2016 CHAPTER 1

PROSPECTIVE

PART 2

COLLECTIVE BENEFITS

Introduction and nature of collective benefits

Introduction and definition

8.—(1) This Part is about pension schemes under which at least some of the benefits that may be provided are collective benefits.

(2) A benefit is a "collective benefit" if in all circumstances the rate or amount of the benefit depends entirely on—

(a) the amount available for the provision of benefits to or in respect of the member and one or more other members collectively, and

(b) factors used to determine what proportion of that amount is available for the provision of the particular benefit.

(3) But a benefit is not a collective benefit if—

(a) it is a money purchase benefit, or

(b) it is of a description specified in regulations.

Duty to set targets for collective benefits

9.—(1) Regulations may require the trustees or managers of a pension scheme to set targets in relation to any collective benefits that may be provided by the scheme.

(2) The regulations may, in particular—

(a) impose requirements about the way that targets are expressed;

(b) impose requirements about the recording or publication of targets;

(c) require the trustees or managers to set initial targets at a level which ensures that the probability of meeting the targets falls within a range specified in the regulations;

(d) require the trustees or managers to obtain a certificate from an actuary certifying that, in the opinion of the actuary, the initial targets have been set at a level that complies with regulations under paragraph (c).

(3) Regulations made in reliance on subsection (2)(d) may, in particular—

(a) require the trustees or managers to obtain the certificate from an actuary who has specified qualifications or meets other specified requirements;

(b) make provision about the content of the certificate;

(c) set out matters to which the actuary must have regard;

(d) require the trustees or managers to provide a copy of the actuary's certificate to a specified person.

(4) In this section "target" means a target, relating to the rate or amount of a benefit, that is unenforceable.

Policy about factors used to determine each benefit

10.—(1) Regulations may require the trustees or managers of a pension scheme—

(a) to have a policy as to the factors to be used to determine what proportion of the amount available for the provision of any collective benefits by the scheme is to be available for the provision of a particular collective benefit, and

(b) to follow that policy in calculating any collective benefit.

(2) The regulations may, in particular—

(a) require the trustees or managers to consult about the policy;

(b) make provision about the content of the policy;

(c) set out matters that the trustees or managers must take into account, or principles they must follow, in formulating the policy;

(d) make provision about reviewing and revising the policy.

Power to impose requirements about factors used to determine each benefit

11. Regulations may make provision as to the factors to be used to determine what proportion of the amount available for the provision of any collective benefits by a pension scheme is to be available for the provision of a particular collective benefit.

Contributions

Payment schedule

12.—(1) Regulations may require the trustees or managers of a pension scheme to prepare a payment schedule showing—

(a) the contributions payable to the scheme in respect of any collective benefits under the scheme, and

(b) the dates on which the contributions are due.

(2) The regulations may require the payment schedule to include other amounts payable to the scheme and the dates on which they are due.

(3) The regulations may, in particular—

(a) make further provision about the content of the payment schedule;

(b) make provision about revising the payment schedule.

(4) The regulations may, in particular, make provision corresponding or similar to any provision made by Article 85 of the 1995 Order (payment schedules for certain kinds of scheme).

Overdue contributions and other payments

13.—(1) Regulations—

(a) may require the trustees or managers of a pension scheme to notify a specified person of any relevant payments that are overdue;

(b) may make provision for the recovery of those payments.

(2) In subsection (1) "relevant payment" means a payment shown in a payment schedule required by regulations under section 12.

(3) Regulations under subsection (1) may, in particular, make provision corresponding or similar to any provision made by Article 86 of the 1995 Order (failure to comply with payment schedule for certain kinds of scheme).

Investment

Statement of investment strategy

14.—(1) Regulations may require the trustees or managers of a pension scheme to prepare a statement of their investment strategy in connection with any collective benefit investments.

(2) The regulations may, in particular, make provision about—

(a) the content of the statement;

(b) reviewing and revising the statement.

(3) The regulations may, in particular—

(a) make provision corresponding or similar to any provision made by Article 35 of the 1995 Order (investment principles for occupational trust-based schemes);

(b) disapply that Article in relation to any investments to which the regulations apply.

Investment performance reports

15.—(1) Regulations may require the trustees or managers of a pension scheme to obtain reports about the performance of any collective benefit investments.

(2) The regulations may, in particular, make provision about—

(a) the content of reports;

(b) how often reports must be obtained;

(c) the person from whom reports must be obtained.

Investment powers

16.—(1) Regulations may make provision about—

(a) the investment powers of the trustees or managers of a pension scheme in connection with collective benefit investments;

(b) their powers to delegate decisions in connection with collective benefit investments (including provision as to liability for delegated decisions);

(c) the investment powers of any person to whom they have delegated decisions in connection with collective benefit investments.

(2) The regulations may, in particular—

(a) make provision corresponding or similar to any provision made by Article 34 or 36 of the 1995 Order (powers of investment and delegation and choice of investments for occupational trust-based schemes);

(b) disapply those Articles in relation to collective benefit investments.

Restriction on borrowing by trustees or managers

17.—(1) Regulations may prohibit a person to whom this section applies from borrowing money or acting as a guarantor except in specified cases.

(2) This section applies to—

(a) the trustees or managers of a pension scheme under which any of the benefits that may be provided are collective benefits, and

(b) any person to whom they have delegated decisions in connection with collective benefit investments.

Investment powers: duty of care

18.—(1) Regulations may make provision to prevent any instrument or agreement from excluding or restricting any liability of the trustees or managers of a pension scheme, or any person to whom they have delegated decisions, in respect of the performance of investment functions involving collective benefit investments.

(2) The regulations may, in particular—

(a) make provision corresponding or similar to any provision made by Article 33 of the 1995 Order (duty of care in respect of investment powers for occupational trust-based schemes);

(b) disapply that Article in relation to collective benefit investments.

Valuation

Valuation reports

19.—(1) Regulations may require the trustees or managers of a pension scheme to obtain a report prepared by an actuary—

(a) valuing the assets held by the scheme for the purposes of providing collective benefits, and

(b) assessing the probability of the scheme meeting the targets in relation to those benefits.

(2) A report required by regulations under this section is referred to in this Part as a "valuation report".

(3) The regulations may, in particular—

(a) require the trustees or managers to obtain the report from an actuary who has specified qualifications or meets other specified requirements;

(b) require the actuary to certify whether, in the opinion of the actuary, the probability of the scheme meeting the targets falls within the required range or is above or below it;

(c) make further provision about the content of valuation reports;

(d) make provision about how often valuation reports must be obtained.

Valuation process

20.—(1) Regulations may make provision about the methods or assumptions to be used by an actuary valuing assets, or assessing the probability of a scheme meeting a target in relation to a collective benefit, for the purposes of a valuation report.

(2) Regulations under subsection (1) may, in particular—

(a) require the trustees or managers of the scheme to determine the methods or assumptions to be used by the actuary;

(b) set out matters that the trustees or managers must take into account, or principles they must follow, in determining methods or assumptions.

(3) Regulations may—

(a) make provision about the assets to be taken into account for the purposes of a valuation report;

(b) require the value attributed to the assets to be reduced by the amount of any liabilities in respect of administrative expenses or other specified matters.

(4) Regulations may require an actuary preparing a valuation report to certify that, in the opinion of the actuary, any specified requirements imposed by regulations under this section have been followed.

(5) Regulations—

(a) may require an actuary to have regard to guidance issued from time to time by a specified person when preparing a valuation report;

(b) may impose other requirements on an actuary when preparing a valuation report.

Dealing with deficits and surpluses

Policy for dealing with a deficit or surplus

21.—(1) Regulations may require the trustees or managers of a pension scheme—

(a) to have a policy for dealing with a deficit or surplus in respect of any collective benefits that may be provided by the scheme, and

(b) to follow that policy if a valuation report shows a deficit or surplus.

(2) For the purposes of this Part—

(a) there is a "deficit" in respect of a collective benefit if the probability of the scheme meeting a target in relation to the benefit is below the required range, and

(b) there is a "surplus" in respect of a collective benefit if the probability of the scheme meeting a target in relation to the benefit is above the required range.

(3) Regulations under subsection (1)(a) may, in particular—

(a) require the trustees or managers to consult about the policy;

(b) make provision about the content of the policy;

(c) set out matters that the trustees or managers must take into account, or principles they must follow, in formulating the policy;

(d) make provision about reviewing and revising the policy.

(4) The regulations may, in particular, require the policy—

(a) to be formulated with a view to achieving results described in the regulations within a period or periods described in the regulations;

(b) to contain provision for a deficit or surplus to be dealt with in one or more of a range of ways described in the regulations;

(c) to contain an explanation of the possible effect of the policy, or any requirements imposed by regulations under section 22, on members in different circumstances.

Power to impose requirements about dealing with a deficit or surplus

22.—(1) Regulations may specify circumstances in which a deficit or surplus in respect of any collective benefits that may be provided by a pension scheme must be dealt with in a particular way.

(2) The regulations may, in particular, specify steps that must be taken by the trustees or managers and the period or periods within which any steps must be taken.

Deficits attributable to an offence or the imposition of a levy

23.—(1) Regulations may provide for an amount to be treated as a debt due from an employer to the trustees or managers of a pension scheme that provides collective benefits in cases where there is a deficit that is attributable to a specified offence or the imposition of a specified levy.

(2) The regulations may, in particular, make provision corresponding or similar to any provision made by Article 75 of the 1995 Order (amounts deemed to be debts due from an employer).

(3) For the purposes of this section—

"employer" has the meaning given by Article 2 of the 2005 Order;

"deficit" has the meaning given by the regulations (and the meaning need not be the same as in section 21).

Payment of amounts out of collective benefit funds

24.—(1) Regulations must prohibit the making of payments out of funds held for the purposes of providing collective benefits except for—

(a) payments made for the purpose of providing those benefits, or

(b) other specified payments.

(2) The regulations may, in particular, make provision corresponding or similar to any provision made by Article 37 of the 1995 Order (payment of surplus to employer in the case of an occupational trust-based scheme).

Cash equivalents

Policy for calculating cash equivalent of benefits

25.—(1) Regulations may require the trustees or managers of a pension scheme—

(a) to have a policy about the calculation and verification of the cash equivalent of any collective benefit that may be provided by the scheme;

(b) to follow that policy in calculating or verifying any cash equivalent.

(2) In this section "cash equivalent" means the cash equivalent mentioned in the following—

(a) section 89A(3) of the Pension Schemes Act;

(b) section 97H(1) of that Act;

(c) Article 26(2) and (3) of the Welfare Reform and Pensions (Northern Ireland) Order 1999; and

(d) any other provision specified in regulations.

(3) Regulations under subsection (1) may, in particular—

(a) require the trustees or managers to consult about the policy;

(b) require the 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;

(c) make other provision about the content of the policy;

(d) set out matters that the trustees or managers must take into account, or principles they must follow, in formulating the policy;

(e) make provision about reviewing and revising the policy.

Winding up

Winding up

26.—(1) Regulations may make provision about the winding up of a pension scheme under which collective benefits may be provided or part of such a scheme.

(2) The regulations may, in particular, make provision about—

(a) the distribution of assets (including any order of priority);

(b) the operation of the scheme during winding up;

(c) the discharge of liabilities;

(d) excess assets on winding up.

(3) The regulations may, in particular—

(a) disapply or amend or otherwise modify the application of any of Articles 38, 73, 73A, 73B, 74 and 76 of the 1995 Order (winding up);

(b) make provision corresponding or similar to any provision made by those Articles.

Requirement to wind up scheme in specified circumstances

27.—(1) Regulations may require the trustees or managers of a pension scheme under which collective benefits may be provided to wind up the whole or part of the scheme in specified circumstances.

(2) The regulations may, in particular—

(a) provide for the winding up of the scheme or part to be as effective in law as if it had been made under powers conferred by or under the scheme;

(b) require the scheme or part to be wound up in spite of any legislative provision, rule of law or provision of a scheme, which would otherwise operate to prevent the winding up;

(c) require the scheme or part to be wound up without regard to any legislative provision, rule of law or provision of a scheme that 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.

Policies about winding up

28.—(1) Regulations may require the trustees or managers of a pension scheme under which collective benefits may be provided—

(a) to have a policy about the winding up of the scheme or part of it;

(b) to follow that policy.

(2) The regulations may, in particular—

(a) require the trustees or managers to consult about the policy;

(b) make provision about the content of the policy;

(c) set out matters that the trustees or managers must take into account, or principles they must follow, in formulating the policy;

(d) make provision about reviewing and revising the policy.

(3) The regulations may, in particular, require the policy—

(a) to contain an explanation of the circumstances in which the trustees or managers are permitted or required to wind up the scheme or part and any requirements about the distribution of assets (including any order of priority);

(b) to contain an explanation of how the trustees or managers intend to use any powers to wind up the scheme or part and how they intend to use any powers in relation to the distribution of assets (including any order of priority);

(c) to contain an explanation of how the costs of winding up are required to be met or how the trustees or managers will use any powers to decide how those costs are to be met.

Identifying assets

Working out which assets are available for the provision of which benefits

29. Regulations may make provision, in relation to a pension scheme under which any of the benefits that may be provided are collective benefits, about how to work out—

(a) which assets held by the scheme are held for the purposes of providing collective benefits;

(b) which assets held by the scheme are held for the purposes of providing which collective benefits;

(c) which assets held by the scheme are held for the purposes of providing any benefits other than collective benefits.

Regulations under Part 2: general

Requirement to obtain actuarial advice

30.—(1) Regulations may require the trustees or managers of a pension scheme to obtain advice from an actuary before making a specified decision or taking other specified steps.

(2) The regulations may, in particular, require the trustees or managers to obtain the advice from an actuary who has specified qualifications or meets other specified requirements.

(3) The regulations—

(a) may require an actuary to have regard to guidance issued from time to time by a specified person when advising on matters in accordance with the regulations;

(b) may impose other requirements on an actuary when advising on matters in accordance with the regulations.

Sub-delegation

31. Regulations under this Part may confer a discretion on a person.

Publication of documents etc

32. Regulations under this Part requiring the trustees or managers of a pension scheme to prepare or obtain any document or have a policy may impose requirements about—

(a) the publication of the document or policy;

(b) the sending of copies to persons specified in the regulations.

Enforcement

33. Regulations under this Part may provide for Article 10 of the 1995 Order (civil penalties) to apply to a person who fails to comply with the regulations.

Overriding requirements

34. Regulations under this Part may include provision for them to override the provisions of a pension scheme to the extent that there is a conflict.

Interpretation of Part 2

Interpretation of Part 2

35.—(1) In this Part—

"collective benefit" has the meaning given by section 8;

"collective benefit investments", in relation to a scheme, means investments held for the purposes of the provision of any collective benefits under the scheme;

"deficit", in respect of a collective benefit, has the meaning given by section 21 (but this definition does not apply in section 23, which contains its own definition);

"money purchase benefit" has the meaning given by section 176 of the Pension Schemes Act;

"pension scheme" has the meaning given by section 1(5) of the Pension Schemes Act;

"required range", in relation to a level of probability, means the range specified in regulations under section 9(2)(c);

"surplus", in respect of a collective benefit, has the meaning given by section 21;

"target" means a target required by regulations under section 9;

"trustees or managers" means—

(a) in relation to a scheme established under a trust, the trustees, and

(b) in relation to any other scheme, the managers;

"valuation report" has the meaning given by section 19.

(2) A power conferred by this Part 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.