

*These notes refer to the Pensions Act (Northern Ireland)  
2008 (c.1) which received Royal Assent on 11 February 2008*

# Pensions Act (Northern Ireland) 2008

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## EXPLANATORY NOTES

### COMMENTARY ON SECTIONS

#### **Part 2: Occupational and personal pension schemes**

##### **Contracting-out**

##### *Section 12: Conversion of guaranteed minimum pensions*

Section 9(1) of the Pension Schemes Act requires a contracted-out scheme to make provision to pay a pension to a member from pensionable age of an amount no less than his guaranteed minimum, as specified under sections 10 to 12 of that Act. Section 13(1) of that Act contains a requirement for the payment of a guaranteed minimum pension to a widow, widower or surviving civil partner.

*Section 12(1)* allows a scheme to omit provision for a guaranteed minimum pension, as required under section 9(1) of that Act, where certain conditions are satisfied.

*Subsection (2)* similarly allows a scheme to omit provision for a survivor's guaranteed minimum pension under section 13(1) of that Act, where the specified conditions are met.

*Subsection (3)* inserts new sections 20A to 20H into the Pension Schemes Act which set out the conditions which a scheme must meet in order to be relieved of the liability to pay guaranteed minimum pensions (as well as the rules applying to transfers, scheme amendments and enforcement).

Section 20A sets out definitions of terms used in sections 20A to 20H.

Section 20B specifies the conditions which a converting scheme must satisfy: actuarial equivalence of the value of members' conversion benefits with those they possessed pre-conversion; no reduction of pensions in payment; conversion benefits not to include money purchase benefits; survivors' benefits to be provided (see section 20D), and specified procedural requirements to be met (see section 20E).

Section 20C provides a power for regulations to be made concerning how actuarial equivalence is to be determined.

Section 20D sets out the detailed requirement for the scheme to provide conversion benefits which include provision for pension to be paid to a widow, widower or surviving civil partner following the death of the member.

Section 20E sets out requirements in relation to obtaining the agreement of the scheme's sponsoring employer, and providing information to members and survivors and to the Commissioners for Her Majesty's Revenue and Customs about the guaranteed minimum pension conversion.

Section 20F provides a power for regulations to be made concerning conditions for transfers of pension rights out of a guaranteed minimum pension-converted scheme and provides that the trustees of a scheme which is not guaranteed minimum pension-converted are allowed, for the purpose of transferring a member's rights out of the scheme, to adjust the member's guaranteed cash equivalent to reflect rights that would have accrued on guaranteed minimum pension conversion, providing the member consents.

Section 20G provides powers for trustees to amend schemes to facilitate guaranteed minimum pension conversion and makes it clear that trustees may adjust rights under a scheme which is being wound up in order to reflect what would have happened on guaranteed minimum pension conversion.

Section 20H provides powers for the Pensions Regulator in respect of enforcing the conditions for guaranteed minimum pension conversion, and provides for the power under Article 10 of the 1995 Order (civil penalties) to apply to trustees undertaking a guaranteed minimum pension conversion.

*Subsection (5)* amends section 43 of the Pension Schemes Act in order to make clear that a person who has had his guaranteed minimum pension converted shall continue to be treated as entitled to that guaranteed minimum pension for the purpose of calculating entitlement to additional state pension (the "contracted-out deduction").

*Subsections (8) and (9)* ensure the continuation of the partial protection against inflation of guaranteed minimum pension increases included in the payments of state retirement pension where a person has their guaranteed minimum pension converted.

*Subsection (10)* concerns the situation where a person with an increase to his guaranteed minimum pension such as is mentioned in *subsection (8)* has his guaranteed minimum pension converted prior to his death. This subsection ensures that his widow, widower or surviving civil partner will continue to have entitlement to certain guaranteed minimum pension additions awarded with the survivor's state retirement pension, and that these additions will be protected against inflation.

*Subsection (12)* provides that regulations made under the new section 20B(5) are subject to the confirmatory resolution procedure in the Assembly.

***Section 13: Abolition of contracting-out for defined contribution pension schemes***

*Section 13(1)* provides that contracting-out certificates for money purchase occupational pension schemes and appropriate scheme certificates (i.e. contracting-out certificates for personal pension schemes) will be cancelled from the date that this subsection is brought into operation (“the abolition date”).

*Subsections (4) to (9)* contain provision regarding regulations which may be made under *this section*. Regulations which amend or repeal any relevant statutory provision (as defined in *subsection (13)*) are subject to the confirmatory procedure in the Assembly. Other regulations are subject to the negative resolution procedure unless they are made together with regulations subject to confirmatory procedure (*subsections (9) and (10)*).

Dispute resolution

***Section 14: Dispute resolution arrangements***

*Section 14* amends Article 250 of the 2005 Order which substitutes Articles 50 to 50B of the 1995 Order for Article 50 of that Order. Article 250 has not yet been brought into operation.

*Subsection (4)* inserts paragraph (4A) into the new Article 50 to provide trustees or managers of an occupational pension scheme with the option of adopting two-stage dispute resolution arrangements. Schemes must provide for disputes to be considered by the trustees or managers, but the trustees or managers can choose for disputes to be considered by another person first. Any decision by the trustees or managers will confirm or replace any first-stage decision.

*Subsection (5)* inserts paragraph (5A) into the new Article 50 to ensure that the requirements of new Article 50(5) apply equally to any first-stage arrangements. This means any decision on an application made under a discretionary first stage must be made and notified to the applicant within a reasonable period.

*Subsections (6) and (7)* make minor amendments to make clear that the requirements of Article 50B relating to the dispute resolution procedure apply only to applications to the trustees or managers, and not any discretionary first-stage process.

*Subsection (8)* substitutes a new version of Article 50B(3) which replaces references to a fixed six-month time limit for applications to the trustees or managers for certain applicants with reference to a reasonable period. This will give the trustees or managers the flexibility to adopt time limits to suit either one or two-stage arrangements.

*Subsection (10)* inserts a new paragraph (4A) into Article 50B to make clear that a decision by the trustees or managers can be made by one or more of the trustees on behalf of the whole board.

Actuarial Guidance

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***Section 15: Removal of Department's role in approving actuarial guidance***

Section 15 introduces amendments detailed in Schedule 5 relating to the removal of powers conferred on the Department to approve actuarial guidance.