required by paragraph (1) are referred to in this Part as “member-nominated trustees”.

(3) The arrangements must provide—

(a) for any person who has been nominated and selected in accordance with the appropriate rules to become a trustee by virtue of his selection, and

(b) for the removal of such a person to require the agreement of all the other trustees.

(4) Where a vacancy for a member-nominated trustee is not filled because insufficient nominations are received, the arrangements must provide for the filling of the vacancy, or for the vacancy to remain, until the expiry of the next period in which persons may be nominated and selected in accordance with the appropriate rules.

(5) The arrangements must provide for the selection of a person as a member-nominated trustee to have effect for a period of not less than three nor more than six years.

(6) The arrangements must provide for the number of member-nominated trustees to be—

(a) at least two or (if the scheme comprises less than 100 members) at least one, and

(b) at least one-third of the total number of trustees;

but the arrangements must not provide for a greater number of member-nominated trustees than that required to satisfy that minimum unless the employer has given his approval to the greater number.

(7) The arrangements must not provide for the functions of member-nominated trustees to differ from those of any other trustee but, for the purposes of this paragraph—

(a) any provision made by an order under Article 8(4), and

(b) Article 25(2),

shall be disregarded.

(8) The arrangements must provide that, if a member-nominated trustee who was a member of the scheme when he was appointed ceases to be a member of the scheme, he ceases to be a trustee by virtue of that fact.

Exceptions

17.—(1) Article 16 does not apply to a trust scheme if—

- (a) a proposal has been made by the employer for the continuation of existing arrangements, or the adoption of new arrangements, for selecting the trustees of the scheme,
- (b) the arrangements referred to in the proposal are for the time being approved under the statutory consultation procedure, and
- (c) such other requirements as may be prescribed are satisfied.

(2) Where—

- (a) by virtue of paragraph (1), Article 16 does not apply to a trust scheme, and
- (b) the employer's proposal was for the adoption of new arrangements which, in consequence of paragraph (1)(b), are adopted,

the trustees shall secure that the proposed arrangements are made and implemented.

(3) For the purposes of this Article, the arrangements for selecting the trustees of a scheme include all matters relating to the continuation in office of the existing trustees, the selection or appointment of new trustees and the terms of their appointments and any special rules for decisions to be made by particular trustees.

(4) Article 16 does not apply to a trust scheme if—

- (a) the trustees of the scheme consist of all the members, or
- (b) it falls within a prescribed class.

(5) Article 10 applies to any employer who—

- (a) makes such a proposal as is referred to in paragraph (1)(a), but
- (b) fails to give effect to the statutory consultation procedure.

Corporate trustees: member-nominated directors

18.—(1) Where a company is a trustee of a trust scheme and the employer is connected with the company or prescribed conditions are satisfied, the company must, subject to Article 19 secure—

- (a) that such arrangements for persons selected by the members of the scheme to be directors of the company as are required by this Article are made, and
- (b) that those arrangements, and the appropriate rules, are implemented.

(2) Persons who become directors under the arrangements required by paragraph (1) are referred to in this Part as “member-nominated directors”.

(3) The arrangements must provide—

- (a) for any person who has been nominated and selected in accordance with the appropriate rules to become a director by virtue of his selection, and
- (b) for the removal of such a person to require the agreement of all the other directors.

(4) Where a vacancy for a member-nominated director is not filled because insufficient nominations are received, the arrangements must provide for the filling of the vacancy, or for the vacancy to remain, until the expiry of the next period in which persons may be nominated and selected in accordance with the appropriate rules.

(5) The arrangements must provide for the selection of a person as a member-nominated director to have effect for a period of not less than three nor more than six years.

- (6) The arrangements must provide for the number of member-nominated directors to be—
- (a) at least two or (if the scheme comprises less than 100 members) at least one, and
 - (b) at least one-third of the total number of directors;

but the arrangements must not provide for a greater number of member-nominated directors than that required to satisfy that minimum unless the employer has given his approval to the greater number.

(7) The arrangements must provide that, if a member-nominated director who was a member of the scheme when he was appointed ceases to be a member of the scheme, he ceases to be a director by virtue of that fact.

- (8) Where this Article applies to a company which is—
- (a) a trustee of two or more trust schemes, and
 - (b) a wholly-owned subsidiary (within the meaning of Article 4 of the Companies (Northern Ireland) Order 1986⁽³⁾) of a company which is the employer in relation to those schemes,

the following provisions apply as if those schemes were a single scheme and the members of each of the schemes were members of that scheme, that is: the preceding provisions of this Article, Article 20 and Article 21(7).

Corporate trustees: exceptions

19.—(1) Article 18 does not apply to a company which is a trustee of a trust scheme if—

- (a) a proposal has been made by the employer for the continuation of existing arrangements, or the adoption of new arrangements, for selecting the directors of the company,
- (b) the arrangements referred to in the proposal are for the time being approved under the statutory consultation procedure, and
- (c) such other requirements as may be prescribed are satisfied.

(2) Where—

- (a) by virtue of paragraph (1), Article 18 does not apply to a company which is a trustee of a trust scheme; and
- (b) the employer's proposal was for the adoption of new arrangements which, in consequence of paragraph (1)(b), are adopted,

the company must secure that the proposed arrangements are made and implemented.

(3) For the purposes of this Article, the arrangements for selecting the directors of a company include all matters relating to the continuation in office of the existing directors, the selection or appointment of new directors and the terms of their appointments and any special rules for decisions to be made by particular directors.

(4) Article 18 does not apply to a company which is a trustee of a trust scheme if the scheme falls within a prescribed class.

- (5) Article 10 applies to any employer who—
- (a) makes such a proposal as is referred to in paragraph (1)(a), but
 - (b) fails to give effect to the statutory consultation procedure.

(3) 1986 NI 6.

Selection, and eligibility, of member-nominated trustees and directors

20.—(1) For the purposes of Articles 16 to 21, the appropriate rules are rules which—

- (a) make the provision required or authorised by this Article, and no other provision, and
- (b) are for the time being approved under the statutory consultation procedure or, if no rules are for the time being so approved, are prescribed rules;

and the arrangements required by Article 16 or 18 to be made must not make any provision which is required or authorised to be made by the rules.

(2) The appropriate rules—

- (a) must determine the procedure for the nomination and selection of a person to fill a vacancy as a member-nominated trustee, and
- (b) may determine, or provide for the determination of, the conditions required of a person for filling such a vacancy.

(3) The appropriate rules must provide for a member-nominated trustee to be eligible for re-selection at the end of his period of service.

(4) Where a vacancy for a member-nominated trustee is not filled because insufficient nominations are received, the appropriate rules must provide for determining the next period in which persons may be nominated and selected in accordance with the rules, being a period ending at a prescribed time.

(5) The appropriate rules must provide that, where the employer so requires, a person who is not a member of the scheme must have the employer's approval to qualify for selection as a member-nominated trustee.

(6) Where Article 18 applies to a trust scheme, references in this Article to a member-nominated trustee include a member-nominated director.

Member-nominated trustees and directors: supplementary

21.—(1) If, in the case of a trust scheme—

- (a) such arrangements as are required by Article 16(1) or 17(2) to be made have not been made, or
- (b) arrangements required by Article 16(1) or 17(2) to be implemented, or the appropriate rules, are not being implemented,

Articles 3 and 10 apply to any trustee who has failed to take all such steps as are reasonable to secure compliance.

(2) If, in the case of a company which is a trustee of a trust scheme—

- (a) such arrangements as are required by Article 18(1) or 19(2) to be made have not been made, or
- (b) arrangements required by Article 18(1) or 19(2) to be implemented, or the appropriate rules, are not being implemented,

Articles 3 and 10 apply to the company.

(3) Regulations may make provision for determining the time by which—

- (a) such arrangements (or further arrangements) as are referred to in Article 16(1), 17(2), 18(1) or 19(2) are required to be made, and
- (b) trustees or directors are required to be selected in pursuance of the appropriate rules.

(4) Regulations may make provision for determining when any approval under the statutory consultation procedure—

- (a) of the appropriate rules, or
- (b) of arrangements for selecting the trustees of a scheme, or the directors of a company, given on a proposal by the employer

is to cease to have effect.

(5) The Department may by regulations modify Articles 16 to 20 and this Article in their application to prescribed cases.

(6) In Articles 17 to 20 and this Article, “the statutory consultation procedure” means the prescribed procedure for obtaining the views of members of schemes.

(7) For the purposes of this and those Articles—

- (a) approval of the appropriate rules, or of arrangements, under the statutory consultation procedure must be given by—

- (i) the active and pensioner members of the scheme, and
- (ii) if the trustees so determine, such deferred members of the scheme as the trustees may determine,

taken as a whole, and

- (b) references to the approval of the appropriate rules, or of arrangements under Article 17 or 19, by any persons under the statutory consultation procedure are to prescribed conditions in respect of those rules or, as the case may be, arrangements being satisfied in the case of those persons in pursuance of the procedure, and those conditions may relate to the extent to which those persons have either endorsed, or not objected to, the rules or, as the case may be, arrangements.

Independent trustees

Circumstances in which following provisions apply

22.—(1) This Article applies in relation to a trust scheme—

- (a) if a person (referred to in this Article and Articles 23 to 26 as “the practitioner”) begins to act as an insolvency practitioner in relation to a company which, or an individual who, is the employer in relation to the scheme, or
- (b) if the official receiver becomes—
 - (i) the liquidator or provisional liquidator of a company which is the employer in relation to the scheme, or
 - (ii) the receiver and the manager, or the trustee, of the estate of a bankrupt who is the employer in relation to the scheme.

(2) Where this Article applies in relation to a scheme, it ceases to do so—

- (a) if some person other than the employer mentioned in paragraph (1) becomes the employer, or
- (b) if at any time neither the practitioner nor the official receiver is acting in relation to the employer;

but this paragraph does not affect 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 it.

(3) In this Article and Articles 23 to 26—

“acting as an insolvency practitioner” and “official receiver” shall be construed in accordance with Articles 3 and 2 of the Insolvency (Northern Ireland) Order 1989, “bankrupt” has the meaning given by Article 9 of the Insolvency (Northern Ireland) Order 1989⁽⁴⁾,

“company” means a company within the meaning given by Article 3 of the Companies (Northern Ireland) Order 1986⁽⁵⁾ or a company which may be wound up under Part VI of the Insolvency (Northern Ireland) Order 1989 (unregistered companies).

Requirement for independent trustee

23.—(1) While Article 22 applies in relation to a scheme, the practitioner or official receiver must—

- (a) 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, appoint under this sub-paragraph, or secure the appointment of, an independent person as a trustee of the scheme.

(2) The duty under paragraph (1)(b) must be performed as soon as reasonably practicable and, if a period is prescribed for the purposes of that paragraph, within that period.

(3) For the purposes of paragraph (1) 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 for the time being acting as an insolvency practitioner in relation to the employer, or
 - (iii) the official receiver, acting in any of the capacities mentioned in Article 22(1)(b) in relation to the employer, and
- (c) he satisfies any prescribed requirements;

and any reference in this Part to an independent trustee shall be construed accordingly.

(4) Where, apart from this paragraph, the duties imposed by paragraph (1) 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, provisional liquidator or administrator, or
- (b) if the employer is an individual, by the person or persons acting as his trustee in bankruptcy.

(5) References in this Article to an individual include, except where the context otherwise requires, references to a partnership.

Members' powers to apply to High Court to enforce duty

24. If—

- (a) Article 22 applies in relation to a trust scheme, but
- (b) the practitioner or official receiver neglects or refuses to discharge any duty imposed on him by Article 23(1) in relation to the scheme,

(4) 1989 NI 19.

(5) 1986 NI 6.

any member of the scheme may apply to the High Court for an order requiring him to discharge his duties under Article 23(1).

Appointment and powers of independent trustees: further provisions

25.—(1) If, immediately before the appointment of an independent trustee under Article 23(1)(b), 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.

(2) While Article 22 applies in relation to a scheme—

(a) any power vested in the trustees of the scheme and exercisable at their discretion may be exercised only by the independent trustee, and

(b) any power—

(i) which the scheme confers on the employer (otherwise than as trustee of the scheme), and

(ii) which is exercisable by him at his discretion but only as trustee of the power, may be exercised only by the independent trustee,

but if, in either case, there is more than one independent trustee, the power may also be exercised with the consent of at least half of those trustees by any person who could exercise it apart from this paragraph.

(3) While Article 22 applies in relation to a scheme, no independent trustee of the scheme may be removed from being a trustee by virtue only of any provision of the scheme.

(4) If a trustee appointed under Article 23(1)(b) ceases to be an independent person, then—

(a) he must immediately 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) subject to paragraph (5), he shall cease to be a trustee of the scheme.

(5) If, in a case where paragraph (4) applies, there is no other trustee of the scheme than the former independent trustee, he shall not cease by virtue of that paragraph to be a trustee until such time as another trustee is appointed.

(6) A trustee appointed under Article 23(1)(b) is 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.

Insolvency practitioner or official receiver to give information to trustees

26.—(1) Notwithstanding anything in Article 133 of the Insolvency (Northern Ireland) Order 1989(6) (court orders for inspection, etc.), while Article 22 applies in relation to a scheme, the practitioner or official receiver must 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.

(2) Any expenses incurred by the practitioner or official receiver in complying with a request under paragraph (1) are recoverable by him as part of the expenses incurred by him in discharge of his duties.

(3) The practitioner or official receiver is not required under paragraph (1) to take any action which involves expenses that cannot be so recovered, unless the trustees of the scheme undertake to meet them.

*Trustees: general***Trustee not to be auditor or actuary of the scheme**

27.—(1) A trustee of a trust scheme, and any person who is connected with, or an associate of, such a trustee, is ineligible to act as an auditor or actuary of the scheme.

(2) Paragraph (1) does not make a person who is a director, partner or employee of a firm of actuaries ineligible to act as an actuary of a trust scheme merely because another director, partner or employee of the firm is a trustee of the scheme.

(3) Paragraph (1) does not make a person who falls within a prescribed class or description ineligible to act as an auditor or actuary of a trust scheme.

(4) A person must not act as an auditor or actuary of a trust scheme if he is ineligible under this Article to do so.

(5) In this Article and Article 28 references to a trustee of a trust scheme do not include—

- (a) a trustee, or
- (b) a trustee of a scheme,

falling within a prescribed class or description.

Article 27: consequences

28.—(1) Any person who acts as an auditor or actuary of a trust scheme in contravention of Article 27(4) is guilty of an offence and liable—

- (a) on summary conviction, to a fine not exceeding the statutory maximum, and
- (b) on conviction on indictment, to imprisonment or a fine, or both.

(2) An offence under paragraph (1) may be charged by reference to any day or longer period of time; and a person may be convicted of a second or subsequent offence under that paragraph by reference to any period of time following the preceding conviction of the offence.

(3) Acts done as an auditor or actuary of a trust scheme by a person who is ineligible under Article 27 to do so are not invalid merely because of that fact.

(4) Where—

- (a) a trustee of a trust scheme acts as auditor or actuary of the scheme, or
- (b) a person acts as auditor or actuary of a trust scheme when he is ineligible under Article 27 to do so by reason of being connected with, or an associate of, a trustee of the scheme,

Article 3 applies to the trusted.

Persons disqualified for being trustees

29.—(1) Subject to paragraph (5), a person is disqualified for being a trustee of any trust scheme if—

- (a) he has been convicted of any offence involving dishonesty or deception,
- (b) he has been adjudged bankrupt or sequestration of his estate has been awarded and (in either case) he has not been discharged,
- (c) where the person is a company, if any director of the company is disqualified under this Article,
- (d) where the person is a Scottish partnership, if any partner is disqualified under this Article,
- (e) he has made an arrangement or a composition contract with, or granted a trust deed for the behoof of, his creditors and has not been discharged in respect of it, or

- (f) he is subject to a disqualification order under Part II of the Companies (Northern Ireland) Order 1989(7) or to such an order under any corresponding enactment for the time being in force in Great Britain.
- (2) In paragraph (1)—
 - (a) sub-paragraph (a) applies whether the conviction occurred before or after the coming into operation of that paragraph, but does not apply in relation to any conviction which is a spent conviction for the purposes of the Rehabilitation of Offenders (Northern Ireland) Order 1978(8),
 - (b) sub-paragraph (b) applies whether the adjudication of bankruptcy or the sequestration occurred before or after the coming into operation of that paragraph,
 - (c) sub-paragraph (e) applies whether the arrangement or composition contract was made, or the trust deed was granted, before or after the coming into operation of that paragraph, and
 - (d) sub-paragraph (f) applies in relation to orders made before or after the coming into operation of that paragraph.
- (3) Where a person—
 - (a) is prohibited from being a trustee of a trust scheme by an order under Article 3, or
 - (b) has been removed as a trustee of a trust scheme by an order made (whether before or after the coming into operation of this paragraph) by the High Court on the grounds of misconduct or mismanagement in the administration of the scheme for which he was responsible or to which he was privy, or which he by his conduct contributed to or facilitated,

the Authority may, if in their opinion it is not desirable for him to be a trustee of any trust scheme, by order disqualify him for being a trustee of any trust scheme.

- (4) The Authority may by order disqualify a person for being a trustee of any trust scheme where —
 - (a) in their opinion he is incapable of acting as such a trustee by reason of mental disorder (within the meaning of the Mental Health (Northern Ireland) Order 1986(9)), or
 - (b) the person is a company which has gone into liquidation (within the meaning of Article 6(2) of the Insolvency (Northern Ireland) Order 1989(10)).
- (5) The Authority may, on the application of any person disqualified under this Article—
 - (a) give notice in writing to him waiving his disqualification,
 - (b) in the case of a person disqualified under paragraph (3) or (4) by order revoke the order disqualifying him,

either generally or in relation to a particular scheme or particular class of schemes.

(6) A notice given or revocation made at any time by virtue of paragraph (5) cannot affect anything done before that time.

Persons disqualified: consequences

30.—(1) A trustee of a trust scheme who becomes disqualified under Article 29 shall, while he is so disqualified, cease to be a trustee.

- (2) Where—

(7) 1989 NI 18.

(8) 1978 NI 27.

(9) 1986 NI 4.

(10) 1989 NI 19.

- (a) a trustee of a trust scheme becomes disqualified under Article 29, or
- (b) in the case of a trustee or a trust scheme who has become so disqualified, his disqualification is waived or the order disqualifying him is revoked or he otherwise ceases to be disqualified,

the Authority may exercise the same jurisdiction and powers as are exercisable by the High Court for vesting any property in, or transferring any property to, the trustees.

(3) A person who purports to act as a trustee of a trust scheme while he is disqualified under Article 29 is guilty of an offence and liable—

- (a) on summary conviction to a fine not exceeding the statutory maximum, and
- (b) on conviction on indictment, to a fine or imprisonment or both.

(4) An offence under paragraph (3) may be charged by reference to any day or longer period of time; and a person may be convicted of a second or subsequent offence under that paragraph by reference to any period of time following the preceding conviction of the offence.

(5) Things done by a person disqualified under Article 29 while purporting to act as trustee or a trust scheme are not invalid merely because of that disqualification.

(6) Nothing in Article 29 or this Article affects the liability of any person for things done, or omitted to be done, by him while purporting to act as trustee of a trust scheme.

(7) The Authority must keep, in such manner as they think fit, a register of all persons who are disqualified under Article 29(3) or (4); and the Authority must, if requested to do so, disclose whether the name of a person specified in the request is included in the register in respect of a scheme so specified.

Trustees not to be indemnified for fines or civil penalties

31.—(1) No amount may be paid out of the assets of a trust scheme for the purpose of reimbursing, or providing for the reimbursement of, any trustee of the scheme in respect of—

- (a) a fine imposed by way of penalty for an offence of which he is convicted, or
- (b) a penalty which he is required to pay under Article 10 or under section 164(4) of the Pensions Schemes Act.

(2) For the purposes of paragraph (1), providing for the reimbursement of a trustee in respect of a fine or penalty includes (among other things) providing for the payment of premiums in respect of a policy of insurance where the risk is or includes the imposition of such a fine or the requirement to pay such a penalty.

(3) Where any amount is paid out of the assets of a trust scheme in contravention of this Article, Articles 3 and 10 apply to any trustee who fails to take all such steps as are reasonable to secure compliance.

(4) Where a trustee of a trust scheme—

- (a) is reimbursed, out of the assets of the scheme or in consequence of provision for his reimbursement made out of those assets, in respect of any of the matters referred to in paragraph (1)(a) or (b), and
- (b) knows, or has reasonable grounds to believe, that he has been reimbursed as mentioned in sub-paragraph (a),

then, unless he has taken all such steps as are reasonable to secure that he is not so reimbursed, he is guilty of an offence.

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

- (a) on summary conviction, to a fine not exceeding the statutory maximum, and

- (b) on conviction on indictment, to imprisonment, or a fine, or both.

Functions of trustees

Decisions by majority

32.—(1) Decisions of the trustees of a trust scheme may, unless the scheme provides otherwise, be taken by agreement of a majority of the trustees.

(2) Where decisions of the trustees of a trust scheme may be taken by agreement of a majority of the trustees—

- (a) the trustees may, unless the scheme provides otherwise, by a determination under this paragraph require not less than the number of trustees specified in the determination to be present when any decision is so taken, and
- (b) notice of any occasions at which decisions may be so taken must, unless the occasion falls within a prescribed class or description, be given to each trustee to whom it is reasonably practicable to give such notice.

(3) Notice under paragraph (2)(b) must be given in a prescribed manner and not later than the beginning of a prescribed period.

(4) This Article is subject to Articles 8(4)(b), 16(3)(b) and 25(2).

(5) If paragraph (2)(b) is not complied with, Articles 3 and 10 apply to any trustee who has failed to take all such steps as are reasonable to secure compliance.

Investment powers: duty of care

33.—(1) Liability for breach of an obligation under any rule of law to take care or exercise skill in the performance of any investment functions, where the function is exercisable—

- (a) by a trustee of a trust scheme, or
- (b) by a person to whom the function has been delegated under Article 34,

cannot be excluded or restricted by an instrument or agreement.

(2) In this Article, references to excluding or restricting liability include—

- (a) making the liability or its enforcement subject to restrictive or onerous conditions,
- (b) excluding or restricting any right or remedy in respect of the liability, or subjecting a person to any prejudice in consequence of his pursuing any such right or remedy, or
- (c) excluding or restricting rules of evidence or procedure.

(3) This Article does not apply—

- (a) to a scheme falling within any prescribed class or description, or
- (b) to any prescribed description of exclusion or restriction.

Power of investment and delegation

34.—(1) The trustees of a trust scheme have, subject to any restriction imposed by the scheme, the same power to make an investment of any kind as if they were absolutely entitled to the assets of the scheme.

(2) Any discretion of the trustees of a trust scheme to make any decision about investments—

- (a) may be delegated by or on behalf of the trustees to a fund manager to whom paragraph (3) applies to be exercised in accordance with Article 36, but

(b) may not otherwise be delegated except under section 26 of the Trustee Act (Northern Ireland) 1958⁽¹¹⁾ (delegation of trusts for period not exceeding 12 months) or paragraph (5).

(3) This paragraph applies to a fund manager who, in relation to the decisions in question, falls, or is treated as falling, within any of paragraphs (a) to (c) of section 191(2) of the Financial Services Act 1986⁽¹²⁾ (occupational pension schemes: exemptions where decisions taken by authorised and other persons).

(4) The trustees are not responsible for the act or default of any fund manager in the exercise of any discretion delegated to him under paragraph (2)(a) if they have taken all such steps as are reasonable to satisfy themselves or the person who made the delegation on their behalf has taken all such steps as are reasonable to satisfy himself—

(a) that the fund manager has the appropriate knowledge and experience for managing the investments of the scheme, and

(b) that he is carrying out his work competently and complying with Article 36.

(5) Subject to any restriction imposed by a trust scheme—

(a) the trustees may authorise two or more of their number to exercise on their behalf any discretion to make any decision about investments, and

(b) any such discretion may, where giving effect to the decision would not constitute carrying on “investment business” in the United Kingdom (within the meaning of the Financial Services Act 1986⁽¹³⁾), be delegated by or on behalf of the trustees to a fund manager to whom paragraph (3) does not apply to be exercised in accordance with Article 36;

but in either case the trustees are liable for any acts or defaults in the exercise of the discretion if they would be so liable if they were the acts or defaults of the trustees as a whole.

(6) Article 33 does not prevent the exclusion or restriction of any liability of the trustees of a trust scheme for the acts or defaults of a fund manager in the exercise of a discretion delegated to him under paragraph (5)(b) where the trustees have taken all such steps as are reasonable to satisfy themselves, or the person who made the delegation on their behalf has taken all such steps as are reasonable to satisfy himself—

(a) that the fund manager has the appropriate knowledge and experience for managing the investments of the scheme, and

(b) that he is carrying out his work competently and complying with Article 36;

and paragraph (2) of Article 33 applies for the purposes of this paragraph as it applies for the purposes of that Article.

(7) The provisions of this Article override any restriction inconsistent with the provisions imposed by any rule of law or by or under any enactment, other than an enactment contained in, or made under, this Part or the Pension Schemes Act.

Investment principles

35.—(1) The trustees of a trust scheme must secure that there is prepared, maintained and revised a written statement of the principles governing decisions about investments for the purposes of the scheme.

(2) The statement must cover, among other things—

(a) the trustees' policy for securing compliance with Articles 36 and 56, and

⁽¹¹⁾ 1958 c. 23 (N.I.).

⁽¹²⁾ 1986 c. 60.

⁽¹³⁾ 1986 c. 60.

- (b) their policy about the following matters.
- (3) Those matters are—
 - (a) the kinds of investments to be held,
 - (b) the balance between different kinds of investments,
 - (c) risk,
 - (d) the expected return on investments,
 - (e) the realisation of investments, and
 - (f) such other matters as may be prescribed.
- (4) Neither the trust scheme nor the statement may impose restrictions (however expressed) on any power to make investments by reference to the consent of the employer.
- (5) The trustees of a trust scheme must, before a statement under this Article is prepared or revised—
 - (a) obtain and consider the written advice of a person who is reasonably believed by the trustees to be qualified by his ability in and practical experience of financial matters and to have the appropriate knowledge and experience of the management of the investments of such schemes, and
 - (b) consult the employer.
- (6) If in the case of any trust scheme—
 - (a) a statement under this Article has not been prepared or is not being maintained, or
 - (b) the trustees have not obtained and considered advice in accordance with paragraph (5),Articles 3 and 10 apply to any trustee who has failed to take all such steps as are reasonable to secure compliance.
- (7) This Article does not apply to any scheme which falls within a prescribed class or description.

Choosing investments

- 36.**—(1) The trustees of a trust scheme must exercise their powers of investment in accordance with paragraphs (2) to (4) and any fund manager to whom any discretion has been delegated under Article 34 must exercise the discretion in accordance with paragraph (2).
- (2) The trustees or fund manager must have regard—
 - (a) to the need for diversification of investments, in so far as appropriate to the circumstances of the scheme, and
 - (b) to the suitability to the scheme of investments of the description of investment proposed and of the investment proposed as an investment of that description.
 - (3) Before investing in any manner (other than in a manner mentioned in Part I of Schedule 1 to the Trustee Investments Act 1961⁽¹⁴⁾) the trustees must obtain and consider proper advice on the question whether the investment is satisfactory having regard to the matters mentioned in paragraph (2) and the principles contained in the statement under Article 35.
 - (4) Trustees relating any investment must—
 - (a) determine at what intervals the circumstances, and in particular the nature of the investment, make it desirable to obtain such advice as is mentioned in paragraph (3), and
 - (b) obtain and consider such advice accordingly.

(14) 1961 c. 62.

(5) The trustees, or the fund manager to whom any discretion has been delegated under Article 34, must exercise their powers of investment with a view to giving effect to the principles contained in the statement under Article 35, so far as reasonably practicable.

(6) For the purposes of this Article, “proper advice” means—

(a) where giving the advice constitutes carrying on investment business in the United Kingdom (within the meaning of the Financial Services Act 1986⁽¹⁵⁾), advice—

(i) given by a person authorised under Chapter III of Part I of that Act,

(ii) given by a person exempted under Chapter IV of that Part who, in giving the advice, is acting in the course of the business in respect of which he is exempt,

(iii) given by a person where, by virtue of paragraph 27 of Schedule 1 to that Act, paragraph 15 of that Schedule does not apply to giving the advice, or

(iv) given by a person who, by virtue of regulation 5 of the Banking Coordination (Second Council Directive) Regulations 1992⁽¹⁶⁾, may give the advice though not authorised as mentioned in head (i), and

(b) in any other case, the advice of a person who is reasonably believed by the trustees to be qualified by his ability in and practical experience of financial matters and to have the appropriate knowledge and experience of the management of the investments of trust schemes.

(7) Trustees shall not be treated as having complied with paragraph (3) or (4) unless the advice was given or has subsequently been confirmed in writing.

(8) If the trustees of a trust scheme do not obtain and consider advice in accordance with this Article, Articles 3 and 10 apply to any trustee who has failed to take all such steps as are reasonable to secure compliance.

Payment of surplus to employer

37.—(1) This Article applies to a trust scheme if—

(a) apart from this Article, power is conferred on any person (including the employer) to make payments to the employer out of funds which are held for the purposes of the scheme.

(b) the scheme is one to which Schedule 22 to the Taxes Act 1988⁽¹⁷⁾ (reduction of pension fund surpluses in certain exempt approved schemes) applies, and

(c) the scheme is not being wound up.

(2) Where the power referred to in paragraph (1)(a) is conferred by the scheme on a person other than the trustees, it cannot be exercised by that person but may be exercised instead by the trustees; and any restriction imposed by the scheme on the exercise of the power shall, so far as capable of doing so, apply to its exercise by the trustees.

(3) The power referred to in paragraph (1)(a) cannot be exercised unless the requirements of paragraphs (4) and (in prescribed circumstances (5), and any prescribed requirements, are satisfied.

(4) The requirements of this paragraph are that—

(a) the power is exercised in pursuance of proposals approved under paragraph 6(1) of Schedule 22 to the Taxes Act 1988,

(b) the trustees are satisfied that it is in the interests of the members that the power be exercised in the manner so proposed,

⁽¹⁵⁾ 1986 c. 60.

⁽¹⁶⁾ S.I. 1992/3218

⁽¹⁷⁾ 1988 c. 1.

- (c) where the power is conferred by the scheme on the employer, the employer has asked for the power to be exercised, or consented to its being exercised, in the manner so proposed,
 - (d) the annual rates of the pensions under the scheme which commence or have commenced are increased by the appropriate percentage, and
 - (e) notice has been given in accordance with prescribed requirements of the scheme of the proposal to exercise the power.
- (5) The requirements of this paragraph are that the Authority are of the opinion that—
- (a) any requirements prescribed by virtue of paragraph (3) are satisfied, and
 - (b) the requirements of paragraph (4) are satisfied.
- (6) In paragraph (4)—
- (a) “annual rate” and “appropriate percentage” have the same meaning as in Article 54, and
 - (b) “pension” does not include—
 - (i) any guaranteed minimum pension (as defined in section 4(2) of the Pension Schemes Act) or any increase in such a pension under section 105 of that Act, or
 - (ii) any money purchase benefit (as defined in section 176(1) of that Act).
- (7) This Article does not apply to any payment to which, by virtue of section 601(3) of the Taxes Act 1988(18), section 601(2) of that Act does not apply.
- (8) If, where this Article applies to any trust scheme, the trustees purport to exercise the power referred to in paragraph (1)(a) by making a payment to which this Article applies without complying with the requirements of this Article, Articles 3 and 10 apply to any trustee who has failed to take all such steps as are reasonable to secure compliance.
- (9) If, where this Article applies to any trust scheme, any person, other than the trustees, purports to exercise the power referred to in paragraph (1)(a) by making a payment to which this Article applies, Article 10 applies to him.
- (10) Regulations may provide that, in prescribed circumstances, this Article does not apply to schemes falling within a prescribed class or description, or applies to them with prescribed modifications.

Power to defer winding up

38.—(1) If, apart from this Article, the rules of a trust scheme would require the scheme to be wound up, the trustees may determine that the scheme is not for the time being to be wound up but that no new members are to be admitted to the scheme.

- (2) Where the trustees make a determination under paragraph (1), this may also determine—
- (a) that no further contributions are to be paid towards the scheme, or
 - (b) that no new benefits are to accrue to, or in respect of, members of the scheme;

but this paragraph does not authorise the trustees to determine, where there are accrued rights to any benefit, that the benefit is not to be increased.

- (3) This Article does not apply to—
- (a) a money purchase scheme, or
 - (b) a scheme falling within a prescribed class or description.

Exercise of powers by member trustees

39. No rule of law that a trustee may not exercise the powers vested in him so as to give rise to a conflict between his personal interest and his duties to the beneficiaries shall apply to a trustee of a trust scheme, who is also a member of the scheme, exercising the powers vested in him in any manner, merely because their exercise in that manner benefits, or may benefit, him as a member of the scheme.

*Functions of trustees or managers***Restriction on employer-related investments**

40.—(1) The trustees or managers of an occupational pension scheme must secure that the scheme complies with any prescribed restrictions 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, and
- (e) other prescribed investments,

“securities” means any asset, right or interest falling within paragraph 1,2,4 or 5 of Schedule 1 to the Financial Services Act 1986⁽¹⁹⁾.

(3) To the extent (if any) that sums due and payable by a person to the trustees or managers of an occupational pension scheme remain unpaid—

- (a) they shall be regarded for the purposes of this Article as loans made to that person by the trustees or managers, and
- (b) resources of the scheme shall be regarded as invested accordingly.

(4) If in the case of a trust scheme paragraph (1) is not complied with, Articles 3 and 10 apply to any trustee who fails to take all such steps as are reasonable to secure compliance.

(5) If any resources of an occupational pension scheme are invested in contravention of paragraph (1), any trustee or manager who agreed in the determination to make the investment is guilty of an offence and liable—

- (a) on summary conviction, to a fine not exceeding the statutory maximum, and
- (b) on conviction on indictment, to a fine or imprisonment, or both.

Provision of documents for members

41.—(1) Regulations may require the trustees or managers of an occupational pension scheme—

- (a) to obtain at prescribed times the documents mentioned in paragraph (2), and
- (b) to make copies of them, and of the documents mentioned in paragraph (3), available to the persons mentioned in paragraph (4).

⁽¹⁹⁾ 1986 c. 60.

- (2) The documents referred to in paragraph (1)(a) are—
 - (a) the accounts audited by the auditor of the scheme,
 - (b) the auditor's statement about contributions under the scheme,
 - (c) a valuation by the actuary of the assets and liabilities of the scheme, and a statement by the actuary concerning such aspects of the valuation as may be prescribed.
- (3) The documents referred to in paragraph (1)(b) are—
 - (a) any valuation, or certificate, prepared under Article 57 or 58 by the actuary of the scheme,
 - (b) any report prepared by the trustees or managers under Article 59(3).
- (4) The persons referred to in paragraph (1)(b) are—
 - (a) members and prospective members of the scheme,
 - (b) spouses of members and of prospective members,
 - (c) persons within the application of the scheme and qualifying or prospectively qualifying for its benefits,
 - (d) independent trade unions recognised to any extent for the purposes of collective bargaining in relation to members and prospective members of the scheme.
- (5) Regulations may in the case of occupational pension schemes to which Article 47 does not apply—
 - (a) prescribe the persons who may act as auditors or actuaries for the purposes of paragraph (2), or
 - (b) provide that the persons who may so act shall be—
 - (i) persons with prescribed professional qualifications or experience, or
 - (ii) persons approved by the Department.
- (6) Regulations shall make provision for referring to an industrial tribunal any question whether an organisation is such a trade union as is mentioned in paragraph (4)(d) and may make provision as to the form and content of any such document as is referred to in paragraph (2).

Employee trustees

Time off for performance of duties and for training

- 42.**—(1) The employer in relation to a trust scheme must permit any employee of his who is a trustee of the scheme to take time off during his working hours for the purpose of—
- (a) performing any of his duties as such a trustee, or
 - (b) undergoing training relevant to the performance of those duties.
- (2) The amount of time off which an employee is to be permitted to take under this Article and the purposes for which, the occasions on which and any conditions subject to which time off may be so taken are those that are reasonable in all the circumstances having regard in particular to—
- (a) how much time off is required for the performance of the duties of a trustee of the scheme and the undergoing of relevant training, and how much time off is required for performing the particular duty or, as the case may be, for undergoing the particular training, and
 - (b) the circumstances of the employer's business and the effect of the employee's absence on the running of that business.
- (3) An employee may present a complaint to an industrial tribunal that his employer has failed to permit him to take time off as required by this Article.

(4) For the purposes of this Article, the working hours of an employee are any time when in accordance with his contract of employment he is required to be at work.

Payment for time off

43.—(1) An employer who permits an employee to take time off under Article 42 must pay him for the time taken off pursuant to the permission.

(2) Where the employee's remuneration for the work he would ordinarily have been doing during that time does not vary with the amount of work done, he must be paid as if he had worked at that work for the whole of that time.

(3) Where the employee's remuneration for the work he would ordinarily have been doing during that time varies with the amount of work done, he must be paid an amount calculated by reference to the average hourly earnings for that work.

(4) The average hourly earnings mentioned in paragraph (3) are those of the employee concerned or, if no fair estimate can be made of those earnings, the average hourly earnings for work of that description of persons in comparable employment with the same employer or, if there are no such persons, a figure of average hourly earnings which is reasonable in the circumstances.

(5) A right to be paid an amount under this Article does not affect any right of an employee in relation to remuneration under his contract of employment, but—

- (a) any contractual remuneration paid to an employee in respect of a period of time off to which this Article applies shall go towards discharging any liability of the employer under this Article in respect of that period, and
- (b) any payment under this Article in respect of a period shall go towards discharging any liability of the employer to pay contractual remuneration in respect of that period.

(6) An employee may present a complaint to an industrial tribunal that his employer has failed to pay him in accordance with this Article.

Time limit for proceedings

44. An industrial tribunal must not consider a complaint under Article 42 or 43 unless it is presented to the tribunal—

- (a) within three months of the date when the failure occurred, or
- (b) where the tribunal is satisfied that it was not reasonably practicable for the complaint to be presented within that period, within such further period as the tribunal considers reasonable.

Remedies

45.—(1) Where the tribunal finds a complaint under Article 42 is well-founded, it must make a declaration to that effect and may make and award of compensation to be paid by the employer to the employee.

(2) The amount of the compensation shall be such as the tribunal considers just and equitable in all the circumstances having regard to the employer's default in failing to permit time off to be taken by the employee and to any loss sustained by the employee which is attributable to the matters complained of.

(3) Where on a complaint under Article 43 the tribunal finds that the employer has failed to pay the employee in accordance with that Article, it must order him to pay the amount which it finds to be due.

(4) The remedy of an employee for infringement of the rights conferred on him by Article 42 or 43 is by way of complaint to an industrial tribunal in accordance with this Part, and not otherwise.

Right not to suffer detriment in employment or be unfairly dismissed

46.—(1) Subject to paragraph (2), an employee has the right not to be subjected to any detriment by any act, or any deliberate failure to act, by his employer done on the ground that, being a trustee of a trust scheme which relates to his employment, the employee performed (or proposed to perform) any functions as such a trustee.

(2) Paragraph (1) does not apply where the detriment in question amounts to dismissal, except where an employee is dismissed in circumstances in which, by virtue of Article 25 of the No. 1 Order, Article 20 of that Order does not apply to the dismissal.

(3) Articles 13B and 13C of the No. 2 Order (which relate to proceedings brought by an employee on the ground that he has been subjected to a detriment in contravention of Article 13A of that Order) shall have effect as if the reference in Article 13B(1) to Article 13A included a reference to paragraph (1).

(4) In the following provisions—

Article 71 of, and Schedule 4 to, the No. 1 Order (death of employee or employer),

Article 49(2) (except sub-paragraph (b)) of the No. 2 Order (employee ordinarily working outside Northern Ireland), and

Article 56(1) of the No. 2 Order (remedy for infringement of rights conferred by the Order),

any reference to the No. 2 Order, or any provision of that Order, includes a reference to paragraph (1).

(5) The dismissal of an employee by an employer shall be regarded for the purposes of Part III of the No. 1 Order as unfair if the reason (or, if more than one, the principal reason) for it is that, being a trustee of a trust scheme which relates to his employment, the employee performed (or proposed to perform) any functions as such a trustee.

(6) Where the reason or the principal reason for which an employee was selected for dismissal was that he was redundant, but it is shown—

(a) that the circumstances constituting the redundancy applied equally to one or more other employees in the same undertaking who held positions similar to that held by him and who have not been dismissed by the employer, and

(b) that the reason (or, if more than one, the principal reason) for which he was selected for dismissal was that specified in paragraph (5),

then, for the purposes of Part III of the No. 1 Order, the dismissal shall be regarded as unfair.

(7) Article 20 of the No. 1 Order (right of employee not to be unfairly dismissed) applies to a dismissal regarded as unfair by virtue of paragraph (5) or (6) regardless of the period for which the employee has been employed and of his age; and accordingly Article 24(1) of that Order (which provides a qualifying period and an upper age limit) does not apply to such a dismissal.

(8) Any provision in an agreement (whether a contract of employment or not) shall be void in so far as it purports—

(a) to exclude or limit the operation of any provision of this Article, or

(b) to preclude any person from presenting a complaint to an industrial tribunal by virtue of any provision of this Article.

(9) Paragraph (8) does not apply to an agreement to refrain from presenting or continuing with a complaint where—

- (a) a conciliation officer has taken action under Article 62(2), (3) or (5) of the No. 1 Order (conciliation), or
 - (b) the conditions regulating compromise agreements under the No. 2 Order (as set out in Article 59(3) of that Order) are satisfied in relation to the agreement.
- (10) In this Article—
- “dismissal” has the same meaning as in Part III of the No. 1 Order;
 - “the No. 1 Order” means the Industrial Relations (Northern Ireland) Order 1976⁽²⁰⁾;
 - “the No. 2 Order” means the Industrial Relations (No. 2) (Northern Ireland) Order 1976⁽²¹⁾.
- (11) Article 2 of the No. 1 Order and Article 2 of the No. 2 Order (general interpretation), have effect for the purposes of this Article as they have effect for the purposes of those Orders.

Advisers

Professional advisers

- 47.—(1) For every occupational pension scheme there shall be—
- (a) an individual, or a firm, appointed by the trustees or managers as auditor (referred to in this Part, in relation to the scheme, as “the auditor”), and
 - (b) an individual appointed by the trustees or managers as actuary (referred to in this Part, in relation to the scheme, as “the actuary”).
- (2) For every occupational pension scheme the assets of which consist of or include investments (within the meaning of the Financial Services Act 1986⁽²²⁾) there shall be an individual or a firm appointed by or on behalf of the trustees or managers as fund manager.
- (3) If in the case of an occupational pension scheme any person—
- (a) is appointed otherwise than by the trustees or managers as legal adviser or to exercise any prescribed functions in relation to the scheme, or
 - (b) is appointed otherwise than by or on behalf of the trustees or managers as a fund manager,
- Articles 3 and 10 apply to any trustee, and Article 10 applies to any manager, who in exercising any of his functions places reliance on the skill or judgement of that person.
- (4) In this Part, in relation to an occupational pension scheme—
- (a) the auditor, actuary and legal adviser appointed by the trustees or managers,
 - (b) any fund manager appointed by or on behalf of the trustees or managers, and
 - (c) any person appointed by the trustees or managers to exercise any of the functions referred to in paragraph (3)(a),
- are referred to as “professional advisers”.
- (5) This Article does not apply to an occupational pension scheme falling within a prescribed class or description and regulations may—
- (a) make exceptions to paragraphs (1) to (3),
 - (b) specify the qualifications and experience, or approval, required for appointment as a professional adviser.
- (6) Regulations may make provision as to—

⁽²⁰⁾ 1976 NI 16.

⁽²¹⁾ 1976 NI 28.

⁽²²⁾ 1986 c. 60.

- (a) the manner in which professional advisers may be appointed and removed,
 - (b) the terms on which professional advisers may be appointed (including the manner in which the professional advisers may resign).
- (7) Subject to regulations made by virtue of paragraph (6), professional advisers shall be appointed on such terms as the trustees or managers may determine.
- (8) If in the case of an occupational pension scheme an auditor, actuary or fund manager is required under this Article to be appointed but the appointment has not been made, or not been made in accordance with any requirements imposed under this Article, Articles 3 and 10 apply to any trustee, and Article 10 applies to any manager, who has failed to take all such steps as are reasonable to secure compliance.
- (9) Regulations may in the case of occupational pension schemes—
- (a) impose duties on any person who is or has been the employer, and on any person who acts as auditor or actuary to such a person, to disclose information to the trustees or managers and to the scheme’s professional advisers.
 - (b) impose duties on the trustees or managers to disclose information to, and make documents available to, and make documents available to, the scheme’s professional advisers.
- (10) If in the case of an occupational pension scheme a person fails to comply with any duty imposed under paragraph (9)(a), Article 10 applies to him.
- (11) If in the case of an occupational pension scheme any duty imposed under paragraph (9)(b) is not complied with, Articles 3 and 10 apply to any trustee, and Article 10 applies to any manager, who has failed to take all such steps as are reasonable to secure compliance.

“Blowing the whistle”

48.—(1) If the auditor or actuary of any occupational pension scheme has reasonable cause to believe that—

- (a) any duty relevant to the administration of the scheme imposed by any enactment or rule of law on the trustees or managers, the employer, any professional adviser or any prescribed person acting in connection with the scheme has not been or is not being complied with, and
- (b) the failure to comply is likely to be of material significance in the exercise by the Authority of any of their functions,

he must immediately give a written report of the matter to the Authority.

(2) The auditor or actuary of any occupational pension scheme must, in any prescribed circumstances, immediately give a written report of any prescribed matter to the Authority.

(3) No duty to which the auditor or actuary of any occupational pension scheme is subject shall be regarded as contravened merely because of an information or opinion contained in a written report under this Article.

(4) If in the a case of any occupational pension scheme any professional adviser (other than the auditor or actuary), any trustee or manager or any person involved in the administration of the scheme has reasonable cause to believe as mentioned in paragraph (12)(a) and (b), he may give a report of the matter to the Authority.

(5) In the case of any such scheme, no duty to which any such adviser, trustee or manager or other person is subject shall be regarded as contravened merely because of any information or opinion contained in a report under this Article; but this paragraph does not apply to any information disclosed in such a report by the legal adviser of an occupational pension scheme if he would be entitled to refuse to produce a document containing the information in any proceedings in any court on the grounds that it was the subject of legal professional privilege.

(6) Paragraphs (1) to (5) apply to any occupational pension scheme to which Article 47 applies.

(7) Article 10 applies to any auditor or actuary who fails to comply with paragraph (1) or (2).

(8) If it appears to the Authority that an auditor or actuary has failed to comply with paragraph (1) or (2), the Authority may by order disqualify him for being the auditor or, as the case may be, actuary of any occupational pension scheme specified in the order.

(9) An order under paragraph (8) may specify the scheme to which the failure relates, all schemes falling within any class or description of occupational pension scheme or all occupational pensions schemes.

(10) The Authority may, on the application of any person disqualified under this Article who satisfies the Authority that he will in future comply with paragraphs (1) and (2), by order revoke the order disqualifying him; but a revocation made at any time cannot affect anything done before that time.

(11) An auditor or actuary of an occupational pension scheme who becomes disqualified under this Article shall, while he is so disqualified, cease to be auditor or, as the case may be, actuary of any scheme specified in the order disqualifying him.

(12) A person who, while he is disqualified under this Article, purports to act as auditor or actuary of an occupational pension scheme specified in the order disqualifying him is guilty of an offence and liable—

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

(b) on conviction on indictment, to a fine or imprisonment, or both.

(13) An offence under paragraph (12) may be charged by reference to any day or longer period of time; and a person may be convicted of a second or subsequent offence under that paragraph by reference to any period of time following the preceding conviction of the offence.

Receipts, payments and records

Other responsibilities of trustees, employers, etc.

49.—(1) The trustees of any trust scheme must, except in any prescribed circumstances, keep any money received by them in a separate account kept by them at an institution authorised under the Banking Act 1987⁽²³⁾.

(2) Regulations may require the trustees of any trust scheme to keep—

(a) records of their meetings (including meetings of any of their number), and

(b) books and records relating to any prescribed transaction.

(3) Regulations may, in the case of any trust scheme, require the employer, and any prescribed person acting in connection with the scheme, to keep books and records relating to any prescribed transaction.

(4) Regulations may require books or records kept under paragraph (2) or (3) to be kept in a prescribed form and manner and for a prescribed period.

(5) Regulations must, in cases where payments of benefit to members of trust schemes are made by the employer, require the employer to make into a separate account kept by him at an institution authorised under the Banking Act 1987⁽²⁴⁾ and payments of benefit which have not been made to the members within any prescribed period.

(23) 1987 c. 22.

(24) 1987 c. 22.

(6) If in the case of any trust scheme any requirements imposed by or under paragraph (1) or (2) are not complied with, Articles 3 and 10 apply to any trustee who has failed to take all such steps as are reasonable to secure compliance.

(7) If in the case of any trust scheme any person fails to comply with any requirement imposed under paragraph (3) or (5), Article 10 applies to him.

(8) Where—

(a) on making a payment of any earnings in respect of any employment there is deducted any amount corresponding to any contribution payable on behalf of an active member of an occupational pension scheme, and

(b) the amount deducted is not, within a prescribed period, paid to the trustees or managers of the scheme and there is not reasonable excuse for the failure to do so,

the employer is guilty of an offence and liable, on summary conviction, to a fine not exceeding the statutory maximum and, on conviction on indictment, to imprisonment, or a fine, or both.

Resolution of disputes

Resolution of disputes

50.—(1) The trustees or managers of an occupational pension scheme must secure that such arrangements as are required by or under this Article for the resolution of disagreements between prescribed persons about matters in relation to the scheme are made and implemented.

(2) The arrangements must—

(a) provide for a person, on the application of a complainant of a prescribed description, to give a decision on such a disagreement, and

(b) require the trustees or managers, on the application of such a complainant following a decision given in accordance with sub-paragraph (a), to reconsider the matter in question and confirm the decision or give a new decision in its place.

(3) Regulations may make provision about—

(a) applications for decisions under such arrangements, and

(b) the procedure for reaching and giving such decisions,

including the times by which applications are to be made and decisions given.

(4) Applications and decisions under paragraph (2) must be in writing.

(5) Arrangements under paragraph (1) must, in the case of existing schemes, have effect as from the commencement of this Article.

(6) If, in the case of any occupational pension scheme, such arrangements as are required by this Article to be made have not been made, or are not being implemented, Article 10 applies to any of the trustees or managers who have failed to take all such steps as are reasonable to secure that such arrangements are made or implemented.

(7) This Article does not apply to a scheme of a prescribed description and paragraph (1) does not apply to prescribed matters in relation to the scheme.

Indexation

Annual increase in rate of pension

51.—(1) Subject to paragraph (6), this Article applies to a pension under an occupational pension scheme if—

- (a) the scheme—
- (i) is an approved scheme, within the meaning of Chapter I of Part XIV of the Taxes Act 1988⁽²⁵⁾ (retirement benefit schemes approved by the Commissioners of Inland Revenue) or is a scheme for which such approval has been applied for under that Chapter and not refused, and
 - (ii) is not a public service pension scheme, and
- (b) apart from this Article, the annual rate of the pension would not be increased each year by at least the appropriate percentage of that rate.
- (2) Subject to Article 52, where a pension to which this Article applies, or any part of it, is attributable to pensionable service on or after the appointed day or, in the case of money purchase benefits, to payments in respect of employment carried on or after the appointed day—
- (a) the annual rate of the pension, or
 - (b) if only part of the pension is attributable to pensionable service or, as the case may be, to payments in respect of employment carried on on or after the appointed day, so much of the annual rate as is attributable to that part,
- must be increased annually by at least the appropriate percentage.
- (3) Paragraph (2) does not apply to a pension under an occupational pension scheme if the rules of the scheme require—
- (a) the annual rate of the pension, or
 - (b) if only part of the pension is attributable to pensionable service or, as the case may be, to payments in respect of employment carried on on or after the appointed day, so much of the annual rate as is attributable to that part,
- to be increased at intervals of not more than twelve months by at least the relevant percentage and the scheme complies with any prescribed requirements.
- (4) For the purposes of paragraph (3) the relevant percentage is—
- (a) the percentage increase in the retail prices index for the reference period, being a period determined, in relation to each periodical increase under the rules, or
 - (b) the percentage for that period which corresponds to 5 per cent. per annum,
- whichever is the lesser.
- (5) Regulations may provide that paragraphs (2) and (3) apply in relation to a pension as if so much of it as would not otherwise be attributable to pensionable service or to payments in respect of employment were attributable to pensionable service or, as the case may be, payments in respect of employment—
- (a) before the appointed day,
 - (b) on or after that day, or
 - (c) partly before and partly on or after that day.
- (6) This Article does not apply to any pension or part of a pension which, in the opinion of the trustees or managers, is derived from the payment by any member of the scheme of voluntary contributions.

Restriction on increase where member is under 55

52.—(1) Subject to paragraph (2), no increase under Article 51 is required to be paid to or for a member of a scheme whose pension is in payment but who has not attained the age of 55 at the time when the increase takes effect.

(2) Paragraph (1) does not apply if the member—

- (a) is permanently incapacitated by mental or physical infirmity from engaging in regular full-time employment, or
- (b) has retired on account of mental or physical infirmity from the employment in respect of which, or on retirement from which, the pension is payable.

(3) The rules of a scheme may provide that if, in a case where a pension has been paid to or for a member under the age of 55 at an increased rate in consequence of paragraph (2), the member—

- (a) ceases to suffer from the infirmity in question before he attains the age of 55, but
- (b) continues to be entitled to the pension,

any increases subsequently taking effect under Article 51 in the annual rate of the pension shall not be paid or shall not be paid in full.

(4) In any case where—

- (a) by virtue only of paragraph (1) or (3), increases are not paid to or for a member or are not paid in full, but
- (b) the member attains the age of 55 or, in a case falling within paragraph (3), again satisfies the condition set out in paragraph (2)(a) or (b),

his pension shall then become payable at the annual rate at which it would have been payable apart from paragraph (1) or (3).

Effect of increases above the statutory requirement

53.—(1) Where in any tax year the trustees or managers of an occupational pension scheme make an increase in a person's pension, not being an increase required by section 105 of the Pension Schemes Act or Article 51, they may deduct the amount of the increase from any increase which, but for this paragraph, they would be required to make under that section or Article in the next tax year.

(2) Where in any tax year the trustees or managers of such a scheme make an increase in a person's pension and part of the increase is not required by section 105 of the Pension Schemes Act or Article 51, they may deduct that part of the increase from any increase which, but for this paragraph, they would be required to make under that section or Article in the next tax year.

(3) Where by virtue of paragraph (1) or (2) any pensions are not required to be increased in pursuance of section 105 of the Pension Schemes Act or Article 51, or not by the full amount that they otherwise would be, their amount shall be calculated for any purpose as if they had been increased in pursuance of that section or Article or, as the case may be, by that full amount.

(4) In section 106 of the Pension Schemes Act (resources for annual increase of guaranteed minimum pension)—

- (a) subsections (2) to (4) are omitted, and
- (b) in subsection (1), for “subsection (2) or (3)” substitute “Article 53 of the Pensions (Northern Ireland) Order 1995”.

Articles 51 to 53: supplementary

54.—(1) The first increase required by Article 51 in the rate of a pension must take effect not later than the first anniversary of the date on which the pension is first paid; and subsequent increases must take effect at intervals of not more than twelve months.

(2) Where the first such increase is to take effect on a date when the pension has been in payment for a period of less than twelve months, the increase must be of an amount at least equal to one twelfth of the amount of the increase so required (apart from this paragraph) for each complete month in that period.

(3) In Articles 51 to 53 and this Article—

“annual rate”, in relation to a pension, means the annual rate of the pension, as previously increased under the rules of the scheme or under Article 51,

“the appointed day” means the day appointed under Article 1 for the commencement of Article 51,

“appropriate percentage”, in relation to an increase in the whole or part of the annual rate of a pension, means the revaluation percentage for the revaluation period the reference period for which ends with the last preceding 30th September before the increase is made,

“pension”, in relation to a scheme, means any pension in payment under the scheme and includes an annuity,

“reference period” has the meaning given by paragraph 2 of Schedule 3 to the Pension Schemes Act 1993(26),

“revaluation order” means an order under paragraph 2(1) of Schedule 2 to the Pension Schemes Act,

“revaluation percentage” means a percentage specified for a revaluation period by a revaluation order;

“revaluation period” has the meaning given by paragraph 2(2) of Schedule 2 to the Pension Schemes Act.

Article 51: end of annual increase in GMP

55. In section 105 of the Pension Schemes Act (annual increase of guaranteed minimum pensions), in subsection (1) (increase in rate of that part of guaranteed minimum pension attributable to earnings factors for tax year 1988—89 and subsequent tax years) for “the tax year 1988—89 and subsequent tax years” substitute “the tax years in the relevant period as defined in that section”.

*Minimum funding requirement***Minimum funding requirement**

56.—(1) Every occupational pension scheme to which this Article applies is subject to a requirement (referred to in this Part as “the minimum funding requirement”) that the value of the assets of the scheme is not less than the amount of the liabilities of the scheme.

(2) This Article applies to an occupational pension scheme other than—

- (a) a money purchase scheme, or
- (b) a scheme falling within a prescribed class or description.

(3) For the purposes of this Article and Articles 57 to 61, the liabilities and assets to be taken into account, and their amount or value, shall be determined, calculated and verified by a prescribed person and in the prescribed manner.

(4) In calculating the value of any liabilities for those purposes, a provision of the scheme which limits the amount of its liabilities by reference to the amount of its assets is to be disregarded.

(5) In Articles 57 to 61, in relation to any occupational pension scheme to which this Article applies—

- (a) the amount of the liabilities referred to in paragraph (1) is referred to as “the amount of the scheme liabilities”,
- (b) the value of the assets referred to in that paragraph is referred to as “the value of the scheme assets”.
- (c) “an actuarial valuation” means a written valuation prepared and signed by the actuary of the scheme of the assets and liabilities referred to in paragraph (1), and
- (d) the “effective date” of an actuarial valuation is the date by reference to which the assets and liabilities are valued.

Valuation and certification of assets and liabilities

57.—(1) The trustees or managers of an occupational pension scheme to which Article 56 applies must—

- (a) obtain, within a prescribed period, an actuarial valuation and afterwards obtain such a valuation before the end of prescribed intervals, and
- (b) on prescribed occasions or within prescribed periods, obtain a certificate prepared by the actuary of the scheme—
 - (i) stating whether or not in his opinion the contributions payable towards the scheme are adequate for the purpose of securing that the minimum funding requirement will continue to be met throughout the prescribed period or, if it appears to him that it is not met, will be met by the end of that period, and
 - (ii) indicating any relevant changes that have occurred since the last actuarial valuation was prepared.

(2) Subject to paragraph (3), the trustees or managers must—

- (a) if the actuary states in such a certificate that in his opinion the contributions payable towards the scheme are not adequate for the purpose of securing that the minimum funding requirement will continue to be met throughout the prescribed period or, if it appears to him that it is not met, will be met by the end of that period, or
- (b) in prescribed circumstances,

obtain an actuarial valuation within the period required by paragraph (4).

(3) In a case within paragraph (2)(a), the trustees or managers are not required to obtain an actuarial valuation if—

- (a) in the opinion of the actuary of the scheme, the value of the scheme assets is not less than 90 per cent. of the amount of the scheme liabilities, and
- (b) since the date on which the actuary signed the certificate referred to in that paragraph, the schedule of contributions for the scheme has been revised under Article 58(3)(b).

(4) If the trustees or managers obtain a valuation under paragraph (2) they must do so—

- (a) in the case of a valuation required by sub-paragraph (a), within the period of six months beginning with the date on which the certificate was signed, and

- (b) in any other case, within a prescribed period.
- (5) A valuation or certificate obtained under paragraph (1) or (2) must be prepared in such manner, give such information and contain such statements as may be prescribed.
- (6) The Trustees or managers must secure that any valuation or certificate obtained under this Article is made available to the employer within seven days of their receiving it.
- (7) Where, in the case of an occupational pension scheme to which Article 56 applies, paragraph (1), (2) or (6) is not complied with—
 - (a) Article 3 applies to any trustee who has failed to take all such steps as are reasonable to secure compliance, and
 - (b) Article 10 applies to any trustee or manager who has failed to take all such steps.

Schedules of contributions

- 58.**—(1) The trustees or managers of an occupational pension scheme to which Article 56 applies must secure that there is prepared, maintained and revised a schedule (referred to in Articles 57 to 59 as a “schedule of contributions”) showing—
- (a) the rates of contributions payable towards the scheme by or on behalf of the employer and the active members of the scheme, and
 - (b) the dates on or before which such contributions are to be paid.
- (2) The schedule of contributions for a scheme must satisfy prescribed requirements.
- (3) The schedule of contribution for a scheme—
- (a) must be prepared before the end of a prescribed period beginning the signing of the first actuarial valuation for the scheme,
 - (b) may be revised where the revisions are previously agreed by the trustees or managers and the employer and any revision in the rates of contributions is certified by the actuary of the scheme, and
 - (c) must be revised before the end of a prescribed period beginning with the signing of each subsequent actuarial valuation.
- (4) The matters shown in the schedule of contributions for a scheme—
- (a) must be matters previously agreed by the trustees or managers and the employer, or
 - (b) if no such agreement has been made as to all the matters shown in the schedule, must be—
 - (i) rates of contributions determined by the trustees or managers, being such rates as in their opinion are adequate for the purpose of securing that the minimum funding requirement will continue to be met throughout the prescribed period or, if it appears to them that it is not met, will be met by the end of that period, and
 - (ii) other matters determined by the trustees or managers;
 and the rates of contributions shown in the schedule must be certified by the actuary of the scheme.
- (5) An agreement for the purposes of paragraph (4)(a) is one which is made by the trustees or managers and the employer during the prescribed period beginning with the signing of the last preceding actuarial valuation for the scheme.
- (6) The actuary may not certify the rates of contributions shown in the schedule of contributions—
- (a) in the case where on the date he signs the certificate it appears to him that the minimum funding requirement is met, unless he is of the opinion that the rates are adequate for the purpose of securing that the requirement will continue to be met throughout the prescribed period, and

(b) in any other case, unless he is of the opinion that the rates are adequate for the purpose of securing that the requirement will be met by the end of that period.

(7) The Authority may in prescribed circumstances extend (or further extend) the period referred to in paragraph (6).

(8) Where, in the case of any occupational pension scheme to which Article 56 applies, this Article is not complied with—

(a) Article 3 applies to any trustee who has failed to take all such steps as are reasonable to secure compliance, and

(b) Article 10 applies to any trustee or manager who has failed to take all such steps.

Determination of contributions: supplementary

59.—(1) Except in prescribed circumstances, the trustees or managers of an occupational pension scheme to which Article 56 applies must, where any amounts payable by or on behalf of the employer or the active members of the scheme in accordance with the schedule of contributions have not been paid on or before the due date, give notice of that fact, within the prescribed period, to the Authority and to the members of the scheme.

(2) Any such amounts which for the time being remain unpaid after that date (whether payable by the employer or not) shall, if not a debt due from the employer to the trustees or managers apart from this paragraph, be treated as such a debt.

(3) If, in the case of an occupational pension scheme to which Article 56 applies, it appears to the trustees or managers, at the end of any prescribed period that the minimum funding requirement is not met, they must prepare a report giving the prescribed information about the failure to meet that requirement.

(4) If, in the case of any such scheme, paragraph (1) or (3) is not complied with—

(a) Article 3 applies to any trustee who has failed to take all such steps as are reasonable to secure compliance and

(b) Article 10 applies to any trustee or manager who has failed to take all such steps.

Serious underprovision

60.—(1) Paragraph (2) applies where, in the case of an occupational pension scheme to which Article 56 applies, an actuarial valuation shows that, on the effective date of the valuation, the value of the scheme assets is less than 90 per cent. of the amount of the scheme liabilities (the difference shown in the valuation being referred to in this Article as “the shortfall”).

(2) The employer must—

(a) by making an appropriate payment to the trustees or managers, or

(b) by a prescribed method,

secure an increase in the value of the scheme assets which, taken with any contributions paid is not less than the shortfall.

(3) The required increase in that value must be secured—

(a) before the end of a prescribed period beginning with the signing of the valuation, or

(b) if the actuarial valuation was obtained by reason of such a statement in a certificate as is referred to in Article 57(2), before the end of a prescribed period beginning with the signing of the certificate.

(4) Except in prescribed circumstances, if the employer fails to secure the required increase in value before the end of the period applicable under paragraph (3), the trustees or managers must,

within the period of fourteen days (or such longer period as is prescribed) beginning with the end of that period, give written notice of that fact to the Authority and to the members of the scheme.

(5) If the employer fails to secure the required increase in value before the end of the period applicable under paragraph (3), then so much of the shortfall as, at any subsequent time, has not been met by an increase in value under paragraph (2) made—

- (a) by making an appropriate payment to the trustees or managers,
- (b) by a prescribed method, or
- (c) by contributions made before the end of that period,

shall, if not a debt due from the employer to the trustees or managers apart from this paragraph, be treated at that time as such a debt.

(6) Where an increase in value is secured by a prescribed method, the increase is to be treated for the purpose of this Article as being of an amount determined in accordance with regulations.

(7) The Authority may in prescribed circumstances extend (or further extend) the period applicable under paragraph (3).

(8) If paragraph (4) is not complied with—

- (a) Article 3 applies to any trustee who has failed to take all such steps as are reasonable to secure compliance, and
- (b) Article 10 applies to any trustee or manager who has failed to take all such steps.

Articles 56 to 60: supplementary

61. Regulations may modify Articles 56 to 60 as they apply in prescribed circumstances.

Equal treatment

The equal treatment rule

62.—(1) An occupational pension scheme which does not contain an equal treatment rule shall be treated as including one.

(2) An equal treatment rule is a rule which relates to the terms on which—

- (a) persons become members of the scheme, and
- (b) members of the scheme are treated.

(3) Subject to paragraph (6), an equal treatment rule has the effect that where—

- (a) a woman is employed on like work with a man in the same employment,
- (b) a woman is employed on work rated as equivalent with that of a man in the same employment, or
- (c) a woman is employed on work which, not being work in relation to which sub-paragraph (a) or (b) applies, is, in terms of the demands made on her (for instance under such headings as effort, skill and decision) or equal value to that of a man in the same employment,

but (apart from the rule) any of the terms referred to in paragraph (2) is or becomes less favourable to the woman than it is to the man, the term shall be treated as so modified as not to be less favourable.

(4) An equal treatment rule does not operate in relation to any difference as between a woman and a man in the operation of any of the terms referred to in paragraph (2) if the trustees or managers of the scheme prove that the difference is genuinely due to a material factor which—

- (a) is not the difference of sex, but

(b) is a material difference between the woman's case and the man's case.

(5) References in paragraph (4) and Articles 63 to 65 to the terms referred to in paragraph (2), or the effect of any of those terms, include—

(a) a term which confers on the trustees or managers of an occupational pension scheme, or any other person, a discretion which, in a case within any of sub-paragraphs (a) to (c) of paragraph (3)—

(i) may be exercised so as to affect the way in which persons become members of the scheme, or members of the scheme are treated, and

(ii) may (apart from the equal treatment rule) be so exercised in a way less favourable to the woman than to the man, and

(b) the effect of any exercise of such a discretion;

and references to the terms on which members of the scheme are treated are to be read accordingly.

(6) In the case of a term within paragraph (5)(a) the effect of an equal treatment rule is that the term shall be treated as so modified as not to permit the discretion to be exercised in a way less favourable to the woman than to the man.

Equal treatment rule: supplementary

63.—(1) The reference in Article 62(2) to the terms on which members of a scheme are treated includes those terms as they have effect for the benefit of dependants of members, and the reference in Article 62(5) to the way in which members of a scheme are treated includes the way they are treated as it has effect for the benefit of dependants of members.

(2) Where the effect of any of the terms referred to in Article 62(2) on persons of the same sex differs according to their family or marital status, the effect of the term is to be compared for the purposes of Article 62 with its effect on persons of the other sex who have the same status.

(3) An equal treatment rule has effect subject to paragraphs 5 and 6 of Schedule 5 to the Social Security (Northern Ireland) Order 1989⁽²⁷⁾ (employment-related benefit schemes: maternity and family leave provisions).

(4) Article 62 shall be construed as one with section 1 of the Equal Pay Act (Northern Ireland) 1970⁽²⁸⁾ (requirement of equal treatment for men and women in the same employment); and sections 2 and 2A of that Act (disputes and enforcement) shall have effect for the purposes of Article 62 as if—

(a) references to an equality clause were to an equal treatment rule,

(b) references to employers and employees were to the trustees or managers of the scheme (on the one hand) and the members, or prospective members, of the scheme (on the other),

(c) for section 2(4) there were substituted—

“(4) No claim in respect of the operation of an equal treatment rule in respect of an occupational pension scheme shall be referred to an industrial tribunal otherwise than by virtue of subsection (3) unless the woman concerned has been employed in a description or category of employment to which the scheme relates within the six months preceding the date of the reference.”, and

(d) references to section 1(2)(c) were to Article 62(3)(c).

⁽²⁷⁾ 1989 NI 13.

⁽²⁸⁾ 1970 c. 32 (N.I.).

(5) Regulations may make provision for the Equal Pay Act (Northern Ireland) 1970⁽²⁹⁾ to have effect, in relation to an equal treatment rule, with prescribed modifications; and paragraph (4) shall have effect subject to any regulations made by virtue of this paragraph.

(6) Article 62, so far as it relates to the terms on which members of a scheme are treated, is to be treated as having had effect in relation to any pensionable service on or after 17th May 1990.

Equal treatment rule: exceptions

64.—(1) An equal treatment rule does not operate in relation to any variation as between a woman and a man in the effect of any of the terms referred to in Article 62(2) if the variation is permitted by or under any of the provisions of this Article.

(2) Where a man and a woman are eligible, in prescribed circumstances, to receive different amounts by way of pension, the variation is permitted by this paragraph if, in prescribed circumstances, the differences are attributable only to differences between men and women in the benefits under sections 43 to 55 of the Contributions and Benefits Act (state retirement pensions) to which, in prescribed circumstances, they are or would be entitled.

(3) A variation is permitted by this paragraph if—

- (a) the variation consists of the application of actuarial factors which differ for men and women to the calculation of contributions to a scheme by employers, being factors which fall within a prescribed class or description, or
- (b) the variation consists of the application of actuarial factors which differ for men and women to the determination benefits falling within a prescribed class or description;

and in this paragraph “benefits” include any payment or other benefit made to or in respect of a person as a member of the scheme.

(4) Regulations may—

- (a) permit further variations, or
- (b) amend or repeal paragraph (2) or (3);

and regulations made by virtue of this paragraph may have effect in relation to pensionable service on or after 17th May 1990 and before the date on which the regulations are made.

Equal treatment rule: consequential alteration of schemes

65.—(1) The trustees or managers of an occupational pension scheme may, if—

- (a) they do not (apart from this Article) have power to make such alterations to the scheme as may be required to secure conformity with an equal treatment rule, or
- (b) they have such power, but the procedure for doing so—
 - (i) is liable to be unduly complex or protracted, or
 - (ii) involves the obtaining of consents which cannot be obtained, or can only be obtained with undue delay or difficulty,
 by resolution make such alterations to the scheme.

(2) The alterations may have effect in relation to a period before the alterations are made.

⁽²⁹⁾ 1970 c. 32 (N.I.).

Equal treatment rule: effect on terms of employment, etc.

66.—(1) In section 6 of the Equal Pay Act (Northern Ireland) 1970(**30**) (exclusions), for subsections (1A) and (2) (exclusion for terms related to death or retirement) substitute—

“(1B) An equality clause shall not operate in relation to terms relating to a person’s membership of, or rights under, an occupational pension scheme, being terms in relation to which, by reason only of any provision made by or under Articles 62 to 64 of the Pensions (Northern Ireland) Order 1995 (equal treatment), an equal treatment rule would not operate if the terms were included in the scheme.

(1C) In subsection (1B), “occupational pension scheme” has the same meaning as in the Pension Schemes (Northern Ireland) Act 1993 and “equal treatment rule” has the meaning given by Article 62 of the Pensions (Northern Ireland) Order 1995.”.

(2) In Article 6(1) of the Sex Discrimination (Northern Ireland) Order 1976(**31**) (victimisation of complainants, etc.)—

- (a) in sub-paragraphs (a) to (c), after “Equal Pay Act” insert “or Articles 62 to 65 of the Pensions (Northern Ireland) Order 1995”, and
- (b) at the end of sub-paragraph (d) add “or under Articles 62 to 65 of the Pensions (Northern Ireland) Order 1995”.

(3) In Article 8 of the Sex Discrimination (Northern Ireland) Order 1976 (discrimination against applicants and employees), for paragraph (4) substitute—

“(4) Paragraphs (1)(b) and (2) do not render it unlawful for a person to discriminate against a woman in relation to her membership of, or rights under, an occupational pension scheme in such a way that, were any term of the scheme to provide for discrimination in that way, then, by reason only of any provision made by or under Articles 62 to 64 of the Pensions (Northern Ireland) Order 1995 (equal treatment), an equal treatment rule would not operate in relation to that term.

(4A) In paragraph (4), “occupational pension scheme” has the same meaning as in the Pension Schemes (Northern Ireland) Act 1993 and “equal treatment rule” has the meaning given by Article 62 of the Pensions (Northern Ireland) Order 1995.”

(4) Regulations may make provision—

- (a) for the Equal Pay Act (Northern Ireland) 1970(**32**) to have effect, in relation to terms of employment relating to membership of, or rights under, an occupational pension scheme with prescribed modifications, and
- (b) for imposing requirements on employers as to the payment of contributions and otherwise in case of their failing or having failed to comply with any such terms.

(5) References in paragraph (4) to terms of employment include (where the context permits)—

- (a) any collective agreement or pay structure, and
- (b) an agricultural wages order within section 5 of the Equal Pay Act (Northern Ireland) 1970(**33**).

(30) 1970 c. 32 (N.I.)

(31) 1976 NI 15.

(32) 1970 c. 32 (N.I.)

(33) 1970 c. 32 (N.I.)

*Modification of schemes***Restriction on powers to alter schemes**

67.—(1) This Article applies to any power conferred on any person by an occupational pension scheme (other than a public service pension scheme) to modify the scheme.

(2) The power cannot be exercised on any occasion in a manner which would or might affect any entitlement or accrued right, of any member of the scheme acquired before the power is exercised unless the requirements under paragraph (3) are satisfied.

(3) Those requirements are that, in respect of the exercise of the power in that manner on that occasion—

(a) the trustees have satisfied themselves that—

(i) the certification requirements, or

(ii) the consent requirements,

are met in respect of that member, and

(b) where the power is exercised by a person other than the trustees, the trustees have approved the exercise of the power in that manner on that occasion.

(4) In paragraph (3)—

(a) “the certification requirements” means prescribed requirements for the purpose of securing that no power to which this Article applies is exercised in any manner which, in the opinion of an actuary, would adversely affect any member of the scheme (without his consent) in respect of his entitlement, or accrued rights, acquired before the power is exercised, and

(b) “the consent requirements” means prescribed requirements for the purpose of obtaining the consent of members of a scheme to the exercise of a power to which this Article applies.

(5) Paragraph (2) does not apply to the exercise of a power in a prescribed manner.

(6) Where a power to which this Article applies may not (apart from this Article) be exercised without the consent of any person, regulations may make provision for treating such consent as given in prescribed circumstances.

Power of trustees to modify schemes by resolution

68.—(1) The trustees of a trust scheme may by resolution modify the scheme with a view to achieving any of the purposes specified in paragraph (2).

(2) The purposes referred to in paragraph (1) are—

(a) to extend the class of persons who may receive benefits under the scheme in respect of the death of a member of the scheme,

(b) to enable the scheme to conform with such arrangements as are required by Article 16(1) or 17(2),

(c) to enable the scheme to comply with such terms and conditions as may be imposed by the Compensation Board in relation to any payment made by them under Article 81 or 82,

(d) to enable the scheme to conform with Article 37(2), 76(2), 89 or 90, and

(e) prescribed purposes.

(3) No modification may be made by virtue of paragraph (2)(a) without the consent of the employer.

(4) Modifications made by virtue of paragraph (2)(b) may include in particular—

(a) modification of any limit on the number of, or of any category of, trustees, or

(b) provision for the transfer or vesting of property.

(5) Regulations may provide that this Article does not apply to trust schemes falling within a prescribed class or description.

Grounds for applying for modifications

69.—(1) The Authority may, on an application made to them by persons competent to do so, make an order in respect of an occupational pension scheme (other than a public service pension scheme)—

- (a) authorising the modification of the scheme with a view to achieving any of the purposes mentioned in paragraph (3), or
- (b) modifying the scheme with a view to achieving any such purpose.

(2) Regulations may make provision about the manner of dealing with applications under this Article.

(3) The purposes referred to in paragraph (1) are—

- (a) in the case of a scheme to which Schedule 22 to the Taxes Act 1988⁽³⁴⁾ (reduction of pension fund surpluses in certain exempt approved schemes) applies, to reduce or eliminate on any particular occasion any excess in accordance with any proposal submitted under paragraph 3(1) of that Schedule, where any requirements mentioned in Article 37(4), and any other prescribed requirements, will be satisfied in relation to the reduction or elimination,
- (b) in the case of an exempt approved scheme (within the meaning given by section 592(1) of the Taxes Act 1988) which is being wound up, to enable assets remaining after the liabilities of the scheme have been fully discharged to be distributed to the employer, where prescribed requirements in relation to the distribution are satisfied, or
- (c) to enable the scheme to be so treated during a prescribed period that an employment to which the scheme applies may be contracted-out employment by reference to it.

(4) The persons competent to make an application under this Article are—

- (a) in the case of the purposes referred to in sub-paragraph (a) or (b) of paragraph (3), the trustees of the scheme, and
- (b) in the case of the purposes referred to in sub-paragraph (c) of that paragraph—
 - (i) the trustees or managers of the scheme,
 - (ii) the employer, or
 - (iii) any person other than the trustees or managers who has power to alter the rules of the scheme.

(5) An order under paragraph (1)(a) must be framed—

- (a) if made with a view to achieving either of the purposes referred to in paragraph (3)(a) or (b), so as to confer the power of modification on the trustees, and
- (b) if made with a view to achieving the purposes referred to in paragraph (3)(c), so as to confer the power of modification on such persons (who may include persons who were not parties to the application made to the Authority) as the Authority think appropriate.

(6) Regulations may provide that in prescribed circumstances this Article does not apply to occupational pension schemes falling within a prescribed class or description or applies to them with prescribed modifications.

⁽³⁴⁾ 1988 c. 1.

Article 69: supplementary

70.—(1) The Authority may not make an order under Article 69 unless they are satisfied that the purposes for which the application for the order was made—

- (a) cannot be achieved otherwise than by means of such an order, or
- (b) can only be achieved in accordance with a procedure which—
 - (i) is liable to be unduly complex or protracted, or
 - (ii) involves the obtaining of consents which cannot be obtained, or can only be obtained with undue delay or difficulty.

(2) The extent of the Authority’s powers to make such an order is not limited, in relation to any purposes for which they are exercisable, to the minimum necessary to achieve those purposes.

(3) The Authority may not make an order under Article 69 with a view to achieving the purpose referred to in paragraph (3)(c) of that Article unless they are satisfied that it is reasonable in all the circumstances to make it.

Effect of orders under Article 69

71.—(1) An order under sub-paragraph (a) of paragraph (1) of Article 69 may enable those exercising any power conferred by the order to exercise it retrospectively (whether or not the power could otherwise be so exercised) and an order under sub-paragraph (b) of that paragraph may modify a scheme retrospectively.

(2) Any modification of a scheme made in pursuance of an order of the Authority under Article 69 is as effective in law as if it had been made under powers conferred by or under the scheme.

- (3) An order under Article 69 may be made and complied with in relation to a scheme—
 - (a) in spite of any enactment or rule of law, or any rule of the scheme, which would otherwise operate to prevent the modification being made, or
 - (b) without regard to any such enactment, rule of law or rule of the scheme as would otherwise require, or might otherwise be taken to require, the implementation of any procedure or the obtaining of any consent, with a view to the making of the modification.

(4) In this Article, “retrospectively” means with effect from a date before that on which the power is exercised or, as the case may be, the order is made.

Modification of public service pension schemes

72.—(1) The appropriate authority may make such provision for the modification of a public service pension scheme as could be made in respect of a scheme, other than a public service pension scheme, by an order of the Authority under Article 69(1)(b).

(2) In this Article, “the appropriate authority”, in relation to a scheme, means such Minister of the Crown or government department as may be designated by the Treasury or the Department of Finance and Personnel as having responsibility for the particular scheme.

(3) The powers of the appropriate authority under this Article are exercisable by means of an order—

- (a) directly modifying the scheme (without regard, in the case of a scheme contained in or made under powers conferred by an enactment, to the terms of the enactment or any of its restrictions), or
- (b) modifying an enactment under which the scheme was made or by virtue of which it has effect.

(4) Any such order may adapt, amend or repeal any such enactment as is referred to in paragraph (3)(a) or(b) as the appropriate authority thinks appropriate.

Winding up

Preferential liabilities on winding up

73.—(1) This Article applies, where a salary related occupational pension scheme to which Article 56 applies is being wound up, to determine the order in which the assets of the scheme are to be applied towards satisfying the liabilities in respect of pensions and other benefits (including increases in pensions).

(2) The assets of the scheme must be applied first towards satisfying the amounts of the liabilities mentioned in paragraph (3) and, if the assets are insufficient to satisfy those amounts in full, then—

- (a) the assets must be applied first towards satisfying the amounts of the liabilities mentioned in earlier sub-paragraphs of paragraph (3) before the amounts of the liabilities mentioned in later sub-paragraphs, and
- (b) where the amounts of the liabilities mentioned in one of those sub-paragraphs cannot be satisfied in full, those amounts must be satisfied in the same proportions.

(3) The liabilities referred to in paragraph (2) are—

- (a) any liability for pensions or other benefits which, in the opinion of the trustees, are derived from the payment by any member of the scheme of voluntary contributions,
- (b) where a person's entitlement to payment of pension or other benefits has arisen, liability for that pension or benefit and for any pension or other benefit which will be payable to dependants of that person on his death (but excluding increases to pensions),
- (c) any liability for—
 - (i) pensions or other benefits which have accrued to or in respect of any members of the scheme (but excluding increases to pensions), or
 - (ii) (in respect of members with less than two years pensionable service) the return of contributions,
- (d) any liability for increases to pensions referred to in sub-paragraphs (b) and (c);

and, for the purposes of paragraph (2), the amounts of the liabilities mentioned in sub-paragraphs (b) to (d) are to be taken to be the amounts calculated and verified in the prescribed manner.

(4) To the extent that any liabilities, as calculated in accordance with the rules of the scheme, have not been satisfied under paragraph (2), any remaining assets of the scheme must then be applied towards satisfying those liabilities (as so calculated) in the order provided for in the rules of the scheme.

(5) If the scheme confers power on any person other than the trustees or managers to apply the assets of the scheme in respect of pensions or other benefits (including increases in pensions), it cannot be exercised by that person but may be exercised instead by the trustees or managers.

(6) If this Article is not complied with—

- (a) Article 3 applies to any trustee who has failed to take all such steps as are reasonable to secure compliance, and
- (b) Article 10 applies to any trustee or manager who has failed to take all such steps.

(7) Regulations may modify paragraph (3).

(8) This Article does not apply to an occupational pension scheme falling within a prescribed class or description.

(9) This Article has effect with prescribed modifications in cases where part of a salary related occupational pension scheme to which Article 56 applies is being wound up.

Discharge of liabilities by insurance, etc.

74.—(1) This Article applies where a salary related occupational pension scheme to which Article 56 applies, other than a scheme falling within a prescribed class or description, is being wound up.

(2) A liability to or in respect of a member of the scheme in respect of pensions or other benefits (including increases in pensions) is to be treated as discharged (to the extent that it would not be so treated apart from this Article) if the trustees or managers of the scheme have, in accordance with prescribed arrangements, provided for the discharge of the liability in one or more of the ways mentioned in paragraph (3).

(3) The ways referred to in paragraph (2) are—

- (a) by acquiring transfer credits allowed under the rules of another occupational pension scheme which satisfies prescribed requirements and the trustees or managers of which are able and willing to accept payment in respect of the member,
- (b) by acquiring rights allowed under the rules of a personal pension scheme which satisfies prescribed requirements and the trustees or managers of which are able and willing to accept payment in respect of the member's accrued rights,
- (c) by purchasing one or more annuities which satisfy prescribed requirements from one or more insurance companies, being companies willing to accept payment in respect of the member from the trustees or managers,
- (d) by subscribing to other pension arrangements which satisfy prescribed requirements.

(4) If the assets of the scheme are insufficient to satisfy in full the liabilities, as calculated in accordance with the rules of the scheme, in respect of pensions and other benefits (including increases in pensions), the reference in paragraph (2) to providing for the discharge of any liability in one or more of the ways mentioned in paragraph (3) is to applying any amount available, in accordance with Article 73, in one or more of those ways.

(5) Regulations may provide for this Article—

- (a) to have effect in relation to so much of any liability as may be determined in accordance with the regulations, or
- (b) to have effect with prescribed modifications in relation to schemes falling within a prescribed class or description.

Deficiencies in the assets

75.—(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 assets of the scheme is less than the amount at that time of the liabilities of the scheme, an amount equal to the difference shall be treated as a debt due from the employer to the trustees or managers of the scheme.

(2) If in the case of an occupational pension scheme which is not a money purchase scheme—

- (a) a relevant insolvency event occurs in relation to the employer, and
- (b) a debt due from the employer under paragraph (1) has not been discharged at the time that event occurs,

the debt in question shall be taken, for the purposes of the law relating to winding up or bankruptcy as it applies in relation to the employer, to arise immediately before that time.

(3) In this Article, “the applicable time” means—

- (a) if the scheme is being wound up before a relevant insolvency event occurs in relation to the employer, any time when it is being wound up before such an event occurs, and
 - (b) otherwise, immediately before the relevant insolvency event occurs.
- (4) For the purposes of this Article a relevant insolvency event occurs in relation to the employer—
- (a) where the employer is a company, when it goes into liquidation, within the meaning of Article 6(2) of the Insolvency (Northern Ireland) Order 1989(35), or
 - (b) where the employer is an individual, at the commencement of his bankruptcy, within the meaning of Article 252 of that Order.
- (5) For the purposes of paragraph (1), the liabilities and assets to be taken into account, and their amount or value, must be determined, calculated and verified by a prescribed person and in the prescribed manner.
- (6) In calculating the value of any liabilities for those purposes, a provision of the scheme which limits the amount of its liabilities by reference to the amount of its assets is to be disregarded.
- (7) This Article does not prejudice any other right or remedy which the trustees or managers may have in respect of a deficiency in the scheme's assets.
- (8) 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(36).
- (9) This Article does not apply to an occupational pension scheme falling within a prescribed class or description.
- (10) Regulations may modify this Article as it applies in prescribed circumstances.

Excess assets on winding up

- 76.**—(1) This Article applies to a trust scheme in any circumstances if—
- (a) (a) it is an exempt approved scheme, within the meaning given by section 592(1) of the Taxes Act 1988(37),
 - (b) the scheme is being wound up, and
 - (c) in those circumstances, power is conferred on the employer or the trustees to distribute assets to the employer on a winding up.
- (2) The power referred to in paragraph (1)(c) cannot be exercised unless the requirements of paragraphs (3) and (in prescribed circumstances) (4), and any prescribed requirements, are satisfied.
- (3) The requirements of this paragraph are that—
- (a) the liabilities of the scheme have been fully discharged,
 - (b) where there is any power under the scheme, after the discharge of those liabilities, to distribute assets to any person other than the employer, the power has been exercised or a decision has been made not to exercise it,
 - (c) the annual rates of the pensions under the scheme which commence or have commenced are increased by the appropriate percentage, and
 - (d) notice has been given in accordance with prescribed requirements to the members of the scheme of the proposal to exercise the power.
- (4) The requirements of this paragraph are that the Authority are of the opinion that—
- (a) any requirements prescribed by virtue of paragraph (2) are satisfied, and

(35) 1989 NI 19.

(36) 1989 NI 19.

(37) 1988 c. 1.

- (b) the requirements of paragraph (3) are satisfied.
- (5) In paragraph (3)—
 - (a) “annual rate” and “appropriate percentage” have the same meaning as in Article 54, and
 - (b) “pension” does not include—
 - (i) any guaranteed minimum pension (as defined in section 4(2) of the Pension Schemes Act) or any increase in such a pension under section 105 of that Act, or
 - (ii) any money purchase benefit (as defined in section 176(1) of that Act).
- (6) If, where this Article applies to any trust scheme, the trustees purport to exercise the power referred to in paragraph (1)(c) without complying with the requirements of this Article, Articles 3 and 10 apply to any of them who have failed to take all such steps as are reasonable to secure compliance.
- (7) If, where this Article applies to any trust scheme, any person other than the trustees purports to exercise the power referred to in paragraph (1)(c) without complying with the requirements of this Article, Article 10 applies to him.
- (8) Regulations may provide that, in prescribed circumstances, this Article does not apply to schemes falling within a prescribed class or description, or applies to them with prescribed modifications.

Excess assets remaining after winding up: power to distribute

- 77.—(1) This Article applies to a trust scheme in any circumstances if—
- (a) it is an exempt approved scheme, within the meaning given by section 592(1) of the Taxes Act 1988(38),
 - (b) the scheme is being wound up,
 - (c) the liabilities of the scheme have been fully discharged,
 - (d) where there is any power under the scheme, after the discharge of those liabilities, to distribute assets to any person other than the employer, the power has been exercised or a decision has been made not to exercise it,
 - (e) any assets remain undistributed, and
 - (f) the scheme prohibits the distribution of assets to the employer in those circumstances.
- (2) The annual rates of the pensions under the scheme which commence or have commenced must be increased by the appropriate percentage, so far as the value of the undistributed assets allows.
- (3) In paragraph (2)—
- (a) “annual rate” and “appropriate percentage” have the same meaning as in Article 54, and
 - (b) “pension” does not include—
 - (i) any guaranteed minimum pension (as defined in section 4(2) of the Pension Schemes Act) or any increase in such a pension under section 105 of that Act, or
 - (ii) any money purchase benefit (as defined in section 176(1) of that Act).
- (4) Where any assets remain undistributed after the discharge of the trustees' duty under paragraph (2)—
- (a) the trustees must use those assets for the purpose of providing additional benefits or increasing the value of any benefits, but subject to prescribed limits, and
 - (b) the trustees may then distribute those assets (so far as undistributed) to the employer.

(5) If, where this Article applies to a trust scheme, the requirements of this Article are not complied with, Article 3 applies to any trustee who has failed to take all such steps as are reasonable to secure compliance.

(6) Regulations may modify this Article as it applies in prescribed circumstances.

Decisions of Compensation Board

Review of Compensation Board's decisions

78.—(1) Subject to paragraphs (2) to (4), any determination by the Compensation Board of a question which it is within their functions to determine shall be final.

(2) The Compensation Board may on the application of a person appearing to them to be interested

- (a) at any time review any such determination of theirs as is mentioned in paragraph (1) (including a determination given by them on a previous review), if they are satisfied that there has been a relevant change of circumstances since the determination was made, or that the determination was made in ignorance of a material fact or based on a mistake as to a material fact or was erroneous in point of law, and
- (b) at any time within a period of three months from the date of the determination, or within such longer period as they may allow in any particular case, review such a determination on any ground.

(3) The Compensation Board's powers on a review under this Article include power—

- (a) to vary or revoke any determination previously made,
- (b) to substitute a different determination, and
- (c) generally to deal with the matters arising on the review as if they had arisen on the original determination;

and also include power to make savings and transitional provisions.

(4) Nothing in section 80(4) of the Pensions Act 1995⁽³⁹⁾ shall be taken to prevent a review under this Article being entered upon by the Compensation Board without an application being made.

The compensation provisions

Cases where compensation provisions apply

79.—(1) Subject to paragraph (2), this Article applies to an application for compensation under Article 80 in respect of an occupational pension scheme if all the following conditions are met—

- (a) the scheme is a trust scheme,
- (b) the employer is insolvent,
- (c) the value of the assets of the scheme has been reduced, and there are reasonable grounds for believing that the reduction was attributable to an act or omission constituting a prescribed offence,
- (d) in the case of a salary related trust scheme, immediately before the date of the application the value of the assets of the scheme is less than 90 per cent. of the amount of the liabilities of the scheme, and

(39) 1995 c. 26.

- (e) it is reasonable in all the circumstances that the members of the scheme should be assisted by the Compensation Board paying to the trustees of the scheme, out of funds for the time being held by them, an amount determined in accordance with the compensation provisions.

(2) Paragraph (1) does not apply in respect of a trust scheme falling within a prescribed class or description; and paragraph (1)(c) applies only to reductions in value since the appointed day.

(3) In this Part, “the compensation provisions” means the provisions of this Article and Articles 80 to 83; and in the compensation provisions as they relate to a trust scheme—

- (a) “the application date” means the date of the application for compensation under Article 80,
- (b) “the appointed day” means the day appointed under Article 1 for the commencement of this Article,
- (c) “the insolvency date” means the date on which the employer became insolvent,
- (d) “the settlement date” means the date determined by the Compensation Board, after consulting the trustees, to be the date after which further recoveries of value are unlikely to be obtained without disproportionate cost or within a reasonable time,
- (e) “the shortfall at the application date” means the amount of the reduction falling within paragraph (1)(c) or (if there was more than one such reduction) the aggregate of the reductions, being the amount or aggregate immediately before the application date,
- (f) “recovery of value” means any increase in the value of the assets of the scheme, being an increase attributable to any payment received (otherwise than from the Compensation Board) by the trustees of the scheme in respect of any act or omission—
- (i) which there are reasonable grounds for believing constituted a prescribed offence, and
- (ii) to which any reduction in value falling within paragraph (1)(c) was attributable.

(4) It is for the Compensation Board to determine whether anything received by the trustees of the scheme is to be treated as a payment received for any such act or omission as is referred to in paragraph (3)(f); and in this Article “payment” includes any money or money’s worth.

(5) Where this Article applies to an application for compensation under Article 80, the trustees must obtain any recoveries of value, to the extent that they may do so without disproportionate cost and within a reasonable time.

(6) If paragraph (5) is not complied with, Article 3 applies to any trustee who has failed to take all such steps as are reasonable to secure compliance.

(7) Article 56(3) and (4) applies for the purposes of the compensation provisions as it applies for the purposes of Articles 56 to 61.

(8) Section 119 of the Pension Schemes Act (meaning of insolvency) applies for the purposes of the compensation provisions as it applies for the purposes of Chapter II of Part VII of that Act (unpaid scheme contributions).

Applications for payments

80.—(1) Compensation may be paid under Article 81 only on an application to which Article 79 applies made within the qualifying period by a prescribed person.

(2) An application under this Article must be made in the manner, and give the information, required by the Compensation Board.

(3) For the purposes of this Article the “qualifying period”, subject to paragraph (5), is the period expiring with the period of twelve months mentioned in paragraph (4).

(4) The period of twelve months referred to in paragraph (3) is that beginning with the later of the following times—

- (a) the insolvency date,
- (b) when the auditor or actuary of the scheme, or the trustees, knew or ought reasonably to have known that a reduction of value falling within Article 79(1)(c) had occurred,

being, in each case, a time after the appointed day.

(5) The Compensation Board may extend, or further extend, the qualifying period.

Amount of compensation

81.—(1) Where, in the opinion of the Compensation Board, Article 79 applies to an application for compensation under Article 80 in respect of a trust scheme, and the Board have determined the settlement date, the Board may make a payment or payments to the trustees of the scheme in accordance with this Article.

(2) The amount of any payment must be determined in accordance with regulations and must take account of any payment already made under Article 82, and the Compensation Board must give written notice of their determination to the person who made the application under Article 80 and (if different) to the trustees.

(3) The amount of the payment or (if there is more than one) the aggregate—

- (a) must not exceed 90 per cent. of the shortfall at the application date, together with interest at the prescribed rate for the prescribed period on the shortfall or (if the shortfall comprises more than one reduction in value) on each of the reductions, and also,
- (b) in the case of a salary related scheme, must not exceed the amount which, on the settlement date, is required to be paid to the trustees of the scheme in order to secure that the value on that date of the assets of the scheme is equal to 90 per cent. of the amount on that date of the liabilities of the scheme.

Payments made in anticipation

82.—(1) The Compensation Board may, on an application for compensation under Article 80, make a payment or payments to the trustees of a trust scheme where in their opinion—

- (a) Article 79 applies, or may apply, to the application, and
- (b) the trustees would not otherwise be able to meet liabilities falling within a prescribed class,

but the Board have not determined the settlement date.

(2) Amounts payable under this Article must be determined in accordance with regulations.

(3) Where any payment is made under this Article, the Compensation Board may, except in prescribed circumstances—

- (a) if they subsequently form the opinion that Article 79 does not apply to the application for compensation in respect of the scheme, or
- (b) if they subsequently form the opinion that the amount of the payment was excessive,

recover so much of the payment as they consider appropriate.

Surplus funds

83.—(1) Section 85 of the Pensions Act 1995⁽⁴⁰⁾ (surplus funds) shall extend to Northern Ireland.

(40) 1995 c. 26.

(2) In subsection (1) of that section (distribution of funds surplus to the Compensation Board's requirements for the purposes of Part I of that Act), after "Part" insert "or any corresponding provisions in force in Northern Ireland".

Modification of compensation provisions

84. Regulations may modify the compensation provisions in their application to trust schemes falling within a prescribed class or description.

Money purchase schemes

Schedules of payments to money purchase schemes

85.—(1) This Article applies to an occupational pension scheme which is a money purchase scheme, other than one falling within a prescribed class or description.

(2) The trustees or managers of every occupational pension scheme to which this Article applies must secure that there is prepared, maintained and revised a schedule (referred to in this Article and Article 86 as a "payment schedule") showing—

- (a) the rates of contributions payable towards the scheme by or on behalf of the employer and the active members of the scheme,
 - (b) such other amounts payable towards the scheme as may be prescribed, and
 - (c) the dates on or before which payments of such contributions or other amounts are to be made (referred to in those Articles as "due dates").
- (3) The payment schedule for a scheme must satisfy prescribed requirements.
- (4) The matters shown in the payment schedule for a scheme—
- (a) to the extent that the scheme makes provision for their determination, must be so determined, and
 - (b) otherwise—
 - (i) must be matters previously agreed between the employer and the trustees or managers of the scheme, or
 - (ii) if no such agreement has been made as to all matters shown in the schedule (other than those for whose determination the scheme makes provision), must be matters determined by the trustees or managers of the scheme.
- (5) Where in the case of a scheme this Article is not complied with—
- (a) Article 3 applies to any trustee who has failed to take all such steps as are reasonable to secure compliance, and
 - (b) Article 10 applies to any trustee or manager who has failed to take all such steps.

Schedules of payments to money purchase schemes: supplementary

86.—(1) Except in prescribed circumstances, the trustees or managers of an occupational pension scheme to which Article 85 applies must, where any amounts payable in accordance with the payment schedule have not been paid on or before the due date, give notice of that fact, within the prescribed period, to the Authority and to the members of the scheme.

(2) Any such amounts which for the time being remain unpaid after that date (whether payable by the employer or not) shall, if not a debt due from the employer to the trustees or managers apart from this paragraph, be treated as such a debt.

(3) Where any amounts payable in accordance with the payment schedule by or on behalf of the employer have not been paid on or before the due date, Article 10 applies to the employer.

(4) If, in the case of an occupational pension scheme to which Article 85 applies, paragraph (1) is not complied with—

- (a) Article 3 applies to any trustee who has failed to take all such steps as are reasonable to secure compliance, and
- (b) Article 10 applies to any trustee or manager who has failed to take all such steps.

Application of further provisions to money purchase schemes

87.—(1) In the case of money purchase schemes falling within a prescribed class or description, regulations may—

- (a) provide for any of the provisions of Articles 56 to 60 to apply, or apply with prescribed modifications (in spite of anything in those Articles), and
- (b) provide for any of the provisions of Articles 85 and 86 to apply with prescribed modifications or not to apply,

to such extent as may be prescribed.

(2) Regulations may provide for any of the provisions of Article 75 to apply, or apply with prescribed modifications, to money purchase schemes to such extent as may be prescribed (in spite of anything in that Article), and the power conferred by this paragraph includes power to apply Article 75 in circumstances other than those in which the scheme is being wound up or a relevant insolvency event occurs (within the meaning of that Article).

Unpaid contributions in cases of insolvency

88. In section 120 of the Pension Schemes Act (duty of Department to pay unpaid contributions to schemes), after subsection (3) insert—

“(3A) Where the scheme in question is a money purchase scheme, the sum payable under this section by virtue of subsection (3) shall be the lesser of the amounts mentioned in paragraphs (a) and (c) of that subsection.”.

and, accordingly, at the beginning of subsection (3) insert “Subject to subsection (3A),”.

Assignment, forfeiture, bankruptcy, etc.,

Inalienability of occupational pension

89.—(1) Subject to paragraph (5), where a person is entitled, or has an accrued right, to a pension under an occupational pension scheme—

- (a) the entitlement or right cannot be assigned, commuted or surrendered,
- (b) the entitlement or right cannot be charged or a lien exercised in respect of it, and
- (c) no set-off can be exercised in respect of it,

and an agreement to effect any of those things is unenforceable.

(2) Where by virtue of this Article a person’s entitlement, or accrued right, to a pension under an occupational pension scheme cannot, apart from paragraph (5), be assigned, no order can be made by any court the effect of which would be that he would be restrained from receiving that pension.

(3) Where a bankruptcy order is made against a person, any entitlement or right of his which by virtue of this Article cannot, apart from paragraph (5), be assigned is excluded from his estate for the purposes of Parts VIII to X of the Insolvency (Northern Ireland) Order 1989⁽⁴¹⁾.

(4) Paragraph (2) does not prevent the making of—

- (a) an attachment of earnings order under the Judgments Enforcement (Northern Ireland) Order 1981⁽⁴²⁾, or
- (b) an income payments order under the Insolvency (Northern Ireland) Order 1989⁽⁴³⁾.

(5) In the case of a person (“the person in question”) who is entitled, or has an accrued right, to a pension under an occupational pension scheme, paragraph (1) does not apply to any of the following, or any agreement to effect any of the following—

- (a) an assignment in favour of the person in question’s widow, widower or dependant,
- (b) a surrender, at the option of the person in question, for the purpose of—
 - (i) providing benefits for that person’s widow, widower or dependant, or
 - (ii) acquiring for the person in question entitlement to further benefits under the scheme,
- (c) a commutation—
 - (i) of the person in question’s benefit on or after retirement or in exceptional circumstances of serious ill health,
 - (ii) in prescribed circumstances, of any benefit for that person’s widow, widower or dependant, or
 - (iii) in other prescribed circumstances,
- (d) subject to paragraph (6), a charge or lien on, or set-off against, the person in question’s entitlement, or accrued right, to pension (except to the extent that it includes transfer credits other than prescribed transfer credits) for the purpose of enabling the employer to obtain the discharge by him of some monetary obligation due to the employer and arising out of a criminal, negligent or fraudulent act or omission by him,
- (e) subject to paragraph (6), except in prescribed circumstances a charge or lien on, or set-off against, the person in question’s entitlement, or accrued right, to pension, for the purpose of discharging some monetary obligation due from the person in question to the scheme and—
 - (i) arising out of a criminal, negligent or fraudulent act or omission by him, or
 - (ii) in the case of a trust scheme of which the person in question is a trustee, arising out of a breach of trust by him.

(6) Where a charge, lien or set-off is exercisable by virtue of paragraph (5)(d) or (e)—

- (a) its amount must not exceed the amount of the monetary obligation in question, or (if less) the value (determined in the prescribed manner) of the person in question’s entitlement or accrued right, and
- (b) the person in question must be given a certificate showing the amount of the charge, lien or set-off and its effect on his benefits under the scheme,

and where there is a dispute as to its amount, the charge, lien or set-off must not be exercised unless the obligation in question has become enforceable under an order of a competent court or in consequence of an award of an arbitrator.

⁽⁴¹⁾ 1989 NI 19.

⁽⁴²⁾ 1981 NI 6.

⁽⁴³⁾ 1989 NI 19.

(7) This Article is subject to section 155 of the Pension Schemes Act (inalienability of guaranteed minimum pension and protected rights payments).

Forfeiture, etc.

90.—(1) Subject to paragraphs (2) to (6) and Article 91, an entitlement, or accrued right, to a pension under an occupational pension scheme cannot be forfeited.

(2) Paragraph (1) does not prevent forfeiture by reference to—

- (a) a transaction or purported transaction which under Article 89 is of no effect, or
- (b) the bankruptcy of the person entitled to the pension or whose right to it has accrued,

whether or not that event occurred before or after the pension became payable.

(3) Where such forfeiture as is mentioned in paragraph (2) occurs, any pension which was, or would but for the forfeiture have become, payable may, if the trustees or managers of the scheme so determine, be paid to all or any of the following—

- (a) the member of the scheme to or in respect of whom the pension was, or would have become, payable,
- (b) the spouse, widow or widower of the member,
- (c) any dependant of the member, and
- (d) any other person falling within a prescribed class.

(4) Paragraph (1) does not prevent forfeiture by reference to the person entitled to the pension, or whose right to it has accrued, having been convicted of one or more offences—

- (a) which are committed before the pension becomes payable, and
- (b) which are—
 - (i) offences of treason,
 - (ii) offences under the Official Secrets Acts 1911 to 1989 for which the person has been sentenced on the same occasion to a term of imprisonment of, or to two or more consecutive terms amounting in the aggregate to, at least 10 years, or
 - (iii) prescribed offences.

(5) Paragraph (1) does not prevent forfeiture by reference to a failure by any person to make a claim for pension—

- (a) where the forfeiture is in reliance on any enactment relating to the limitation of actions, or
- (b) where the claim is not made within six years of the date on which the pension becomes due.

(6) Paragraph (1) does not prevent forfeiture in prescribed circumstances.

(7) In this Article and Article 91, references to forfeiture include any manner of deprivation or suspension.

Forfeiture by reference to obligation to employer

91.—(1) Subject to paragraph (2), Article 90(1) does not prevent forfeiture of a person's entitlement, or accrued right, to a pension under an occupational pension scheme by reference to the person having incurred some monetary obligation due to the employer and arising out of a criminal, negligent or fraudulent act or omission by the person.

(2) A person's entitlement or accrued right to a pension may be forfeited by reason of paragraph (1) to the extent only that it does not exceed the amount of the monetary obligation in question, or (if less) the value (determined in the prescribed manner) of the person's entitlement or accrued right to a pension under the scheme.

(3) Such forfeiture as is mentioned in paragraph (1) must not take effect where there is a dispute as to the amount of the monetary obligation in question, unless the obligation has become enforceable under an order of a competent court or in consequence of an award of an arbitrator.

(4) Where a person's entitlement or accrued right to a pension is forfeited by reason of paragraph (1), the person must be given a certificate showing the amount forfeited and the effect of the forfeiture on his benefits under the scheme.

(5) Where such forfeiture as is mentioned in paragraph (1) occurs, an amount not exceeding the amount forfeited may, if the trustees or managers of the scheme so determine, be paid to the employer.

Articles 89 to 91: supplementary

92.—(1) Regulations may—

- (a) modify Articles 89 to 91 in their application to public service pension schemes or to other schemes falling within a prescribed class or description, or
- (b) provide that those Articles do not apply in relation to schemes falling within a prescribed class or description.

(2) In those Articles, “pension” in relation to an occupational pension scheme, includes any benefit under the scheme and any part of a pension and any payment by way of pension.

Pension rights of individuals adjudged bankrupt, etc.

93. After Article 315 of the Insolvency (Northern Ireland) Order 1989⁽⁴⁴⁾ insert—

“Recovery of excessive pension contributions

315A.—(1) Where an individual is adjudged bankrupt and—

- (a) he has during the relevant period made contributions as a member of an occupational pension scheme, or
- (b) contributions have during the relevant period been made to such a scheme on his behalf,

the trustee of the bankrupt's estate may apply to the High Court for an order under this Article.

(2) If, on an application for an order under this Article, the High Court is satisfied that the making of any of the contributions (“the excessive contributions”) has unfairly prejudiced the individual's creditors, the Court may make such order as it thinks fit for restoring the position to what it would have been if the excessive contributions had not been made.

(3) The High Court shall, in determining whether it is satisfied under paragraph (2), consider in particular—

- (a) whether any of the contributions were made by or on behalf of the individual for the purpose of putting assets beyond the reach of his creditors or any of them.
- (b) whether the total amount of contributions made by or on behalf of the individual (including contributions made to any other occupational pension scheme) during the relevant period was excessive in view of the individual's circumstances at the time when they were made, and

(44) 1989 NI 19.

- (c) whether the level of benefits under the scheme, together with benefits under any other occupational pension scheme, to which the individual is entitled, or is likely to become entitled, is excessive in all the circumstances of the case.

Orders under Article 315A

315B.—(1) Without prejudice to the generality of Article 315A(2), an order under that Article may include provision—

- (a) requiring the trustees or managers of the scheme to pay an amount to the individual's trustee in bankruptcy,
- (b) reducing the amount of any benefit to which the individual (or his spouse, widow, widower or dependant) is entitled, or to which he has an accrued right, under the scheme,
- (c) reducing the amount of any benefit to which, by virtue of any assignment, commutation or surrender of the individual's entitlement (or that of his spouse, widow, widower or dependant) or accrued right under the scheme, another person is entitled or has an accrued right,
- (d) otherwise adjusting the liabilities of the scheme in respect of any such person as is mentioned in sub-paragraph (b) or (c).

(2) The maximum amount by which an order under Article 315A may require the assets of an occupational pension scheme to be reduced is the lesser of—

- (a) the amount of the excessive contributions, and
- (b) the value (determined in the prescribed manner) of the assets of the scheme which represent contributions made by or on behalf of the individual.

(3) Subject to paragraphs (4) and (5), an order under Article 315A must reduce the amount of the liabilities of the scheme by an amount equal to the amount of the reduction made in the value of the assets of the scheme.

(4) Paragraph (3) does not apply where the individual's entitlement or accrued right to benefits under the scheme which he acquired by virtue of the excessive contributions (his "excessive entitlement") has been forfeited.

(5) Where part of the individual's excessive entitlement has been forfeited, the amount of the reduction in the liabilities of the scheme required by paragraph (3) is the value of the remaining part of his excessive entitlement.

(6) An order under Article 315A in respect of an occupational pension scheme shall be binding on the trustees or managers of the scheme.

Orders under Article 315A: supplementary

315C.—(1) Nothing in—

- (a) any provision of section 155 of the Pension Schemes (Northern Ireland) Act 1993 or Article 89 of the Pensions (Northern Ireland) Order 1995 (which prevent assignment, or orders being made restraining a person from receiving anything which he is prevented from assigning, and make provision in relation to a person's pension on bankruptcy),
- (b) any provision of any enactment (whether passed or made before or after the making of the Pensions (Northern Ireland) Order 1995) corresponding to any of the provisions mentioned in sub-paragraph (a), or
- (c) any provision of the scheme in question corresponding to any of those provisions,

applies to the High Court exercising its powers under Article 315A.

(2) Where any sum is required by an order under Article 315A to be paid to the trustee in bankruptcy, that sum shall be comprised in the bankrupt's estate.

(3) Where contributions have been made during the relevant period to any occupational pension scheme and the entitlement or accrued right to benefits acquired thereby has been transferred to a second or subsequent occupational pension scheme ("the transferee scheme"), Articles 315A and 315B and this Article shall apply as though the contributions had been made to the transferee scheme.

(4) For the purposes of this Article and Articles 315A and 315B—

(a) contributions are made during the relevant period if—

(i) they are made by or on behalf of the individual at any time during the period of 5 years ending with the day of presentation of the bankruptcy petition on which the individual is adjudged bankrupt, or

(ii) they are made on behalf of the individual at any time during the period between the presentation of the petition and the commencement of the bankruptcy, or

and

(b) the accrued rights of an individual under an occupational pension scheme at any time are the rights which have accrued to or in respect of him at that time to future benefits under the scheme.

(5) In this Article and Articles 315A and 315B—

"occupational pension scheme" has the meaning given by section 1 of the Pension Schemes (Northern Ireland) Act 1993, and

"trustees or managers", in relation to an occupational pension scheme, means—

(a) in the case of a scheme established under a trust, the trustees of the scheme, and

(b) in any other case, the managers of the scheme".

Questioning the decisions of the Authority

Review of decisions

94.—(1) Subject to the following provisions of this Article and to Article 95, any determination by the Authority of a question which it is within their functions to determine shall be final.

(2) The Authority must, on the application of any person ("the applicant") at any time within the prescribed period, review any determination of theirs—

(a) to make an order against the applicant under Article 3,

(b) to require the applicant to pay a penalty under Article 10 or section 164(4) of the Pension Schemes Act, or

(c) to disqualify the applicant for being a trustee of any trust scheme under Article 29(3) or (4).

(3) The Authority may on the application of a person appearing to them to be interested—

(a) at any time review any other such determination of theirs as is mentioned in paragraph (1) (including a determination given by them on a previous review), if they are satisfied that there has been a relevant change of circumstances since the determination was made, or that the determination was made in ignorance of a material fact or based on a mistake as to a material fact or was erroneous in point of law,

(b) at any time within a period of six months from the date of the determination, or within such longer period as they may allow in any particular case, review such a determination on any ground.

(4) The Authority's powers on a review under paragraph (2) or (3) include power—

- (a) to vary or revoke any determination or order previously made,
- (b) to substitute a different determination or order, and
- (c) generally to deal with the matters arising on the review as if they had arisen on the original determination;

and also include power to make savings and transitional provisions.

(5) Subsection (5) of section 96 of the Pensions Act 1995⁽⁴⁵⁾ (regulations about procedure on reviews of decisions of the Authority) shall extend to Northern Ireland, but nothing in that subsection shall be taken to prevent a review under paragraph (2) or (3) being entered upon by the Authority without an application being made.

References and appeals from the Authority

95.—(1) Any question of law arising in connection with—

- (a) any matter arising under this Part for determination, or
- (b) any matter arising on an application to the Authority for a review of a determination, or on a review by them entered upon without an application,

may, if the Authority think fit, be referred for decision to the court.

(2) If the Authority determine in accordance with paragraph (1) to refer any question of law to the court, they must give notice in writing of their intention to do so—

- (a) in the case where the question arises on an application made to the Authority, to the applicant, and
- (b) in any case to such persons as appear to them to be concerned with the question.

(3) Any person who is aggrieved—

- (a) by a determination of the Authority given on a review under Article 94, or
- (b) by the refusal of the Authority to review a determination,

where the determination involves a question of law and that question is not referred by the Authority to the court under paragraph (1), may on that question appeal from the determination to the court.

(4) The Authority are entitled to appear and be heard on any reference or appeal under this Article.

(5) Rules of court must include provision for regulating references and appeals to the court under this Article and for limiting the time within which such appeals may be brought.

(6) The decision of the court on a reference or appeal under this Article is final, and this paragraph overrides any other enactment.

(7) On any such reference or appeal the court may order the Authority to pay the costs of any other person, whether or not the decision is in that other person's favour and whether or not the Authority appear on the reference or appeal.

(8) In this Article, "the court" means the High Court.

(45) 1995 c. 26.

*Gathering information: the Authority***Provision of information: the Authority**

96.—(1) In the case of any occupational pension scheme—

- (a) a trustee, manager, professional adviser or employer, and
- (b) any other person appearing to the Authority to be a person who holds, or is likely to hold, information relevant to the discharge of the Authority’s functions,

must, if required to do so by them by notice in writing, produce any document relevant to the discharge of those functions.

(2) To comply with paragraph (1) the document must be produced in such a manner, at such a place and within such a period as may be specified in the notice.

(3) In this Article and Articles 97 to 99, “document” includes information recorded in any form, and any reference to production of a document, in relation to information recorded otherwise than in legible form, is to producing a copy of the information in legible form.

Inspection of premises: the Authority

97.—(1) An inspector may, for the purposes of investigating whether, in the case of any occupational pension scheme, the regulatory provisions are being, or have been, complied with, at any reasonable time enter premises liable to inspection and, while there—

- (a) may make such examination and inquiry as may be necessary for such purposes,
- (b) may require any person on the premises to produce, or secure the production of, any document relevant to compliance with those provisions for his inspection, and
- (c) may, as to any matter relevant to compliance with those provisions, examine, or require to be examined, either alone or in the presence of another person, any person on the premises whom he has reasonable cause to believe to be able to give information relevant to that matter.

(2) In paragraph (1), “the regulatory provisions” means provisions made by or under—

- (a) the provisions of this Part, other than the following provisions: Articles 51 to 54, 62 to 65 and 108 to 110,
- (b) the following provisions of the Pension Schemes Act: section 2 (registration), Chapter IV of Part IV (transfer values), section 109 (information) or section 170 (levy), or
- (c) any correspondence provisions in force in Great Britain.

(3) Premises are liable to inspection for the purposes of this Article if the inspector has reasonable grounds to believe that—

- (a) members of the scheme are employed there,
- (b) documents relevant to the administration of the scheme are being kept there, or
- (c) the administration of the scheme, or work connected with the administration of the scheme, is being carried out there,

unless the premises are a private dwelling-house not used by, or by permission of, the occupier for the purposes of a trade or business.

(4) An inspector applying for admission to any premises for the purposes of this Article must, if so required, produce his certificate of appointment.

(5) In this Part, “inspector” means a person appointed by the Authority as an inspector.

Warrants

98.—(1) A justice of the peace may issue a warrant under this Article if satisfied on complaint on oath given by or on behalf of the Authority that there are reasonable grounds for believing—

- (a) that there are on any premises documents whose production has been required under Article 96(1) or 97(1)(b), or any corresponding provisions in force in Great Britain, and which have not been produced in compliance with the requirement.
- (b) that there are on any premises documents whose production could be so required and that if their production were so required the documents would not be produced but would be removed from the premises, hidden, tampered with or destroyed, or
- (c) that—
 - (i) an offence has been committed under this Order or the Pension Schemes Act, or any enactment in force in Great Britain corresponding to either of them,
 - (ii) a person will do any act which constitutes a misuse or misappropriation of the assets of an occupational pension scheme
 - (iii) a person is liable to pay a penalty under Article 10 or section 164(4) of the Pension Schemes Act, or any enactment in force in Great Britain corresponding to either of them, or
 - (iv) a person is liable to be prohibited from being a trustee of a trust scheme under Article 3,

and that there are on any premises documents which relate to whether the offence has been committed, whether the act will be done, or whether the person is so liable, and whose production could be required under Article 96(1) or 97(1)(b), or any corresponding provisions in force in Great Britain.

(2) A warrant under this Article authorises an inspector—

- (a) to enter the premises specified in the complaint, using such force as is reasonably necessary for the purpose,
- (b) to search the premises and take possession of any documents appearing to be such documents as are mentioned in paragraph (1) or to take in relation to such documents any other steps which appear necessary for preserving them or preventing interference with them,
- (c) to take copies of any such documents, or
- (d) to require any person named in the warrant to provide an explanation of them or to state where they may be found.

(3) A warrant under this Article continues in force until the end of the period of one month beginning with the day on which it is issued.

(4) Any documents of which possession is taken by virtue of a warrant under this Article may be retained—

- (a) for a period of six months, or
- (b) if within that period proceedings to which the documents are relevant are commenced against any person for any offence under this Order or the Pension Schemes Act, or any enactment in force in Great Britain corresponding to either of them, until the conclusion of those proceedings.

Information and inspection: penalties

99.—(1) A person who, without reasonable excuse, neglects or refuses to produce a document when required to do so under Article 96 is guilty of an offence.

- (2) A person who, without reasonable excuse—
- (a) intentionally delays or obstructs an inspector exercising any power under Article 97,
 - (b) neglects or refuses to produce, or secure the production of, any document when required to do so under that Article, or
 - (c) neglects or refuses to answer a question or to provide information when so required,
- is guilty of an offence.
- (3) A person guilty of an offence under paragraph (1) or (2) is liable on summary conviction to a fine not exceeding level 5 on the standard scale.
- (4) An offence under paragraph (1) or (2)(b) or (c) may be charged by reference to any day or longer period of time; and a person may be convicted of a second or subsequent offence by reference to any period of time following the preceding conviction of the offence.
- (5) Any person who knowingly or recklessly provides the Authority with information which is false or misleading in a material particular is guilty of an offence if the information—
- (a) is provided in purported compliance with a requirement under Article 97, or
 - (b) is provided otherwise than as mentioned in sub-paragraph (a) but in circumstances in which the person providing the information intends, or could reasonably be expected to know, that it would be used by the Authority for the purpose of discharging their functions under this Order.
- (6) Any person who intentionally and without reasonable excuse alters, suppresses, conceals or destroys any document which he is or is liable to be required under Article 96 or 97 to produce to the Authority is guilty of an offence.
- (7) Any person guilty of an offence under paragraph (5) or (6) is liable—
- (a) on summary conviction, to a fine not exceeding the statutory maximum,
 - (b) on conviction on indictment, to imprisonment or a fine, or both.

Savings for certain privileges, etc.

- 100.**—(1) Nothing in Articles 96 to 99 requires a person to answer any question or give any information if to do so would incriminate that person or that person's spouse.
- (2) Nothing in those Articles requires any person to produce any document to the Authority, or to any person acting on their behalf, if he would be entitled to refuse to produce the document in any proceedings in any court on the grounds that it was the subject of legal professional privilege.
- (3) Where any person claims a lien on a document, its production under Article 96 or 97 is without prejudice to the lien.

Publishing reports: the Authority

- 101.**—(1) The Authority may, if they consider it appropriate to do so in any particular case, publish in such form and manner as they think fit a report of any investigation under this Part and of the result of that investigation.
- (2) For the purposes of the law of defamation, the publication of any matter by the Authority is absolutely privileged.

Disclosure of information: the Authority

Restricted information

102.—(1) Except as provided by Articles 104 to 106, restricted information must not be disclosed by the Authority or by any person who receives the information directly or indirectly from them, except with the consent of the person to whom it relates and (if different) the person from whom the Authority obtained it.

(2) For the purposes of this Article and Articles 103 to 106, “restricted information” means any information obtained by the Authority in the exercise of their functions which relates to the business or other affairs of any person, except for information—

- (a) which at the time of the disclosure is or has already been made available to the public from other sources, or
- (b) which is in the form of a summary or collection of information so framed as not to enable information relating to any particular person to be ascertained from it.

(3) Any person who discloses information in contravention of this Article is guilty of an offence and liable—

- (a) on summary conviction, to a fine not exceeding the statutory maximum, and
- (b) on conviction on indictment, to a fine or imprisonment or both.

Information supplied to the Authority by corresponding overseas authorities

103.—(1) Subject to paragraph (2), for the purposes of Article 102 “restricted information” includes information which has been supplied to the Authority for the purposes of their functions by an authority which exercises functions corresponding to the functions of the Authority in a country or territory outside the United Kingdom.

(2) Articles 104 to 106 do not apply to such information as is mentioned in paragraph (1), and such information must not be disclosed except—

- (a) as provided in Article 102,
- (b) for the purpose of enabling or assisting the Authority to discharge their functions, or
- (c) with a view to the institution of, or otherwise for the purposes of, criminal proceedings, whether under this Order or otherwise.

Disclosure for facilitating discharge of functions by the Authority

104.—(1) Article 102 does not preclude the disclosure of restricted information in any case in which disclosure is for the purpose of enabling or assisting the Authority to discharge their functions.

(2) If, in order to enable or assist the Authority properly to discharge any of their functions, the Authority consider it necessary to seek advice from any qualified person on any matter of law, accountancy, valuation or other matter requiring the exercise of professional skill, Article 102 does not preclude the disclosure by the Authority to that person of such information as appears to the Authority to be necessary to ensure that he is properly informed with respect to the matters on which his advice is sought.

Disclosure for facilitating discharge of functions by other supervisory authorities

105.—(1) Article 102 above does not preclude the disclosure by the Authority of restricted information to any person specified in the first column of the following Table if the Authority consider that the disclosure would enable or assist that person to discharge the functions specified in relation to him in the second column of that Table.

TABLE

| Persons | Functions |
|--|---|
| The Department | Functions under the Charities Act (Northern Ireland) 1964(46) or Part III of the Pension Schemes Act. |
| The Department of Economic Development. | Functions under Part XV of the Companies (Northern Ireland) Order 1986(47), the Insolvency (Northern Ireland) Order 1989(48) or Part II of the Companies (No.2) (Northern Ireland) Order 1990(49). |
| The Secretary of State. | Functions under the Insurance Companies Act 1982(50), Part XIV of the Companies Act 1985(51), the Insolvency Act 1986(52), the Financial Services Act 1986(53), Part III of the Companies Act 1989(54) or Part III of the Pension Schemes Act 1993(55). |
| The Treasury. | Functions under the Financial Services Act 1986. |
| The Bank of England. | Functions under the Banking Act 1987(56) or any of the functions. |
| The Charity Commissioners. | Functions under the Charities Act 1993(57). |
| The Lord Advocate. | Functions under Part I of the Law Reform (Miscellaneous Provisions) (Scotland) Act 1990(58). |
| The Pensions Ombudsman and the Registrar of Occupational and Personal Pension Schemes. | Functions under the Pension Schemes Act or the Pension Schemes Act 1993. |
| The Compensation Board. | Functions under this Order or any corresponding enactment in force in Great Britain. |
| The Policyholders Protection Board. | Functions under the Policyholders Protection Act 1975(59). |
| The Deposit Protection Board. | Functions under the Banking Act 1987. |

(46) 1964 c. 33 (N.I.).

(47) 1986 NI 6.

(48) 1989 NI 19.

(49) 1990 NI 10.

(50) 1982 c. 50.

(51) 1985 c. 6.

(52) 1986 c. 45.

(53) 1986 c. 60.

(54) 1989 c. 40.

(55) 1993 c. 48.

(56) 1987 c. 22.

(57) 1993 c. 10.

(58) 1990 c. 40.

(59) 1975 c. 75.

| Persons | Functions |
|---|--|
| The Investor Protection Board. | Functions under the Building Societies Act 1986 (60) . |
| The Friendly Societies Commission. | Functions under the enactments relating to friendly societies. |
| The Building Societies Commission. | Functions under the Building Societies Act 1986. |
| The Commissioners of Inland Revenue or their officers. | Functions under the Taxes Act 1988 (61) or the Taxation of Chargeable Gains Act 1992 (62) . |
| The Official Receiver for Northern Ireland or the Official Receiver in England and Wales. | Functions under the enactments relating to insolvency. |
| An inspector appointed by the Department of Economic Development. | Functions under Part XV of the Companies (Northern Ireland) Order 1986 (63) . |
| A recognised professional body (within the meaning of Article 350 of the Insolvency (Northern Ireland) Order 1989 (64)). | Functions in its capacity as such a body under that Order. |
| A recognised professional body (within the meaning of section 391 of the Insolvency Act 1986 (65)). | Functions in its capacity as such a body under that Act. |
| An inspector appointed by the Secretary of State. | Functions under Part XIV of the Companies Act 1985 (66) or section 94 or 177 of the Financial Services Act 1986 (67) . |
| A person authorised to exercise powers under section 43A or 44 of the Insurance Companies Act 1982 (68) , section 447 of the Companies Act 1985, Article 440 of the Companies (Northern Ireland) Order 1986, section 106 of the Financial Services Act 1986, or section 84 of the Companies Act 1989 (69) . | Functions under those sections or that Article. |
| A designated agency or transferee body or the competent authority (within the meaning of the Financial Services Act 1986). | Functions under the Financial Services Act 1986. |
| A recognised self-regulating organisation, recognised professional body, recognised investment exchange or recognised clearing house (within the meaning of the Financial Services Act 1986). | Functions in its capacity as an organisation, body, exchange or clearing house recognised under the Financial Services Act 1986. |

(60) 1986 c. 53.**(61)** 1988 c. 1.**(62)** 1992 c. 12.**(63)** 1986 NI 6.**(64)** 1989 NI 19.**(65)** 1986 c. 45.**(66)** 1985 c. 6.**(67)** 1986 c. 60.**(68)** 1982 c. 50.**(69)** 1989 c. 40.

| Persons | Functions |
|---|-------------------------------|
| A person administering a scheme for compensating investors under section 54 of the Financial Services Act 1986. | Functions under that section. |

- (2) The Department may after consultation with the Authority—
- (a) by order amend the Table in paragraph (1) by—
 - (i) adding any person exercising regulatory functions and specifying functions in relation to that person,
 - (ii) removing any person for the time being specified in the Table, or
 - (iii) altering the functions for the time being specified in the Table in relation to any person, or
 - (b) by order restrict the circumstances in which, or impose conditions subject to which, disclosure is permitted in the case of any person for the time being specified in the Table.

Other permitted disclosures

106.—(1) Article 102 does not preclude the disclosure by the Authority of restricted information to—

- (a) the Department, or
- (b) the Secretary of State,

if the disclosure appears to the Authority to be desirable or expedient in the interests of members of occupational pension schemes or in the public interest.

- (2) Article 102 does not preclude the disclosure of restricted information—
- (a) with a view to the institution of, or otherwise for the purposes of, criminal proceedings, whether under this Order or otherwise,
 - (b) in connection with any other proceedings arising out of—
 - (i) this Order, or
 - (ii) the Pension Schemes Act,
 or any corresponding enactment in force in Great Britain or any proceedings for breach of trust in relation to an occupational pension scheme,
 - (c) with a view to the institution of, or otherwise for the purposes of, proceedings under Article 10 or 11 of the Companies (Northern Ireland) Order 1989⁽⁷⁰⁾ or section 7 or 8 of the Company Directors Disqualification Act 1986⁽⁷¹⁾,
 - (d) in connection with any proceedings under the Insolvency (Northern Ireland) Order 1989⁽⁷²⁾ or the Insolvency Act 1986⁽⁷³⁾ which the Authority have instituted or in which they have a right to be heard,
 - (e) with a view to the institution of, or otherwise for the purposes of, any disciplinary proceedings relating to the exercise of his professional duties by a solicitor, an actuary or an accountant,
 - (f) with a view to the institution of, or otherwise for the purposes of, any disciplinary proceedings relating to the discharge by a public servant of his duties,

⁽⁷⁰⁾ 1989 NI 18.

⁽⁷¹⁾ 1986 c. 46.

⁽⁷²⁾ 1989 NI 19.

⁽⁷³⁾ 1986 c. 45.

(g) for the purpose of enabling or assisting an authority in a country outside the United Kingdom to exercise functions corresponding to those of the Authority under this Order, or

(h) in pursuance of a Community obligation.

(3) Article 102 does not preclude the disclosure by the Authority of information to the Director of Public Prosecutions for Northern Ireland, the Director of Public Prosecutions, the Lord Advocate, a procurator fiscal or a constable.

(4) Article 102 does not preclude the disclosure by any person mentioned in paragraph (1) or (3) of information obtained by the person by virtue of that paragraph, if the disclosure is made with the consent of the Authority.

(5) Article 102 does not preclude the disclosure by any person specified in the first column of the Table in Article 105(1) of information obtained by the person by virtue of Article 102, if the disclosure is made—

(a) with the consent of the Authority, and

(b) for the purpose of enabling or assisting the person to discharge any functions specified in relation to him in the second column of the Table.

(6) The Authority must, before deciding whether to give their consent to such a disclosure as is mentioned in paragraph (4) or (5), take account of any representations made to them by the person seeking to make the disclosure as to the desirability of the disclosure or the necessity for it.

(7) In paragraph (2), “public servant” means an officer or servant of the Crown or of any prescribed authority.

Disclosure of information by the Inland Revenue

107.—(1) This Article applies to information held by any person in the exercise of tax functions about any matter relevant, for the purposes of those functions, to tax or duty in the case of an identifiable person (in this Article referred to as “tax information”).

(2) No obligation as to secrecy imposed by section 182 of the Finance Act 1989⁽⁷⁴⁾ or otherwise shall prevent the disclosure of tax information to the Authority for the purpose of enabling or assisting the Authority to discharge their functions.

(3) Where tax information is disclosed to the Authority by virtue of paragraph (2), it shall, subject to paragraph (4), be treated for the purposes of Article 102 as restricted information.

(4) Articles 104 to 106 do not apply to tax information and such information must not be disclosed except—

(a) to, or in accordance with authority duly given by, the Commissioners of Inland Revenue or the Commissioners of Customs and Excise, or

(b) with a view to the institution of, or otherwise for the purposes of, criminal proceedings under this Order or the Pension Schemes Act, or any enactment in force in Great Britain corresponding to either of them.

(5) In this Article, “tax functions” has the same meaning as in section 182 of the Finance Act 1989.

Gathering information: the Compensation Board

Provision of information: the Compensation Board

108.—(1) In the case of any trust scheme—

(74) 1989 c. 26

- (a) a trustee, professional adviser or employer, and
- (b) any other person appearing to the Compensation Board to be a person who holds, or is likely to hold, information relevant to the discharge of the Board's functions,

must, if required to do so by the Board by notice in writing, produce any document relevant to the discharge of those functions.

(2) To comply with paragraph (1) the document must be produced in such a manner, at such a place and within such a period as may be specified in the notice.

(3) In this Article and Article 109, "document" includes information recorded in any form, and any reference to production of a document, in relation to information recorded otherwise than in legible form, is to producing a copy of the information in legible form.

Information: penalties

109.—(1) A person who without reasonable excuse neglects or refuses to produce a document when required to do so under Article 108 is guilty of an offence.

(2) A person guilty of an offence under paragraph (1) is liable on summary conviction to a fine not exceeding level 5 on the standard scale.

(3) An offence under paragraph (1) may be charged by reference to any day or longer period of time; and a person may be convicted of a second or subsequent offence by reference to any period of time following the preceding conviction of the offence.

(4) Any person who knowingly or recklessly provides the Compensation Board with information which is false or misleading in a material particular is guilty of an offence if the information is provided in circumstances in which the person providing the information intends, or could reasonably be expected to know, that it would be used by the Board for the purpose of discharging their functions under this Order or any corresponding enactment in force in Great Britain.

(5) Any person who intentionally and without reasonable excuse alters, suppresses, conceals or destroys any document which he is or is liable to be required under Article 108 to produce to the Compensation Board is guilty of an offence.

(6) Any person guilty of an offence under paragraph (4) or (5) is liable—

- (a) on summary conviction, to a fine not exceeding the statutory maximum,
- (b) on conviction on indictment, to imprisonment or a fine, or both.

Savings for certain privileges: the Compensation Board

110. Nothing in Article 108 or 109 requires a person—

- (a) to answer any question or give any information if to do so would incriminate that person or that person's spouse, or
- (b) to produce any document if he would be entitled to refuse to produce the document in any proceedings in any court on the grounds that it was the subject of legal professional privilege.

Publishing reports: the Compensation Board

111.—(1) The Compensation Board may, if they consider it appropriate to do so in any particular case, publish in such form and manner as they think fit a report of any investigation under this Part and of the result of that investigation.

(2) For the purposes of the law of defamation, the publication of any matter by the Compensation Board shall be absolutely privileged.

Disclosure of information

112.—(1) A person to whom this Article applies may disclose to the Compensation Board any information received by him under or for the purposes of any enactment if the disclosure is made by him for the purpose of enabling or assisting the Board to discharge any of their functions.

(2) In the case of information which a person holds or has held in the exercise of functions—

(a) of the Commissioners of Inland Revenue or the Commissioners of Customs and Excise or the officers of either of them, and

(b) relating to any tax within the general responsibility of the Commissioners,

paragraph (1) does not authorise any disclosure unless made in accordance with an authorisation given by the Commissioners.

(3) Subject to paragraph (4), the Compensation Board may disclose to a person to whom this Article applies any information received by them under or for the purposes of any enactment, where the disclosure is made by the Board—

(a) for any purpose connected with the discharge of their functions, or

(b) for the purpose of enabling or assisting that person to discharge any of his functions.

(4) Where any information disclosed to the Compensation Board under this Article is so disclosed subject to any express restriction on the disclosure of the information by the Board, the Board's power of disclosure under paragraph (3) is, in relation to the information, exercisable by them subject to any such restriction.

(5) In the case of any such information as is mentioned in paragraph (2), paragraph (3) does not authorise any disclosure of that information by the Compensation Board unless made—

(a) to, or in accordance with authority duly given by, the Commissioners of Inland Revenue or the Commissioners of Customs and Excise or

(b) with a view to the institution of, or otherwise for the purposes of, criminal proceedings under this Order or the Pension Schemes Act, or any enactment in force in Great Britain corresponding to either of them.

(6) Nothing in this Article shall be construed as affecting any power of disclosure exercisable apart from this Article.

(7) This Article applies to the following (and, accordingly, in this Article “person” shall be construed as including any of them)—

(a) any government department,

(b) the Director of Public Prosecutions for Northern Ireland,

(c) the Director of Public Prosecutions,

(d) the Lord Advocate,

(e) any constable,

(f) any designated agency or recognised self-regulating organisation (within the meaning of the Financial Services Act 1986⁽⁷⁵⁾),

(g) a recognised professional body (within the meaning of Article 350 of the Insolvency (Northern Ireland) Order 1989⁽⁷⁶⁾ or section 391 of the Insolvency Act 1986⁽⁷⁷⁾),

(h) the Pensions Ombudsman,

(i) the Policyholders Protection Board,

⁽⁷⁵⁾ 1986 c. 60.

⁽⁷⁶⁾ 1989 NI 19.

⁽⁷⁷⁾ 1986 c. 45.

- (j) the Authority,
- (k) the Registrar of Occupational and Personal Pension Schemes,
- (l) the Official Receiver for Northern Ireland or the Official Receiver in England and Wales, and
- (m) such other persons as may be prescribed.

General

Breach of regulations

113.—(1) Regulations made by virtue of any provisions of this Part may provide for the contravention of any provision contained in any such regulations to be an offence under this Part and for the recovery on summary conviction for any such offence of a fine not exceeding level 5 on the standard scale.

(2) An offence under any provision of the regulations may be charged by reference to any day or longer period of time; and a person may be convicted of a second or subsequent offence under such a provision by reference to any period of time following the preceding conviction of the offence.

(3) Where by reason of the contravention of any provision contained in regulations made by virtue of this Part—

- (a) a person is convicted of an offence under this Part, or
- (b) a person pays a penalty under Article 10,

then, in respect of that contravention, he shall not, in a case within sub-paragraph (a), be liable to pay such a penalty or, in a case within sub-paragraph (b), be convicted of such an offence.

Overriding requirements

114.—(1) Where any provision mentioned in paragraph (2) conflicts with the provisions of an occupational pension scheme—

- (a) the provision mentioned in paragraph (2), to the extent that it conflicts, overrides the provisions of the scheme, and
- (b) the scheme has effect with such modifications as may be required in consequence of sub-paragraph (a).

(2) The provisions referred to in paragraph (1) are those of—

- (a) this Part,
- (b) any subordinate legislation made or having effect as if made under this Part, or
- (c) any arrangements under Article 16(1) or 17(2).

Powers to modify this Part

115.—(1) Regulations may modify any provisions of this Part, in their application—

- (a) to a trust scheme which applies to earners in employments under different employers,
- (b) to a trust scheme of which there are no members who are in pensionable service under the scheme, or
- (c) to any case where a partnership is the employer, or one of the employers, in relation to a trust scheme.

(2) Regulations may provide for Articles 22 to 26, and Article 114 (so far as it applies to those Articles), not to apply in relation to a trust scheme falling within a prescribed class or description.

Calculations, etc. under regulations: sub-delegation

116. Regulations made by virtue of Article 56(3), 73(3) or 75 may provide for the values of the assets and the amounts of the liabilities there mentioned to be calculated and verified in accordance with guidance—

- (a) prepared and revised by a prescribed body, and
- (b) approved by the Department.

Consultations about regulations

117.—(1) Before the Department makes any regulations by virtue of this Part, It must consult such persons as it considers appropriate.

(2) Paragraph (1) does not apply—

- (a) to regulations made for the purpose only of consolidating other regulations revoked by them,
- (b) to regulations in the case of which the Department considers consultation inexpedient because of urgency,
- (c) to regulations made before the end of the period of six months beginning with the coming into operation of the provision of this Part by virtue of which the regulations are made,
- (d) to regulations which—
 - (i) state that they are consequential upon a specified enactment, and
 - (ii) are made before the end of the period of six months beginning with the coming into operation of that enactment, or
- (e) to regulations making only provision corresponding to provision contained in regulations made by the Secretary of State in relation to Great Britain.

Crown application

118.—(1) This Part applies to an occupational pension scheme managed by or on behalf of the Crown as it applies to other occupational pension schemes; and, accordingly, references in this Part to a person in his capacity as a trustee or manager of an occupational pension scheme include the Crown, or a person acting on behalf of the Crown, in that capacity.

(2) References in this Part to a person in his capacity as employer in relation to an occupational pension scheme include the Crown, or a person acting on behalf of the Crown, in that capacity.

(3) This Article does not apply to any provision made by or under this Part under which a person may be prosecuted for an offence; but such a provision applies to persons in the public service of the Crown as it applies to other persons.

(4) This Article does not apply to Article 42 to 46 (but see the amendment of Article 79 (1) of the Industrial Relations (Northern Ireland) Order 1976(78) in Schedule 1).

(5) Nothing in this Part applies to Her Majesty in Her private capacity (within the meaning of the Crown Proceedings Act 1947(79)).

(6) Subject to paragraphs (1) to (5), this Part binds the Crown to the full extent authorised by the constitutional laws of Northern Ireland.

(78) 1976 NI.16

(79) 1947 c. 44.

Consequential amendments

119. Schedule 1 (amendments consequential on this Part) has effect.

“Connected” and “associated” persons

120.—(1) Articles 4 and 7 of the Insolvency (Northern Ireland) Order 1989⁽⁸⁰⁾ (associated and connected persons) apply for the purposes of the provisions of this Order listed in paragraph (2) as they apply for the purposes of any provision of that Order.

(2) The provisions referred to in paragraph (1) are—

- (a) Article 23(3)(b)
- (b) Articles 27 and 28,
- (c) Article 40,

but in the case of Article 40 the provisions mentioned in paragraph (1) shall apply for those purposes with any prescribed modifications.

Interpretation of Part II

121.—(1) In this Part—

“active member”, in relation to an occupational pension scheme, means a person who is in pensionable service under the scheme,

“the actuary” and “the auditor”, in relation to an occupational pension scheme, have the meanings given by Article 47,

“the Authority” means the Occupational Pensions Regulatory Authority;

“the Compensation Board” means the Pensions Compensation Board.

“the compensation provisions” has the meaning given by Article 79(3),

“the Crown” means the Crown in right of Her Majesty’s government in Northern Ireland or in right of Her Majesty’s government in the United Kingdom;

“deferred member”, in relation to an occupational pension scheme, means a person (other than an active or pensioner member) who has accrued rights under the scheme,

“employer”, in relation to an occupational pension scheme, means the employer of persons in the description or category of employment to which the scheme in question relates (but see Article 122(3)),

“equal treatment rule” has the meaning given by Article 62,

“firm” means a body corporate or a partnership,

“fund manager”, in relation to an occupational pension scheme, means a person who manages the investments held for the purposes of the scheme,

“government department” means a Northern Ireland department or a department of the government of the United Kingdom;

“independent trustee” has the meaning given by Article 23(3),

“managers”, in relation to an occupational pension scheme other than a trust scheme, means the persons responsible for the management of the scheme,

“member”, in relation to an occupational pension scheme, means any active, deferred or pensioner member (but see Article 122(4)),

“member-nominated director” has the meaning given by Article 18(2),

“member-nominated trustee” has the meaning given by Article 16(2),

“the minimum funding requirement” has the meaning given by Article 56(1),

“normal pension age” has the meaning given by section 175 of the Pension Schemes Act,

“payment schedule” has the meaning given by Article 85(2),

“pensionable service”, in relation to a member of an occupational pension scheme, means service in any description or category of employment to which the scheme relates which qualifies the member (on the assumption that it continues for the appropriate period) for pension or other benefits under the scheme,

“pensioner member”, in relation to an occupational pension scheme, means a person who, in respect of his pensionable service under the scheme or by reason of transfer credits, is entitled to the present payment of pension or other benefits, “prescribed” means prescribed by regulations,

“professional adviser”, in relation to a scheme, has the meaning given by Article 47,

“public service pension scheme” has the meaning given by section 1 of the Pension Schemes Act,

“resources”, in relation to an occupational pension scheme, means the funds out of which the benefits provided by the scheme are payable from time to time, including the proceeds of any policy of insurance taken out, or annuity contract entered into, for the purposes of the scheme,

“the Taxes Act 1988” means the Income and Corporation Taxes Act 1988⁽⁸¹⁾,

“transfer credits” means rights allowed to a member under the rules of an occupational pension scheme by reference to a transfer to that scheme of his accrued rights from another scheme (including any transfer credits allowed by that scheme),

“trustees or managers”, in relation to an occupational pension scheme, means—

- (a) in the case of a trust scheme, the trustees of the scheme, and
- (b) in any other case, the managers of the scheme, “trust scheme” means an occupational pension scheme established under a trust

(2) For the purposes of this Part—

- (a) the accrued rights of a member of an occupational pension scheme at any time are the rights which have accrued to or in respect of him at that time to future benefits under the scheme, and
- (b) at any time when the pensionable service of a member of an occupational pension scheme is continuing, his accrued rights are to be determined as if he had opted, immediately before that time, to terminate that service,

and references to accrued pension or accrued benefits are to be interpreted accordingly.

(3) In determining what is “pensionable service” for the purposes of this Part—

- (a) service notionally attributable for any purpose of the scheme is to be disregarded, and
- (b) no account is to be taken of any rules of the scheme by which a period of service can be treated for any purpose as being longer or shorter than it actually is.

Article 121: supplementary

122.—(1) For the purposes of this Part, an occupational pension scheme is salary related if—

- (a) the scheme is not a money purchase scheme, and
- (b) the scheme does not fall within a prescribed class or description,

(81) 1988 c. 1.

and “salary related trust scheme” is to be read accordingly.

(2) Regulations may apply this Part with prescribed modifications to occupational pension schemes—

(a) which are not money purchase schemes, but

(b) where some of the benefits that may be provided are money purchase benefits.

(3) Regulations may, in relation to occupational pension schemes, extend for the purposes of this Part the meaning of “employer” to include persons who have been the employer in relation to the scheme.

(4) For any of the purposes of this Part, regulations may in relation to occupational pension schemes—

(a) extend or restrict the meaning of “member”,

(b) determine who is to be treated as a prospective member, and

(c) determine the times at which a person is to be treated as becoming, or as ceasing to be, a member or prospective member.