



2016 CHAPTER 1

PART 3

GENERAL CHANGES TO LEGISLATION ABOUT PENSION SCHEMES

Administration and governance

Pensions promise obtained from third party

36.—(1) Regulations may provide that the trustees or managers of a defined benefits scheme or a shared risk scheme must not obtain a pensions promise from a third party unless conditions specified in the regulations are met.

(2) Regulations under this section—

- (a) may provide for a specified provision of the regulations to override a provision of a scheme to the extent that there is a conflict;
- (b) may provide for Article 10 of the 1995 Order (civil penalties) to apply to a person who fails to comply with the regulations.

(3) In this section—

“defined benefits scheme” has the meaning given by section 2;

“pensions promise” has the meaning given by section 5;

“shared risk scheme” has the meaning given by section 3;

“trustees or managers” means—

- (a) in relation to a scheme established under a trust, the trustees, and
- (b) in relation to any other scheme, the managers.

(4) In Article 34(7) of the 1995 Order (power of investment and delegation overrides other legislation etc), for the words from “other than” to the end substitute “other than an enactment contained in, or made under—

- (a) this Part,
- (b) the Pension Schemes Act, or
- (c) section 36 of the Pension Schemes Act (Northern Ireland) 2016.”.

Duty to act in the best interests of members

37.—(1) Regulations may impose a duty on the managers of a relevant non-trust based scheme to act in the best interests of members when taking decisions of a specified description.

(2) In this section “relevant non-trust based scheme” means a non-trust based scheme that is—

- (a) a shared risk scheme, or
- (b) a defined contributions scheme under which any of the benefits that may be provided are collective benefits.

(3) Regulations under this section—

- (a) may provide for the duty to act in the best interests of members to override obligations that are inconsistent with that duty (including obligations imposed by any legislative provision, rule of law or provision of a scheme or other instrument), but

(b) do not otherwise affect any duty that might arise apart from this section.

(4) Regulations under this section may provide for the consequences of a manager breaching (or threatening to breach) the duty to act in the best interests of members to be the same as the consequences of breaching (or threatening to breach) a fiduciary duty owed by the manager to the members and, accordingly, for the duty to be enforceable in the same way as a fiduciary duty.

(5) In this section—

- “collective benefit” has the meaning given by section 8;
- “defined contributions scheme” has the meaning given by section 4;
- “non-trust based scheme” means a scheme that is not established under a trust;
- “shared risk scheme” has the meaning given by section 3.

Disclosure of information about schemes

38.—(1) Section 109 of the Pension Schemes Act (disclosure of information about schemes to members etc) is amended as follows.

(2) In subsection (1)—

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

- (a) in the opening words, for “the persons mentioned in subsection (2)” substitute “persons of prescribed descriptions”;
 - (b) in paragraph (ca), omit “to the member” and “by him”.
- (3) Omit subsection (2).
- (4) Before subsection (3) insert—
- “(2A) In complying with requirements specified in the regulations, a person must have regard to any guidance prepared from time to time by the Department.”.
- (5) For subsection (4) substitute—
- “(4) Where the regulations specify requirements to be complied with in the case of an occupational pension scheme with respect to keeping recognised trade unions informed, the regulations must make provision for referring to an industrial tribunal any question whether an organisation is a recognised trade union.
- (4A) For the purposes of subsection (4) a trade union is a recognised trade union in relation to an occupational pension scheme if it is an independent trade union recognised to any extent for the purposes of collective bargaining in relation to members and to prospective members of the scheme.”.
- (6) In subsection (5), for “some or all of the persons mentioned in subsection (2)” substitute “persons of a prescribed description”.
- (7) Omit paragraph 13 of Schedule 10 to the 2005 Order, which is no longer needed given subsection (3).