2000 CHAPTER 4

PART II

PENSIONS

CHAPTER II

OCCUPATIONAL AND PERSONAL PENSION SCHEMES

Winding-up of schemes

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 sub-paragraphs (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

(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.”.