



2000 CHAPTER 4

PART II

PENSIONS

CHAPTER II

OCCUPATIONAL AND PERSONAL PENSION SCHEMES

Other provisions

Restriction on index-linking where annuity tied to investments

47.—(1) In Article 51(2) of the Pensions Order (annual increase in rate of pension), for “Subject to Article 52” there shall be substituted “Subject to Articles 51A and 52”.

(2) After Article 51 of that Order there shall be inserted—

“Restriction on increase where annuity tied to investments

51A.—(1) No increase under Article 51 is required to be made, at any time on or after the relevant date, of so much of any pension under a money purchase scheme as—

- (a) is payable by way of an annuity the amount of which for any year after the first year of payment is determined (whether under the terms of the scheme or under the terms of the annuity contract in pursuance of which it is payable) by reference to fluctuations in the value of, or the return from, particular investments,
- (b) does not represent benefits payable in respect of the protected rights of any member of the scheme, and

(c) satisfies such other conditions (if any) as may be prescribed.

(2) For the purposes of this Article it shall be immaterial whether the annuity in question is payable out of the funds of the scheme in question or under an annuity contract entered into for the purposes of the scheme.

(3) In this Article “the relevant date” means the date appointed for the coming into operation of section 47 of the Child Support, Pensions and Social Security Act (Northern Ireland) 2000.”.

Information for members of schemes, etc

48.—(1) In section 109(1) of the Pension Schemes Act (disclosure of information about schemes to members, etc.), for “and” at the end of paragraph (c) there shall be substituted—

“(ca) of the pensions and other benefits an entitlement to which would be likely to accrue to the member, or be capable of being secured by him, in respect of the rights that may arise under it; and”.

(2) After subsection (3) of that section there shall be inserted—

“(3A) The regulations may provide for the information that must be given to be determined, in whole or part, by reference to guidance which—

- (a) is prepared and from time to time revised by a prescribed body; and
- (b) is for the time being approved by the Department.

(3B) The regulations may, in relation to cases where a scheme is being wound up, contain—

- (a) provision conferring power on the Regulatory Authority, at times before the period expires, to extend any period specified in the regulations as the period within which a requirement imposed by the regulations must be complied with; and
- (b) provision as to the contents of any application for the exercise of such a power and as to the form and manner in which, and the time within which, any such application must be made.”.

Jurisdiction of the Pensions Ombudsman

49.—(1) Section 142 of the Pension Schemes Act (functions of the Pensions Ombudsman) shall be amended as follows.

(2) In subsection (1), after paragraph (b) there shall be inserted—

“(ba) a complaint made to him by or on behalf of an independent trustee of a trust scheme who, in connection with any act or omission which is an act or omission either—

- (i) of trustees of the scheme who are not independent trustees, or
- (ii) of former trustees of the scheme who were not independent trustees,

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alleges maladministration of the scheme.”.

(3) In that subsection, for the words after sub-paragraph (ii) of paragraph (d) there shall be substituted—

“and in a case falling within sub-paragraph (ii) references in this Part to the scheme to which the reference relates are references to each of the schemes,

- (e) any dispute not falling within paragraph (f) between different trustees of the same occupational pension scheme,
- (f) any dispute, in relation to a time while Article 22 of the Pensions (Northern Ireland) Order 1995 (schemes subject to insolvency procedures) applies in relation to an occupational pension scheme, between an independent trustee of the scheme and either—
 - (i) trustees of the scheme who are not independent trustees, or
 - (ii) former trustees of the scheme who were not independent trustees,
 and
- (g) any question relating, in the case of an occupational pension scheme with a sole trustee, to the carrying out of the functions of that trustee.”.

(4) After that subsection there shall be inserted—

“(1A) The Pensions Ombudsman shall not investigate or determine any dispute or question falling within subsection (1)(c) to (g) unless it is referred to him—

- (a) in the case of a dispute falling within subsection (1)(c), by or on behalf of the actual or potential beneficiary who is a party to the dispute,
- (b) in the case of a dispute falling within subsection (1)(d), by or on behalf of any of the parties to the dispute,
- (c) in the case of a dispute falling within subsection (1)(e), by or on behalf of at least half the trustees of the scheme,
- (d) in the case of a dispute falling within subsection (1)(f), by or on behalf of the independent trustee who is a party to the dispute,
- (e) in the case of a question falling within subsection (1)(g), by or on behalf of the sole trustee.

(1B) For the purposes of this Part any reference to or determination by the Pensions Ombudsman of a question falling within subsection (1)(g) shall be taken to be the reference or determination of a dispute.”.

(5) In subsection (3), after “occupational pension scheme” there shall be inserted “or a personal pension scheme”.

(6) In subsection (6) for paragraph (a) there shall be substituted—

“(a) if, before the making of the complaint or the reference of the dispute—

- (i) proceedings in respect of the matters which would be the subject of the investigation have been begun in any court or industrial tribunal, and
 - (ii) those proceedings are proceedings which have not been discontinued or which have been discontinued on the basis of a settlement or compromise binding all the persons by or on whose behalf the complaint or reference is made;”.
- (7) In subsection (7)—
 - (a) after paragraph (b) there shall be inserted—
 - “(ba) a person who is entitled to a pension credit as against the trustees or managers of the scheme;”;
 - (b) in paragraph (c)(i), for “paragraph (a) or (b)” there shall be substituted “paragraph (a), (b) or (ba)”.
- (8) In subsection (8) after the definition of “employer” there shall be inserted—
 - ““independent trustee”, in relation to a scheme, means—
 - (a) a trustee of the scheme appointed under Article 23(1)(b) of the Pensions (Northern Ireland) Order 1995 (appointment of independent trustee by insolvency practitioner or official receiver),
 - (b) a person appointed under Article 7(1) of that Order to replace a trustee falling within paragraph (a) or this paragraph;”.
- (9) In subsection (1)—
 - (a) for “complaints and disputes” there shall be substituted “matters”;
 - (b) in paragraph (b), for the words from “is to” to the end of the paragraph there shall be substituted “are references to the other scheme referred to in that sub-paragraph”; and
 - (c) in paragraphs (c) and (d), the words “which arises” shall cease to have effect.
- (10) Subsection (6) shall not have effect in relation to proceedings begun before the day appointed under section 68 for the coming into operation of this section.

Investigations by the Pensions Ombudsman

50.—(1) The Pension Schemes Act shall be amended as follows.

- (2) In section 144 (staying court proceedings where a complaint is made or a dispute is referred), in subsection (4), after paragraph (b) there shall be inserted—

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- “(ba) any actual or potential beneficiary of the scheme whose interests are or may be affected by the matters to which the complaint or dispute relates;
- (bb) any actual or potential beneficiary of the scheme whose interests it is reasonable to suppose might be affected by—
- (i) the Pensions Ombudsman’s determination of the complaint or dispute; or
 - (ii) directions that may be given by the Ombudsman in consequence of that determination;”.

(3) For subsection (1) of section 145 (procedure on an investigation) there shall be substituted—

“(1) Where the Pensions Ombudsman proposes to conduct an investigation into a complaint made or dispute referred under this Part, he shall—

 - (a) give every person against whom allegations are made in the complaint or reference an opportunity to comment on those allegations,
 - (b) give every person responsible for the management of the scheme to which the complaint or reference relates an opportunity to make representations to him about the matters to which the complaint or dispute relates, and
 - (c) give every actual or potential beneficiary of that scheme whose interests are or may be affected by the matters to which the complaint or dispute relates, an opportunity to make representations about those matters.

(1A) Subject to subsection (1B), subsection (1) shall not require an opportunity to make comments or representations to be given to any person if the Pensions Ombudsman is satisfied that that person is—

 - (a) a person who, as the person or one of the persons making the complaint or reference, has had his opportunity to make comments or representations about the matters in question; or
 - (b) a person whose interests in relation to the matters to which the complaint or dispute relates are being represented, in accordance with rules under this section, by a person who has been given an appropriate opportunity to make comments or representations.

(1B) The Pensions Ombudsman shall, under subsection (1), give an opportunity to make comments and representations to a person falling within subsection (1A)(a) in any case in which that person is a person who, in accordance with rules, is appointed or otherwise determined, after the

making of the complaint or reference, to represent the interests of other persons in relation to the matters to which the complaint or dispute relates.”.

(4) In subsection (3) of section 145, for “and” at the end of paragraph (b) there shall be substituted—

- “(ba) for the interests of all of a number of persons who—
- (i) are actual or potential beneficiaries of the scheme to which the complaint or reference relates; and
 - (ii) appear to have the same interest in relation to any of the matters to which the complaint or dispute relates,
- to be represented for the purposes of the investigation by such one or more of them, or such other person, as may be appointed by the Ombudsman or otherwise determined in accordance with the rules.”.

(5) In that subsection, after paragraph (c), there shall be added “and

- (d) for the payment of legal expenses incurred by a party to an investigation (as defined in section 144(4)) out of funds held for the purposes of the scheme to which the complaint or reference relates.”.

(6) After subsection (7) of section 145 there shall be added—

“(8) References in this section to the matters to which a complaint or dispute relates include references to any matter which it is reasonable to suppose might form the subject of—

- (a) the Pensions Ombudsman’s determination of the complaint or dispute, or
- (b) any directions that may be given by the Ombudsman in consequence of that determination.”.

(7) In subsection (1) of section 147 (determinations of the Pensions Ombudsman), after paragraph (b) there shall be added “and

- (c) to every other person who was required under section 145 to be given an opportunity—
- (i) to comment on an allegation in the complaint or reference; or
 - (ii) to make representations about matters to which the complaint or reference relates.”.

(8) In subsection (3) of section 147, for “and” at the end of paragraph (b) there shall be substituted—

- “(ba) any person who under section 145 was given such an opportunity to make any such comment or representation as is mentioned in subsection (1)(c) of this section;
- (bb) any person whose interests were represented by a person falling within any of the preceding paragraphs; and”;

and, in paragraph (c) of that subsection for “paragraph (a) or (b)” there shall be substituted “any of paragraphs (a) to (bb)”.

- (9) Nothing in any provision made by this section shall—
- (a) apply in relation to any complaint or reference made to the Pensions Ombudsman before the day on which this section comes into operation; or
 - (b) authorise the making of any provision applying in relation to any such complaint or reference.

Prohibition on different rules for overseas residents, etc

51. After Article 66 of the Pensions Order there shall be inserted—

“Treatment of overseas residents, etc.

Prohibition on different rules for overseas residents, etc

66A.—(1) This Article applies where an occupational pension scheme contains provisions contravening paragraph (2) or (3).

(2) Except so far as regulations otherwise provide, provisions of an occupational pension scheme contravene this paragraph to the extent that they would (apart from this Article) have an effect with respect to—

- (a) the entitlement of any person to benefits under the scheme, or
- (b) the payment to any person of benefits under the scheme,

which would be different according to whether or not a place outside the United Kingdom is specified by that person as the place to which he requires payments of benefits under the scheme to be made to him.

(3) Except so far as regulations otherwise provide, provisions of an occupational pension scheme contravene this paragraph to the extent that they would (apart from this Article) have an effect with respect to—

- (a) the entitlement of any person to remain a member of the scheme,
- (b) the eligibility of any person to remain a person by or in respect of whom contributions are made towards or under the scheme, or
- (c) the making by or in respect of any person who is a member of the scheme of any contributions towards or under the scheme,

which would be different according to whether that person works wholly in the United Kingdom or wholly or partly outside the United Kingdom.

(4) Provisions contravening paragraph (2) shall have effect, in relation to all times after the coming into operation of section 51 of the Child Support, Pensions and Social Security Act (Northern Ireland) 2000, as if they made the same provision in relation to a person who requires payments of benefits to be made to a place outside the United Kingdom as they make in relation

to a person in whose case all payments of benefits fall to be made to a place in the United Kingdom.

(5) Provisions contravening paragraph (3) shall have effect, in relation to all times after the coming into operation of section 51 of the Child Support, Pensions and Social Security Act (Northern Ireland) 2000, as if they made the same provision in relation to persons working wholly or partly outside the United Kingdom as they make in relation to persons working wholly in the United Kingdom.

(6) This Article—

- (a) shall be without prejudice to any statutory provision under which any amount is to be or may be deducted, or treated as deducted, from amounts payable by way of benefits under the scheme or treated as so payable; and
- (b) shall not apply in relation to so much of any provision of a scheme as is required for securing compliance with the conditions of any approval, exemption or relief given or available under the Tax Acts.”.

Miscellaneous amendments and alternative to anti-franking rules

52. Schedule 5 (which contains miscellaneous amendments of the Pension Schemes Act and the Pensions Order and makes provision for an alternative to the anti-franking rules in Part III of that Act) shall have effect.