

Pension Schemes Act (Northern Ireland) 2016

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 2 – Collective Benefits

Section 8: Introduction and definition

Section 8 sets out the defining characteristics of a “collective” benefit.

Where, in all circumstances the rate or amount of the benefit payable to or in respect of a member depends entirely on (a) the amount available to pay that member’s and other members’ benefits and (b) factors used to determine what proportion of that amount is available for the provision of the particular benefit, these benefits are defined as ‘collective’ in the Act. The definition also provides that a benefit which is a money purchase benefit or a benefit of a prescribed description is not a collective benefit.

Section 9: Duty to set targets for collective benefits

Section 9 provides that regulations may require that trustees or managers of pension schemes offering collective benefits set targets in relation to the rate or amount of those benefits. In particular, regulations can be made about the way that targets are expressed, recorded and published. The intention is that members of a scheme with collective benefits should be provided with a reasonable estimate of the benefits that they can expect to receive from the scheme; in the absence of a well defined pot over which the individual has clear ownership, the target is a way of illustrating for the member what they might receive. Regulations may also require trustees or managers to set initial targets at such a level that the probability of meeting the target will fall within a range specified in regulations and for this to be certified by an actuary. The setting of targets is to ensure that schemes providing collective benefits operate in a transparent manner and provide some assurance to members in relation to those benefits.

Section 9(3) provides that regulations may, in particular, make provision for matters to which the actuary should have regard, and may require trustees or managers to provide the actuarial certificate to a specified person. Regulations may also make provision about the content of the actuarial certificate and require

the trustees or managers to obtain the certificate from an actuary who has certain qualifications or meets other specified requirements.

Section 10: Policy about factors used to determine each benefit

Section 11: Power to impose requirements about factors used to determine each benefit

Section 10 provides that regulations may require trustees or managers to have a policy on the factors used to calculate members' benefits and to implement that policy. Section 11 allows the Department to prescribe requirements about the factors to be used.

Section 12: Payment Schedule

Section 13: Overdue contributions and other payments

Section 12 provides for a power to make regulations which may require trustees or managers to prepare a payment schedule which shows the contributions due for payment to the scheme in respect of any collective benefits, and the dates on which these contributions are payable. Section 13 gives a regulation-making power to require a specified person to be notified in the event of any payment shown in a payment schedule becoming overdue. Regulations can also make provision for the recovery of overdue payments.

Sections 12(4) and 13(3) provide that regulations may make provisions corresponding, or similar, to those set out in Articles 85 and 86 respectively of the 1995 Order (which deal with schedules of payments for money purchase schemes).

Section 14: Statement of investment strategy

Section 15: Investment performance reports

Articles 35 and 36 of the 1995 Order (together with the Occupational Pension Schemes (Investment) Regulations (Northern Ireland) 2005) outline the requirements and principles governing investments for trust-based schemes, including a requirement for the trustees to draw up a statement of investment principles. Amongst other things, this statement must cover the trustees' policies in relation to the kinds of investment to be held, the balance between different kinds of investment, risks, and the expected return on investments.

Section 14 gives a regulation-making power to require trustees or managers of a scheme to produce a statement about the investment strategy to be followed in connection with the provision of "collective" benefits.

Section 14(3) gives a power for these regulations to make corresponding or similar provision to that which applies to trust-based schemes under the 1995 Order. Regulations may provide for specific requirements about what must be

included in the statement of investment strategy, and how frequently the strategy should be reviewed.

Under section 15 regulations may be made requiring the trustees or managers of schemes to obtain regular reports on the performance of investments held for the provision of collective benefits. Regulations may provide for how frequently the investment performance reports should be obtained, from whom they should be obtained and what the reports must include.

Section 16: Investment powers

Under this section regulations may make provision in relation to investment powers of trustees or managers of schemes containing collective benefits. The regulations may also make provision allowing trustees or managers to delegate decisions about investments to another person and provision about the investment powers of any person to whom such decisions have been delegated. In this way trustees or managers can delegate powers to those with investment knowledge to act in an appropriate way. These regulations may make similar provision to Article 34 or 36 of the 1995 Order, which contain provision relating to powers of investment, delegation and choice of investments for occupational trust based schemes.

Section 17: Restriction on borrowing by trustees or managers

This section provides for a power to make regulations to prohibit trustees or managers of schemes containing collective benefits from borrowing money or acting as a guarantor, except in specified cases. This also applies to anyone to whom the trustees or manager have delegated decisions about collective benefit investments.

Section 18: Investment powers: duty of care

This section provides a power to make regulations to ensure that trustees or managers of schemes which contain collective benefits, and those who have had investment functions delegated to them, cannot be excluded from liability when exercising their investment functions involving collective benefit investments. This requirement will help to ensure that those responsible for collective benefit investments cannot avoid their duty of care in respect of how they manage the funds, in turn helping to ensure the funds are properly managed and providing a safeguard for members. This section allows current restrictions that apply under Article 33 of the 1995 Order to trustees of trust based occupational schemes in relation to investment functions to similarly apply in relation to those running schemes which offer collective benefits.

Section 19: Valuation reports

Section 20: Valuation process

Section 19 gives a regulation-making power which may require those schemes offering collective benefits to obtain a document, prepared by an actuary, which

values the assets held by the scheme for the purposes of providing collective benefits and assesses the probability of the scheme being able to meet any targets in relation to those benefits. This document is defined in the Act as a “valuation report”. Among other matters, the regulations may make provision about the content and frequency of valuation reports, may require that the actuary preparing the report must have particular qualifications or meet other requirements and may require the actuary to certify whether the probability falls within the required probability range or not.

Section 20 provides for a power to make provision about the methods or assumptions to be used by an actuary when drawing up a valuation report. Regulations made under this section may require an actuary to have regard to guidance when preparing the valuation report and may impose other requirements on the actuary.

The section also contains a power to require the trustees or managers to decide the methods or assumptions to be used by the actuary and a power for regulations to set out matters that the trustees or managers must take into account, or principles they must follow, when making that decision. These principles might, for example, state the parameters of the economic and actuarial assumptions must be used.

Section 21: Policy for dealing with a deficit or surplus

Under this section, regulations may provide that trustees or managers of schemes offering collective benefits are required to have a policy for dealing with circumstances where the probability of a scheme meeting a target in relation to a collective benefit is outside of the required range of probability set out in regulations - termed in the Act as a “deficit” or “surplus”.

Trustees and managers will usually have some flexibility and discretion about how they react to a “deficit” or “surplus”, therefore the section sets out powers which may require the policy to contain provision for a “deficit” or “surplus” to be dealt with in one or more of a range of ways. Regulations may require the policy, to contain an explanation of the possible effect of the policy on members in different circumstances and to be drawn up with a view to achieving certain results within a specified period of time. Regulations may require consultation with members about the policy and any changes to it, and may make provision for the policy to be regularly reviewed or revised. Regulations may also make provision about the content of the policy and set out matters or principles that trustees must take into account or follow in setting the policy.

Section 22: Power to impose requirements about dealing with a deficit or surplus

This section provides for regulations to set out circumstances in which a deficit or surplus must be dealt with in a particular way. The regulations can set out specific things trustees or managers must do and the time within which they must do them.

Section 23: Deficits attributable to an offence or the imposition of a levy

This section sets out a regulation-making power to allow an amount to be treated as a debt due from an employer to a scheme offering collective benefits in situations where a deficit in relation to a target benefit has resulted from a specified offence or the imposition of a specified levy. In this context, section 23(2) provides that regulations may mirror, or be similar to, any provision made by Article 75 (amounts deemed to be debts due from an employer) of the 1995 Order.

Section 24: Payment of amounts out of collective benefit funds

Regulations under this section will ensure that assets held in relation to collective benefits are used to provide those benefits. However, there is a power to make exceptions to this general rule. It may be that there are some limited circumstances when it may be appropriate for an employer or some other party to be entitled to some share of any surplus from the scheme. For example, where an employer wishes to assist a collective benefit scheme that falls into difficulty by putting some extra funds in, then to encourage such an action there may be arrangements in place to allow the possibility of full or partial repayment to the employer if the scheme has a future surplus. Regulations under this section may be similar to existing provisions in Article 37 of the 1995 Order.

Section 25: Policy for calculating cash equivalent of benefits

This section contains a power to require trustees or managers of a scheme offering collective benefits to have and to follow a policy for the calculation and verification of cash equivalents of collective benefits. The cash equivalent is used for the purpose of calculating transfer values and for valuing rights for sharing pensions on divorce.

Regulations under this section may require trustees or managers to ensure that the policy is consistent with any requirements imposed by regulations under section 93 or 97I of the Pension Schemes Act or Article 27 of the Welfare Reform and Pensions (Northern Ireland) Order 1999 or any other specified requirements. Regulations may also make provision about the content of the policy, the review and revision of the policy, and may require trustees or managers to consult about the policy. The regulations can also set out the sort of things trustees or managers must take into account or principles they must follow in setting the policy.

Section 26: Winding up

This section provides for regulations about the winding up of schemes providing collective benefits. The regulations can also apply to part of a scheme providing collective benefits.

The regulations can make provision about the distribution of assets between members, the operation of the scheme during wind up, discharge of liabilities,

and excess assets on wind up. The 1995 Order already makes provision in relation to these areas for some occupational pension schemes.

The section therefore provides for regulations to disapply, amend or otherwise modify the application of Articles 38, 73, 73A, 73B, 74 and 76 of the 1995 Order, which concern the winding up of occupational pension schemes. It also provides for regulation-making powers to make provision corresponding or similar to any provision made by Articles 38, 73, 73A, 73B, 74 and 76 of the 1995 Order.

Section 27: Requirement to wind up scheme in specified circumstances

This section provides for regulations to set out circumstances in which the trustees or managers must wind up either the whole or part of a scheme providing collective benefits. The powers have been drafted to ensure that any wind up required under this provision will be as effective as if it had been made under powers conferred by the scheme. Regulations made under this section may also override any other legislation or scheme rules that would otherwise prevent wind up, and override any need for any consent or procedure that would otherwise be required.

Section 28: Policies about winding up

Under this section, regulations may provide that trustees or managers of schemes offering collective benefits are required to have a policy for dealing with the winding up of a scheme providing collective benefits and to follow the policy.

The regulations can require trustees or managers to consult about the policy and to make provision for reviewing and revising the policy.

The regulations can also make provision about the content of the policy and can set out the sort of things trustees or managers have to take account of or the principles they have to follow when putting the policy together.

The regulations can require the policy to include an explanation of the circumstances in which trustees or managers are required to wind up the scheme and the circumstances in which they have the power to decide when to wind up. If they have the power to decide when to wind up, regulations can require the policy to set out how they intend to use that power.

The regulations can also require the policy to include an explanation of how assets will be distributed, and if the trustees or managers have the power to decide how to distribute assets, how they intend to use that power.

Section 29: Working out which assets are available for the provision of which benefits

This section provides for regulations to set out how to work out which benefits are available for the provision of collective benefits, which assets are available for the provision of which collective benefits (for example if there is more than one section in a scheme providing collective benefits) and which assets are available for the provisions of benefits other than collective benefits.

Section 30: Requirement to obtain actuarial advice

Section 31: Sub-delegation

Section 32: Publication of documents etc

Section 33: Enforcement

Section 30 provides that regulations may require trustees or managers to consult an actuary who has specified qualifications or meets other specified requirements before making a specified decision or taking other specified steps.

Section 31 provides a power for regulations to confer discretion on a person in relation to the provisions in Part 2 of the Act, for example, regulations may make provision for the methods or assumptions to be used by an actuary but leave some discretion about these matters to the actuary.

Section 32 provides that where regulations made under Part 2 of the Act require the trustees or managers to prepare or obtain a document, regulations may also impose requirements about the publication of that document and require copies of that document to be sent to certain persons.

Section 33 provides a power for the regulations made under Part 2 of the Act to provide for civil penalties to apply where a person breaches requirements in those regulations.

Section 34: Overriding requirements

This section allows for regulations made under Part 2 of the Act to override any conflicting provisions in scheme rules.

Section 35: Interpretation of Part 2

This section defines a number of expressions used in Part 2 of the Act.

The section also provides that a power conferred by this Part of the Act to make provision corresponding or similar to any provision made by an Article of the 1995 Order includes a power to make provision corresponding or similar to any provision that may be made by regulations under that Article.