



2000 CHAPTER 4

PART II

PENSIONS

CHAPTER II

OCCUPATIONAL AND PERSONAL PENSION SCHEMES

*Winding-up of schemes*

**Information to be given to the Authority**

**43.**—(1) In Article 22(1)(a) and (3) of the Pensions Order (circumstances in which following provisions apply), for “26” there shall be substituted “26A”.

(2) After Article 26 of that Order there shall be inserted—

**“Information to be given to the Authority in relation to a scheme to which Article 22 applies**

**26A.**—(1) If at any time while Article 22 applies in relation to a scheme—

- (a) the trustees of the scheme do not include at least one person who the practitioner or official receiver has informed them is a person about whose independent status he is satisfied, and
- (b) the trustees have no other reasonable grounds for believing that their number includes at least one person about whose independent status the practitioner or official receiver is satisfied,

it shall be the duty of the trustees, as soon as reasonably practicable after it first appears to any one or more of them as mentioned in sub-paragraphs (a)

and (b), to give notice to the Authority that the scheme appears not to have an independent trustee.

(2) If a trust scheme is without trustees at any time while Article 22 applies to it, it shall be the duty of every person involved in the administration of the scheme, as soon as reasonably practicable after it first appears to him that the scheme is without trustees, to give notice to the Authority that the scheme has no trustees.

(3) No person shall be required to give a notice under paragraph (1) or (2) at any time when it appears to him, on reasonable grounds—

(a) that it is the intention of the practitioner or official receiver, for the purpose of complying with his duty under Article 23(1)(b), to make or secure the appointment of any person as a trustee of the scheme, and

(b) that the appointment will be made within the period specified by or under Article 23(2) for the performance of that duty.

(4) No person shall be required to give a notice under paragraph (2) at any time when it appears to him, on reasonable grounds, that the Authority are already aware that the scheme has no trustees.

(5) Where the practitioner or official receiver at any time informs the trustees of a trust scheme that he is not, or is no longer, satisfied about a person's independent status, no account shall be taken for the purposes of paragraph (1)(a) of any information that he was so satisfied which was given by the practitioner or official receiver to the trustees before that time.

(6) References in this Article to the practitioner or official receiver being satisfied about a person's independent status are references to his being satisfied for the purposes of Article 23 that that person is an independent person.

(7) If paragraph (1) is not complied with, Article 10 applies to any trustee who has failed to take all such steps as are reasonable to secure compliance.

(8) Article 10 applies to any person who fails to comply with a duty imposed on him by paragraph (2).

### **Information to be given in cases where Article 22 disapplied**

**26B.**—(1) Where, at any time—

(a) Article 22 would apply in relation to a trust scheme but for regulations under Article 115,

(b) the employer in relation to the scheme is the sole trustee of the scheme,

(c) there are persons involved in the administration of the scheme, and

---

*Status: This is the original version (as it was originally enacted).*

---

- (d) none of those persons has received an employer's assurance relating to the scheme,

it shall be the duty of every person who is involved in the administration of the scheme, as soon as reasonably practicable after it first appears to him as mentioned in sub-paragraphs (a) and (b), to give notice to the Authority that the case is one falling within sub-paragraphs (a) to (d).

(2) For the purposes of this Article a person has received an employer's assurance relating to a scheme if during the period while Article 22 would have applied in relation to the scheme but for regulations under Article 115—

- (a) he has been informed by the person who is the employer in relation to the scheme that there is no reason why the employer should not continue to act as a trustee of the scheme,
- (b) he has not subsequently been informed by the person who is the employer in relation to the scheme that that has ceased to be the case, and
- (c) the trustees of the scheme have not changed since he was informed as mentioned in sub-paragraph (a).

(3) No person shall be required to give a notice under paragraph (1)—

- (a) at any time when it appears to him, on reasonable grounds, that the Authority are already aware that the case is one falling within sub-paragraphs (a) to (d) of that paragraph,
- (b) if a period is prescribed for the purposes of this sub-paragraph, at any time in the prescribed period after the event by virtue of which the scheme became a scheme in relation to which Article 22 would apply but for regulations under Article 115, or
- (c) at any other time that is prescribed for the purposes of this paragraph.

(4) Article 10 applies to any person who fails to comply with any duty imposed on him by paragraph (1).

### **Construction of Articles 26A and 26B**

**26C.—**(1) In Articles 26A and 26B, references in relation to a scheme, to a person involved in the administration of the scheme are (subject to paragraph (2)) references to any person who is so involved otherwise than as—

- (a) the employer in relation to that scheme,
- (b) a trustee of the scheme,
- (c) the auditor of the scheme or its actuary,
- (d) a legal adviser of the trustees of the scheme,
- (e) a fund manager for the scheme,

- (f) a person acting on behalf of a person who is involved in the administration of the scheme,
- (g) a person providing services to a person so involved,
- (h) a person acting in his capacity as an employee of a person so involved,
- (i) a person who would fall within any of sub-paragraphs (f) to (h) if persons acting in relation to the scheme in any capacity mentioned in the preceding sub-paragraphs were treated as involved in the administration of a scheme.

(2) In this Article references, in relation to a scheme, to a person involved in the administration of the scheme do not include references to persons of a particular description if regulations provide for persons of that description to be excluded from those references.

(3) If regulations so provide in relation to any provision of Article 26A or 26B, so much of that provision as requires any notice to be given as soon as reasonably practicable after a particular time shall have effect as a requirement to give that notice within such period after that time as may be prescribed.”.

(3) In paragraph (2) of Article 115 of that Order (powers to provide for Articles 22 to 26 not to apply in the case of certain schemes), for “Articles 22 to 26” there shall be substituted “some or all of the provisions of Articles 22 to 26C”.

(4) After that paragraph there shall be added—

“(3) Regulations may modify Articles 26A and 26B for the purpose of requiring prescribed persons, in addition to or instead of the persons who (apart from the regulations) would be required to provide information to the Authority under those Articles, to be subject to the duties imposed by those Articles.”.

(5) In section 173(b) of the Pension Schemes Act (managers of schemes), at the end there shall be added “or Articles 22 to 26C of the Pensions (Northern Ireland) Order 1995”.

#### **Modification of scheme to secure winding-up**

**44.** After Article 71 of the Pensions Order there shall be inserted—

##### **“Modification by Authority to secure winding-up**

**71A.**—(1) The Authority may at any time while—

- (a) an occupational pension scheme is being wound up, and
- (b) the employer in relation to the scheme is subject to an insolvency procedure,

make an order modifying that scheme with a view to ensuring that it is properly wound up.

(2) The Authority shall not make such an order except on an application made to them, at a time such as is mentioned in paragraph (1), by the trustees or managers of the scheme.

(3) Except in so far as regulations otherwise provide, an application for the purposes of this Article must be made in writing.

(4) Regulations may make provision—

- (a) for the form and manner in which an application for the purposes of this Article is to be made to the Authority,
- (b) for the matters which are to be contained in such an application,
- (c) for the documents which must be attached to an application for the purposes of this Article or which must otherwise be delivered to the Authority with or in connection with any such application,
- (d) for persons to be required, before such time as may be prescribed, to give such notifications of the making of an application for the purposes of this Article as may be prescribed,
- (e) for the matters which are to be contained in a notification of such an application,
- (f) for persons to have the opportunity, for a prescribed period, to make representations to the Authority about the matters to which such an application relates,
- (g) for the manner in which the Authority are to deal with any such application.

(5) The power of the Authority to make an order under this Article—

- (a) shall be limited to what they consider to be the minimum modification necessary to enable the scheme to be properly wound up, and
- (b) shall not include power to make any modification that would have a significant adverse effect on—
  - (i) the accrued rights of any member of the scheme, or
  - (ii) any person's entitlement under the scheme to receive any benefit.

(6) A modification of an occupational pension scheme by an order of the Authority under this Article shall be as effective in law as if—

- (a) it had been made under powers conferred by or under the scheme,
- (b) the modification made by the order were capable of being made in exercise of such powers notwithstanding any enactment, rule of

law or rule of the scheme that would have prevented their exercise for the making of that modification, and

- (c) the exercise of such powers for the making of that modification would not have been subject to any enactment, rule of law or rule of the scheme requiring the implementation of any procedure or the obtaining of any consent in connection with the making of a modification.

(7) Regulations may provide that, in prescribed circumstances, this Article—

- (a) does not apply in the case of occupational pension schemes of a prescribed class or description, or
- (b) in the case of occupational pension schemes of a prescribed class or description applies with prescribed modifications.

(8) The times when an employer in relation to an occupational pension scheme shall be taken for the purposes of this Article to be subject to an insolvency procedure are—

- (a) in the case of a trust scheme, while Article 22 applies in relation to the scheme, and
- (b) in the case of a scheme that is not a trust scheme, while Article 22 would apply in relation to the scheme if it were a trust scheme,

and for the purposes of this paragraph no account shall be taken of modifications or exclusions contained in any regulations under Article 115.

(9) The Authority shall not be entitled to make an order under this Article in relation to a public service pension scheme.”.

### **Reports about winding-up**

**45.—**(1) After Article 72 of the Pensions Order there shall be inserted—

*“Supervision of winding-up*

#### **Reports to Authority about winding-up**

**72A.—**(1) Where—

- (a) an occupational pension scheme is being wound up, and
- (b) the winding-up is one beginning at a time (whether before or after the making of this Order) by reference to which regulations provide that it is to be a winding-up to which this Article applies,

it shall be the duty of the trustees or managers, in accordance with this Article, to make periodic reports in writing to the Authority about the progress of the winding-up.

(2) In the case of each winding-up, the first report to be made under this Article shall be made—

- (a) except in a case to which sub-paragraph (b) applies—
  - (i) after the end of the prescribed period beginning with the day on which the winding-up began, and
  - (ii) before the end of the prescribed period that begins with the end of the period that applies for the purposes of head (i), and
- (b) in a case where the winding-up began before the coming into operation of the regulations which (for the purposes of paragraph (1)(b)) prescribe the time by reference to which the winding-up is one to which this Article applies, before such date as may be prescribed by those regulations.

(3) Subject to paragraph (4), each subsequent report made under this Article in the case of a winding-up shall be made no more than twelve months after the date which (apart from any postponement under paragraph (4)) was the latest date for the making of the previous report required to be made in the case of that winding-up.

(4) If, in the case of any report required to be made under paragraph (3), the Authority consider (whether on an application made for the purpose or otherwise) that it would be appropriate to do so, they may, at any time before the latest time for the making of that report, postpone that latest time by such period as they think fit.

(5) The latest time for making a report shall not be postponed under paragraph (4) by more than twelve months.

(6) Subject to the application of the limit specified in paragraph (5) to the cumulative period of the postponements, more than one postponement may be made under paragraph (4) in the case of the same report.

(7) A report under this Article—

- (a) shall contain such information and statements as may be prescribed, and
- (b) shall be made in accordance with the prescribed requirements.

(8) Regulations may—

- (a) provide that, in prescribed circumstances, there shall be no obligation to make a report that would otherwise fall to be made under this Article,
- (b) make provision for the period within which, and the manner in which, applications may be made for a postponement under paragraph (4), and

(c) modify paragraphs (3) and (5) by substituting periods of different lengths for the periods for the time being specified in those paragraphs.

(9) If there is any failure by the trustees or managers of any scheme to comply with their duty to make a report in accordance with the requirements imposed by or under this Article—

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

(b) Article 10 applies (irrespective of the description of scheme involved) to any trustee or manager who has failed to take all such steps.”.

(2) In Article 121 of that Order (interpretation of Part II), after paragraph (3) there shall be added—

“(4) In a case of the winding-up of an occupational pension scheme in pursuance of an order of the Authority under Article 11 or of an order of a court, the winding-up shall (subject to paragraph (8)) be taken for the purposes of this Part to begin—

(a) if the order provides for a time to be the time when the winding-up begins, at that time, and

(b) in any other case, at the time when the order comes into force.

(5) In a case of the winding-up of an occupational pension scheme in accordance with a requirement or power contained in the rules of the scheme, the winding-up shall (subject to paragraphs (6) to (8)) be taken for the purposes of this Part to begin—

(a) at the time (if any) which under those rules is the time when the winding-up begins, and

(b) if sub-paragraph (a) does not apply, at the earliest time which is a time fixed by the trustees or managers as the time from which steps for the purposes of the winding-up are to be taken.

(6) Paragraph (5) shall not require a winding-up of a scheme to be treated as having begun at any time before the end of any period during which effect is being given—

(a) to a determination under Article 38 that the scheme is not for the time being to be wound up, or

(b) to a determination in accordance with the rules of the scheme to postpone the commencement of a winding-up.

(7) In paragraph (5)(b) the reference to the trustees or managers of the scheme shall have effect in relation to any scheme the rules of which provide for a determination that the scheme is to be wound up to be made by persons



---

*Status: This is the original version (as it was originally enacted).*

---

other than the trustees or managers as including a reference to those other persons.

(8) Paragraphs (4) to (7) do not apply for such purposes as may be prescribed.”.

(3) After Article 49 of that Order there shall be inserted—

**“Record of winding-up decisions**

**49A.**—(1) Except in so far as regulations otherwise provide, the trustees or managers of an occupational pension scheme shall keep written records of—

- (a) any determination for the winding-up of the scheme in accordance with its rules,
- (b) decisions as to the time from which steps for the purposes of the winding-up of the scheme are to be taken,
- (c) determinations under Article 38,
- (d) determinations in accordance with the rules of the scheme to postpone the commencement of a winding-up of the scheme.

(2) For the purpose of this Article—

- (a) the determinations and decisions of which written records must be kept under this Article include determinations and decisions by persons who—
  - (i) are not trustees or managers of a scheme, but
    - (ii) are entitled, in accordance with the rules of a scheme, to make a determination for its winding-up, and
  - (b) regulations may, in relation to such determinations or decisions as are mentioned in sub-paragraph (a), impose obligations to keep written records on the persons making the determinations or decisions (as well as, or instead of, on the trustees or managers).

(3) Regulations may provide for the form and content of any records that are required to be kept under this Article.

(4) Article 3 applies to any trustee of a scheme who fails to take all such steps as are reasonable to secure compliance by the trustees of that scheme with the obligations imposed on them by this Article.

(5) Article 10 applies to any trustee or manager of a scheme who fails to take all such steps as are reasonable to secure compliance by the trustees or managers of that scheme with those obligations.”.

**Directions for facilitating winding-up**

**46.** After the Article 72A inserted in the Pensions Order by section 45(1) there shall be inserted—

**“Directions by Authority for facilitating winding-up**

**72B.—**(1) Subject to the following provisions of this Article, the Authority shall have power, at any time after the winding-up of an occupational pension scheme has begun, to give directions under this Article if they consider that the giving of the direction is appropriate on any of the grounds set out in paragraph (2).

(2) Those grounds are—

- (a) that the trustees or managers of the scheme are not taking all the steps in connection with the winding-up that the Authority consider would be being taken if the trustees or managers were acting reasonably,
- (b) that steps being taken by the trustees or managers for the purposes of the winding-up involve things being done with what the Authority consider to be unreasonable delay,
- (c) that the winding-up is being obstructed or unreasonably delayed by the failure of any person—
  - (i) to provide information to the trustees or managers,
  - (ii) to provide information to a person involved in the administration of the scheme,
  - (iii) to provide information to a person of a prescribed description, or
  - (iv) to take any step (other than the provision of information) that he has been asked to take by the trustees or managers,
- (d) that the winding-up would be likely to be facilitated or accelerated by the taking by any person other than the trustees or managers of any other steps,
- (e) that in any prescribed circumstances not falling within subparagraphs (a) to (d)—
  - (i) the provision by any person of any information to the trustees or managers or to any other person, or
  - (ii) the taking of any other step by any person,would be likely to facilitate or accelerate the progress of the winding-up.

(3) Except in prescribed circumstances, the power of the Authority to give a direction under this Article in the case of a winding-up shall be exercisable only where—

- (a) periodic reports about the progress of the winding-up are required to be made under Article 72A, and

---

*Status: This is the original version (as it was originally enacted).*

---

(b) the first report that has to be made for the purposes of that Article in the case of that winding-up either has been made or should have been made.

(4) Regulations may provide that, in prescribed circumstances, the Authority shall not give a direction on the ground set out in paragraph (2) (e) except in response to an application made by the trustees or managers of the scheme for the giving of a direction on that ground.

(5) A direction under this Article is a direction in writing given to and imposing requirements on—

- (a) any or all of the trustees or managers of the scheme,
- (b) a person who is involved in its administration, or
- (c) a person of a prescribed description.

(6) The requirements that may be imposed by a direction under this Article are any requirement for the person to whom it is given, within such period specified in the direction as the Authority may consider reasonable—

- (a) to provide the trustees or managers with all such information as may be specified or described in the direction,
- (b) to provide a person involved in the administration of the scheme with all such information as may be so specified or described,
- (c) to provide a person who is of a prescribed description with all such information as may be so specified or described,
- (d) to take such steps (other than the provision of information) as may be so specified or described.

(7) If, at any time before the end of a period within which any step is required by a direction under this Article to be taken by any person, the Authority consider (whether on an application made for the purpose or otherwise) that it would be appropriate to do so, they may extend (or further extend) that period until such time as they think fit.

(8) Regulations may—

- (a) impose limitations on the steps that a person may be required to take by a direction under this Article,
- (b) make provision for the period within which, and the manner in which, applications may be made for a period to be extended (or further extended) under paragraph (7).

(9) In this Article references, in relation to a scheme, to a person involved in the administration of the scheme are (subject to paragraph (10)) references to any person who is so involved otherwise than as—

- (a) the employer in relation to that scheme,
- (b) a trustee or manager of the scheme,

- (c) the auditor of the scheme or its actuary,
- (d) a legal adviser of the trustees or managers of the scheme,
- (e) a fund manager for the scheme,
- (f) a person acting on behalf of a person who is involved in the administration of the scheme,
- (g) a person providing services to a person so involved,
- (h) a person acting in his capacity as an employee of a person so involved,
- (i) a person who would fall within any of sub-paragraphs (f) to (h) if persons acting in relation to the scheme in any capacity mentioned in the preceding sub-paragraphs were treated as involved in the administration of a scheme.

(10) In this Article references, in relation to a scheme, to a person involved in the administration of the scheme do not include references to persons of a particular description if regulations provide for persons of that description to be excluded from those references.

#### **Duty to comply with directions under Article 72B**

**72C.**—(1) It shall be the duty of any person to whom a direction is given under Article 72B to comply with it.

(2) Where a direction is given under Article 72B to the trustees of a trust scheme, Article 3 applies to any trustee who fails, without reasonable excuse, to take all such steps as are reasonable to secure compliance with it.

(3) Article 10 applies to any trustee or manager of a scheme who fails, without reasonable excuse, to take all such steps as are reasonable to secure compliance by the trustees or managers of that scheme with any direction given to them under Article 72B.

(4) Article 10 applies to any person who—

- (a) is a person to whom a direction under Article 72B is given otherwise than in the capacity of a trustee or manager, and
- (b) without reasonable excuse, fails to comply with that direction.

(5) For the purposes of this Article it shall not be a reasonable excuse in relation to any failure to provide information in pursuance of a direction under Article 72B that the provision of that information would (but for the duty imposed by paragraph (1) of this Article) involve a breach by any person of a duty owed to another not to disclose that information.”