

*These notes refer to the Pension Schemes Act (Northern Ireland)
2016 (c.1) which received Royal Assent on 15 January 2016*

Pension Schemes Act (Northern Ireland) 2016

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 3 – General Changes to Legislation about Pension Schemes

Section 47: Other amendments to do with Parts 1 and 2

Schedule 2: Other amendments to do with Parts 1 and 2

Schedule 2 makes consequential amendments to existing pensions legislation to take account of the categories of scheme defined in Part 1 and collective benefits defined in Part 2. The Schedule also makes some resulting changes to replace references to money purchase schemes to limit the number of ways of categorising schemes in legislation.

Where there are references in existing legislation to a “money purchase scheme”, these are generally replaced by references to “a scheme under which all the benefits that may be provided are money purchase benefits”. This does not change the effect of the legislation – rather, they are technical changes to limit the number of categories that can be attached to pension schemes.

In other cases, the new categories are themselves substituted for existing definitions.

Pension Schemes (Northern Ireland) Act 1993

Section 120 of the Pension Schemes Act places a duty on the Department for Employment and Learning to pay unpaid contributions to schemes in the event of employer insolvency and consequent default on employer contributions. The amount that the Department is required to pay is the least of three amounts set out in paragraphs (a) to (c) of subsection (3). Subsection (3A) states that where the scheme is a money purchase scheme, the amount is the lesser of the amounts specified in paragraphs (a) and (c) (paragraph (b) is not relevant to money purchase schemes). The Schedule amends the wording to replace “money purchase scheme” with “defined contributions scheme, or a shared risk scheme under which all of the benefits that may be provided are money purchase benefits”. The Schedule also amends subsection (3A) so that it also applies to a shared risk scheme under which all the benefits that may be provided are money purchase benefits or collective benefits. This updates the provision to ensure

it applies in the right way to schemes which offer collective benefits and that they are covered by the appropriate provision, as well as ensuring all schemes which are shared risk and have only money purchase and collective benefits, and schemes which are defined contributions and provide a guaranteed income after the point of retirement, are captured.

Section 176 of the Act is amended so that the terms, “defined contributions scheme”, “defined benefits scheme”, and “shared risk scheme”, as set out in Part 1 of this Act and “collective benefit”, as set out in Part 2 of this Act, apply in that Act.

Pensions (Northern Ireland) Order 1995

Article 37 of the 1995 Order makes provision in relation to payments to employers when a trust-based occupational scheme is in surplus. Paragraph 7 of the Schedule amends paragraph (1A) of Article 37 to disapply that Article in relation to funds held for the purposes of collective benefits. Funds held for the purposes of providing collective benefits should only be used to provide those benefits except in very limited circumstances. Employer liability in respect of collective benefits is limited to the employer contributions and they cannot be required to make any additional payments where the funds are insufficient to meet the targets. Correspondingly, they should not, as a general rule, have a right to any surplus in the fund. Regulations made under section 24 will set out any exceptions to the rule that the funds must only be used for provision of collective benefits.

Articles 51 and 51A of the 1995 Order relate to indexation requirements for pension schemes (that is, the method by which pensions in payment are increased annually to take account of inflation). The Schedule amends paragraph (1)(a)(iii) of Article 51, which exempts pensions in money purchase schemes from indexation requirements in certain circumstances, by substituting “defined contributions scheme” for “money purchase scheme”. It consequently amends Article 51A to replace ‘money purchase scheme’ with “defined contributions scheme”. This means that the indexation requirements exclude all defined contributions schemes, including money purchase schemes, schemes offering collective benefits, and those that are defined as self-annuitising under Article 51A.

Article 73 of the 1995 Order deals with distribution of liabilities when an occupational pension scheme winds up. Paragraph 11 of the Schedule amends paragraph (2) of Article 73 to reflect the new scheme categories found in Part 1 of the Act.

Paragraph 11 of the Schedule applies the existing provisions on wind up to the new categories of defined benefits, shared risk and defined contributions schemes. The provisions on winding up do not apply to schemes under which all the benefits that may be provided are money purchase benefits or prescribed schemes or schemes of a prescribed description. This maintains the current position.

An “employer debt” is a reference to a statutory debt arising under Article 75 of the 1995 Order. Article 75 of the 1995 Order applies to an occupational pension scheme (other than a scheme which is a money purchase scheme, or a prescribed scheme or a scheme of a prescribed description) where there is a funding deficit in circumstances where either the scheme is winding up or a prescribed event has occurred in relation to the employer.

Paragraph 12 of the Schedule provides that Article 75 will not apply to an occupational pension scheme which offers only collective benefits, money purchase benefits, or a combination of the two. This paragraph also provides that where a scheme offers a combination of collective and non-collective benefits, the scheme is to be treated for the purposes of Part 1 of the 1995 Order as two separate schemes, with one scheme relating to the collective benefits and the other relating to the other benefits. Not all benefits in a defined contributions scheme will necessarily be money-purchase – some or all may be collective benefits.

Articles 85 and 86 of the 1995 Order make provision requiring trustees or managers of occupational money purchase schemes to prepare schedules of payments for scheme members. The Schedule amends this requirement so that it applies to all defined contribution schemes and any shared risk schemes under which either all of the benefits that may be provided are money purchase benefits, or a combination of money purchase and collective benefits. The wording of paragraph (2)(a) of Article 85 is altered to place focus on the type of benefits that are being offered, in order that ‘relevant benefits’ are considered regardless of whether a scheme is a defined contributions or a shared risk scheme. Article 121 of the 1995 Order is amended so that the terms “defined contributions scheme”, “defined benefits scheme” and “shared risk scheme”, as set out in Part 1 of this Act and “collective benefit” as set out in Part 2 of the Act, apply in that Order and to include a definition of “occupational” in relation to a defined benefits scheme, shared risk scheme or defined contributions scheme.

Welfare Reform and Pensions (Northern Ireland) Order 1999

Article 35 of the Welfare Reform and Pensions (Northern Ireland) Order 1999 makes provision about the treatment of pension credits in winding up. Currently it does not apply to a money purchase scheme. The amendment replaces the reference to a money purchase scheme with a reference to a scheme under which all the benefits that may be provided are money purchase benefits. This does not change the effect.

Pensions (Northern Ireland) Order 2005

The majority of the amendments made to the 2005 Order take out a number of references to money purchase schemes and update provisions in that Order to take account of the new pension scheme categories and the introduction of collective benefits. In most cases, the effect of the provisions is to extend exemption of the provision from schemes offering only money purchase benefits to schemes in which all benefits are collective or a combination of collective

and money purchase. However, in paragraph 24 is a further qualification – with the effect that the provision does apply to schemes with only money purchase benefits which include a third party promise.

Article 2 of the 2005 Order defines terms used throughout that Order. Paragraph 21 of Schedule 2 of this Act inserts the new scheme category and collective benefit definitions and omits the definition of ‘money purchase scheme’. It also updates the list of overriding provisions contained in the definition of “scheme rules” in the 2005 Order, to include regulations made under Part 2 of this Act, and under Schedule 17 and 18 to the 2015 Act. This means that where these regulations override conflicting provision in the scheme rules the regulations are treated as part of the scheme rules for the purposes of the 2005 Order.

Paragraphs 22, 28, 31 and 33 also amend the definition of pensions legislation in Articles 9, 85, 231 and 267 of the 2005 Order to include provisions in and made under the Act, ensuring that the Regulator can take action where there are breaches of the Act and Regulations made under it and to allow for modification of the provisions where schemes receive contributions from a European employer.

Article 110 of the 2005 Order defines those occupational pension schemes which are eligible to be taken over by the Board of the Pension Protection Fund. Paragraph 29 of the Schedule amends the 2005 Order to include reference to the new categories of occupational pension scheme in Part 1 of the Act, (defined benefits, shared risk and defined contributions schemes) as eligible for the Pension Protection Fund. This paragraph also has the effect that occupational pension schemes that offer only money purchase and collective benefits, and occupational pension schemes that offer only collective benefits are not eligible for the Pension Protection Fund.

Pensions (No. 2) Act (Northern Ireland) 2008

Sections 20 to 28 of the Pensions (No. 2) Act set out the requirements that a pension scheme must meet if it is to be a qualifying scheme for the purposes of meeting an employer’s enrolment duties under pension legislation. (This is sometimes referred to as “automatic enrolment”.)

The amendments in Schedule 2 to the Act replace the existing definitions of “defined benefits scheme”, “money purchase scheme” and “hybrid scheme” in these sections with the new definitions set out in Part 1 of this Act, and change the section headings accordingly. The quality requirements are on the whole unchanged (except where stated).

Section 26 is amended to refer to a personal pension scheme “that is a defined contributions scheme”. The requirements are the same except it will no longer be a requirement that all benefits under the scheme must be money purchase benefits.

Section 78 is amended to insert the definitions of “defined benefits scheme”, “defined contributions scheme” and “shared risk scheme” as set out in Part 1 of

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this Act and “collective benefit” as set out in Part 2 of the Act, as well as defining “occupational” as it applies to these pension schemes. The original references to “defined benefits”, “money purchase scheme” and “hybrid scheme” are omitted.