



## 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)—

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*Status: This is the original version (as it was originally enacted).*

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- (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).

### *Early leavers*

#### **Extension of preservation of benefit under occupational pension schemes**

**39.**—(1) Part 4 of the Pension Schemes Act (protection for early leavers) is amended as follows.

- (2) In section 67 (basic principle as to short service benefit)—
  - (a) in subsection (1), for paragraph (aa) (but not the “or” at the end) substitute
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    - “(aa) he has at least 30 days’ qualifying service and, if he were entitled to benefit because of this paragraph, all of it would necessarily be benefit falling within subsection (1A),”;
  - (b) after subsection (1) insert—
    - “(1A) The following fall within this subsection—
    - (a) collective benefits;

- (b) benefits calculated otherwise than by reference to the member's salary.”.
- (3) In section 66 (interpretation of Chapter 1: preservation requirements), in subsection (1)—
  - (a) after the definition of “relevant employment” insert—
    - “benefits”, in relation to a member of a scheme, means—
    - (a) retirement benefit for the member at normal pension age,
    - (b) benefit for the member's wife, husband, civil partner, widow, widower, surviving civil partner or dependants or others on the member's attaining normal pension age or the member's later death, or
    - (c) both such descriptions of benefit;”;
  - (b) in the definition of “long service benefit” omit the words from “and in this definition “benefits” means” to the end of the definition.
- (4) In section 67, for subsections (7) to (11) substitute—
  - “(7) In subsection (1), “2 years' qualifying service” or (as the case may be) “30 days' qualifying service” means a period of service of the relevant duration in which the member was at all times employed either—
    - (a) in pensionable service under the scheme, or
    - (b) in service in employment which was contracted-out by reference to the scheme, or
    - (c) in linked qualifying service under another scheme.
  - (8) For the purposes of subsection (7)—
    - (a) a period of service may consist of a single period or two or more periods, continuous or discontinuous;
    - (b) no regard is to be had to whether or not the service was of the same description throughout the period of service.
  - (9) A period of service previously terminated is not to count towards the 2 years' or (as the case may be) 30 days' qualifying service unless it counts towards qualification for long service benefit, and need then count only to the same extent and in the same way.
  - (10) Subsection (1)(aa) does not apply in relation to a person's membership of a scheme if—
    - (a) in a case where the benefit would necessarily all be money purchase benefit, any period of relevant service began before the day on which section 35 of the Pensions Act (Northern Ireland) 2015 came into operation (whether or not it also ended before that date);

(b) in any other case, any period of relevant service began before the day on which section 39 of the Pension Schemes Act (Northern Ireland) 2016 came into operation (whether or not it also ended before that date).

“Relevant service” means service that counts towards the 30 days’ qualifying service for the purposes of subsection (1)(aa).”.

(5) In section 70 (computation of short service benefit), in subsections (3) and (4), after “so much of any benefit” insert “, other than collective benefit,”.

(6) In section 35 of the Pensions Act (Northern Ireland) 2015, omit subsections (2) and (3) which are no longer needed given the earlier provisions of this section.

### **Revaluation of accrued benefits**

**40.** Schedule 1 contains amendments about the revaluation of benefits.

### *Indexation*

#### **Collective benefits exempt from indexation**

**41.—**(1) In Article 51 of the 1995 Order (annual increase in rate of pension)—

(a) in paragraph (1), for “Subject to paragraphs (6) and (7)” substitute “Subject to paragraphs (6) to (7A)”;

(b) after paragraph (7) insert—

“(7A) This Article does not apply to any pension, or part of a pension, that is a collective benefit.”.

(2) Omit section 21(2) of the Pensions Act (Northern Ireland) 2012, which is no longer needed given subsection (1).

#### **Regulatory own fund schemes exempt from indexation**

**42.—**(1) Article 51 of the 1995 Order (annual increase in rate of pension) is amended as follows.

(2) In paragraph (1)(a)(ii) (scheme based exemption) after “public service pension scheme” insert “or a regulatory own fund scheme (see paragraph (9))”.

(3) After paragraph (8) insert—

“(9) In paragraph (1)(a)(ii) “regulatory own fund scheme” means a scheme in respect of which Article 17 of Council Directive 2003/41/EC of 3 June 2003 on the activities and supervision of institutions for occupational retirement provision applies.

(10) Regulations may amend paragraph (9) to replace the reference to the Article mentioned there with a reference to any provision of an EU instrument that replaces it (with or without changes).”.

#### **Power to create other exemptions from indexation**

**43.**—(1) In Article 51 of the 1995 Order (annual increase in rate of pension), after paragraph (5) insert—

“(5A) Regulations may provide that this Article does not apply to a pension, or part of a pension, of a specified description.

(5B) But regulations under paragraph (5A) may not be made in respect of—

- (a) a pension, or any part of a pension, under a defined benefits scheme,
- (b) a pension, or any part of a pension, which came into payment before the day on which the regulations come into operation, or
- (c) a pension, or any part of a pension, which is attributable to pensionable service before the day on which the regulations come into operation.

(5C) Regulations under paragraph (5A) may amend this Part.”.

(2) In Article 167(3) of that Order (Assembly, etc. control of orders and regulations), before sub-paragraph (b) insert—

“(aa) Article 51(5A),”.

#### *Independent trustees*

#### **Removal of requirement to maintain register of independent trustees**

**44.**—(1) Article 23 of the 1995 Order (power to appoint independent trustees) is amended as follows.

(2) In paragraph (1), omit sub-paragraph (b) (requirement for the trustee to be registered in a register maintained by the Authority) and the “and” before it.

(3) Omit paragraphs (4) to (6) (regulations to provide for there to be a register of independent trustees).

#### *Rules about modification of schemes*

#### **Rules about modification of schemes**

**45.**—(1) The 1995 Order is amended as follows.

(2) In Article 67 (the subsisting rights provisions)—

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- (a) in paragraph (3), omit sub-paragraph (b) and the “or” before it;
- (b) after paragraph (3) insert—

“(3A) Regulations may provide for cases in which the subsisting rights provisions do not apply.”

- (3) In Article 67A (the subsisting rights provisions: interpretation), in paragraph (3) (meaning of “protected modification”), after sub-paragraph (a) insert—

“(aa) on taking effect would or might result in any subsisting right of a member of the scheme which is a right to benefits in respect of which there is a pensions promise becoming, or being replaced with, a right to benefits under the scheme rules in respect of which there is no pensions promise,

- (ab) on taking effect would or might result in any subsisting right of a member of the scheme which is a right to retirement income in respect of which there is a pensions promise becoming, or being replaced with, a right to benefits other than retirement income,

- (ac) on taking effect would or might result in any subsisting right of—

- (i) a member of the scheme, or

- (ii) a survivor of a member of the scheme,

which is not a right or entitlement to collective benefits becoming, or being replaced with, a right or entitlement to collective benefits under the scheme rules.”

- (4) In paragraph (3)(b) of that Article, after “rules” insert “, other than a pension that is a collective benefit”.

- (5) In paragraph (5)(a) of that Article, after “sub-paragraph (a)” insert “, (aa), (ab), (ac)”.

- (6) In paragraph (9) of that Article—

- (a) in sub-paragraph (a), after paragraph (ix) insert—

- “(x) regulations made under Schedule 17 to the Pensions Act (Northern Ireland) 2015;

- (xi) regulations made under Schedule 18 to the Pensions Act (Northern Ireland) 2015;

- (xii) regulations made under Part 2 of the Pension Schemes Act (Northern Ireland) 2016;”;

- (b) in sub-paragraph (b), after paragraph (vii) insert—

- “(viii) regulations made under paragraph 16 of Schedule 17 to the Pensions Act (Northern Ireland) 2015;

(ix) regulations made under paragraph 6 of Schedule 18 to the Pensions Act (Northern Ireland) 2015;

(x) regulations made under section 34 of the Pension Schemes Act (Northern Ireland) 2016;”.

(7) In Article 121 (interpretation), in paragraph (1), at the appropriate place insert—

““pensions promise” has the meaning given by section 5 of the Pension Schemes Act (Northern Ireland) 2016;”;

““retirement income” has the meaning given by section 7 of the Pension Schemes Act (Northern Ireland) 2016;”.

### *Pension sharing*

#### **Pension sharing and normal benefit age**

**46.—**(1) The Pension Schemes Act is amended as follows.

(2) In section 97B (interpretation) for the definition of “normal benefit age” substitute—

““normal benefit age”, in relation to a pension credit benefit for a member of a scheme, is the earliest age at which the member is entitled to receive the benefit without adjustment for taking it early or late (disregarding any special provision as to early payment on the grounds of ill-health or otherwise);

“normal pension age”, in relation to a benefit for a member of a scheme, means the earliest age at which the member is entitled to receive the benefit without adjustment for taking it early or late (disregarding any special provision as to early payment on the grounds of ill-health or otherwise);”.

(3) In section 97C (basic principle as to pension credit benefit), for subsection (1) substitute—

“(1) The normal benefit age in relation to a pension credit benefit for a member of a scheme—

(a) must not be lower than 60, and

(b) must not be higher than the permitted maximum.

(1A) The “permitted maximum” is 65 or, if higher, the highest normal pension age for any benefit that is payable under the scheme to or in respect of any of the members by virtue of rights which are not attributable (directly or indirectly) to a pension credit.”.



*Other amendments*

**Other amendments to do with Parts 1 and 2**

**47. Schedule 2—**

- (a) contains amendments to do with Parts 1 and 2, and
- (b) replaces references to “money purchase scheme” so as to limit the number of different ways of categorising pension schemes.