

STATUTORY INSTRUMENTS

1995 No. 3213

The Pensions (Northern Ireland) Order 1995

PART II

OCCUPATIONAL PENSIONS

Supervision by the Authority

[^{F1}Prohibition orders

3.—(1) The Authority may by order prohibit a person from being a trustee of—

- (a) a particular trust scheme,
- (b) a particular description of trust schemes, or
- (c) trust schemes in general,

if they are satisfied that he is not a fit and proper person to be a trustee of the scheme or schemes to which the order relates.

(2) Where a prohibition order is made under paragraph (1) against a person in respect of one or more schemes of which he is a trustee, the order has the effect of removing him.

(3) The Authority may, on the application of any person prohibited under this Article, by order revoke the order either generally or in relation to a particular scheme or description of schemes.

(4) An application under paragraph (3) may not be made—

- (a) during the period within which the determination to exercise the power to make the prohibition order may be referred to the Tribunal under Article 91(3) or 94(7) of the Pensions (Northern Ireland) Order 2005, and
- (b) if the determination is so referred, until the reference, and any appeal against the Tribunal's determination, has been finally disposed of.

(5) A revocation made at any time under this Article cannot affect anything done before that time.

(6) The Authority must prepare and publish a statement of the policies they intend to adopt in relation to the exercise of their powers under this Article.

(7) The Authority may revise any statement published under paragraph (6) and must publish any revised statement.

(8) In this Article “the Tribunal” means the Pensions Regulator Tribunal established under section 102 of the Pensions Act 2004.]

F1 [2005 NI 1](#)

Suspension orders

4.—(1) The Authority may by order suspend a trustee of a trust scheme—

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- (a) pending consideration being given to the making of an order against him under Article 3(1),
- [^{F2}(aa) pending consideration being given to the institution of proceedings against him for an offence involving dishonesty or deception,]
- (b) where proceedings have been instituted against him for an offence involving dishonesty or deception and have not been concluded,
- (c) where a petition has been presented to the court for an order adjudging him bankrupt, or for the sequestration of his estate, and proceedings on the petition have not been concluded,
- (d) where the trustee is a company, if a petition for the winding up of the company has been presented to the court and proceedings on the petition have not been concluded,
- (e) where an application has been made to the court for a disqualification order against him under [^{F3} the Company Directors Disqualification (Northern Ireland) Order 2002] or for such an order under any corresponding enactment for the time being in force in Great Britain and proceedings on the application have not been concluded, or
- (f) where the trustee is a company and, if any director were a trustee, the Authority would have power to suspend him under sub-paragraph (b), (c) or (e).

(2) An order under paragraph (1)—

- (a) if made by virtue of sub-paragraph (a) [^{F2} or (aa)], has effect for an initial period not exceeding twelve months, and
- (b) in any other case, has effect until the proceedings in question are concluded;

but the Authority may by order extend the initial period referred to in sub-paragraph (a) for a further period of twelve months, and any order suspending a person under paragraph (1) ceases to have effect [^{F2} in relation to a trust scheme] if an order is made against that person under Article 3(1) [^{F2} in relation to that scheme].

(3) An order under paragraph (1) has the effect of prohibiting the person suspended, during the period of his suspension, from exercising any functions as trustee of any trust scheme to which the order applies; and the order may apply to a particular trust scheme, a particular [^{F2} description] of trust schemes or trust schemes in general.

(4) An order under paragraph (1) may be made on one of the grounds in sub-paragraphs (b) to (e) whether or not the proceedings were instituted, petition presented or application made (as the case may be) before or after the coming into operation of that paragraph.

(5) The Authority may, on the application of any person suspended under paragraph (1), by order revoke the order, either generally or in relation to a particular scheme or a particular [^{F2} description] of schemes; but a revocation made at any time cannot affect anything done before that time.

[^{F2}(5A) An application under paragraph (5) may not be made—

- (a) during the period within which the determination to exercise the power to make an order under paragraph (1) may be referred to the Tribunal under Article 91(3) or 94(7) of the Pensions (Northern Ireland) Order 2005, and
- (b) if the determination is so referred, until the reference, and any appeal against the Tribunal's determination, has been finally disposed of.]

(6) An order under this Article may make provision as respects the period of the trustee's suspension for matters arising out of it, and in particular for enabling any person to execute any instrument in his name or otherwise act for him and for adjusting any rules governing the proceedings of the trustees to take account of the reduction in the number capable of acting.

[^{F2}(7) In this Article “the Tribunal” means the Pensions Regulator Tribunal established under section 102 of the Pensions Act 2004.]

F2 2005 NI 1

F3 2002 NI 4

Art. 5 rep. by 2005 NI 1

Removal or suspension of trustees: consequences

6.—(1) A person who purports to act as trustee of a trust scheme while prohibited from being a trustee of the scheme under Article 3 or suspended in relation to the scheme under Article 4 is guilty of an offence and liable—

- (a) on summary conviction, to a fine not exceeding the statutory maximum, and
- (b) on conviction on indictment, to a fine or imprisonment or both.

(2) An offence under paragraph (1) may be charged by reference to any day or longer period of time; and a person may be convicted of a second or subsequent offence under that paragraph by reference to any period of time following the preceding conviction of the offence.

(3) Things done by a person purporting to act as trustee of a trust scheme while prohibited from being a trustee of the scheme under Article 3 or suspended in relation to the scheme under Article 4 are not invalid merely because of that prohibition or suspension.

(4) Nothing in Article 3 or 4 or this Article affects the liability of any person for things done, or omitted to be done, by him while purporting to act as trustee of a trust scheme.

Appointment of trustees

7.—(1) Where a trustee of a trust scheme is removed by an order under Article 3, or^{F4} . . . by reason of his disqualification, the Authority may by order appoint another trustee in his place.

(2) Where a trustee appointed under paragraph (1) is appointed to replace a trustee appointed under^{F4} Article 23(1)], Articles 22 to 26 shall apply to the replacement trustee as they apply to a trustee appointed under^{F4} Article 23(1)].

(3) The Authority may also by order appoint a trustee of a trust scheme where they are satisfied that it is necessary to do so in order—

- (a) to secure that the trustees as a whole have, or exercise, the necessary knowledge and skill for the proper administration of the scheme,
- (b) to secure that the number of trustees is sufficient for the proper administration of the scheme, or
- (c) to secure the proper use or application of the assets of the scheme.

Para. (4) rep. by 2005 NI 1

(5) The power to appoint a trustee by an order under this Article includes power by such an order—

- (a) to determine the appropriate number of trustees for the proper administration of the scheme,
- (b) to require a trustee appointed by the order to be paid fees and expenses out of the scheme's resources,
- (c) to provide for the removal or replacement of such a trustee.

^{F4}(5A) An application may be made to the Authority in relation to a trust scheme by—

- (a) the trustees of the scheme,
- (b) the employer, or

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(c) any member of the scheme,
for the appointment of a trustee of the scheme under paragraph (3)(a) or (c).]

(6) Regulations may make provision about the descriptions of persons who may or may not be appointed trustees under this Article.

F4 2005 NI 1

Appointment of trustees: consequences

8.—^{F5}(1) An order under Article 7 appointing a trustee may provide for any fees and expenses of trustees appointed under the order to be paid—

- (a) by the employer,
- (b) out of the resources of the scheme, or
- (c) partly by the employer and partly out of those resources.

(2) Such an order may also provide that an amount equal to the amount (if any) paid out of the resources of the scheme by virtue of paragraph (1)(b) or (c) is to be treated for all purposes as a debt due from the employer to the trustees of the scheme.]

(3) Subject to paragraph (4), a trustee appointed under Article 7 shall, unless he is the independent trustee and Article 22 applies in relation to the scheme, have the same powers and duties as the other trustees.

(4) An order under Article 7 may make provision—

- (a) for restricting the powers or duties of a trustee so appointed,^{F6} . . .
- (b) for powers or duties to be exercisable by a trustee so appointed to the exclusion of other trustees.

F5 2005 NI 1

F6 1999 NI 11

Removal and appointment of trustees: property

9. Where the Authority have power under this Part to appoint or remove a trustee, they may exercise^{F7} by order] the same jurisdiction and powers as are exercisable by the High Court for vesting any property in, or transferring any property to, trustees in consequence of the appointment or of the removal.

F7 2005 NI 1

Civil penalties

10.—(1) Where the Authority are satisfied that by reason of any act or omission this Article applies to any person, they may by notice in writing require him to pay, within a prescribed period, a penalty in respect of that act or omission not exceeding the maximum amount.

(2) In this Article, “the maximum amount” means—

- (a) £5,000 in the case of an individual and £50,000 in any other case, or
- (b) such lower amount as may be prescribed in the case of an individual or in any other case,

and the Department may by order amend sub-paragraph (a) by substituting higher amounts for the amounts for the time being specified in that sub-paragraph.

(3) Regulations made by virtue of this Part may provide for any person who has contravened any provision of such regulations to pay, within a prescribed period, a penalty under this Article not exceeding an amount specified in the regulations; and the regulations must specify different amounts in the case of individuals from those specified in other cases and any amount so specified may not exceed the amount for the time being specified in the case of individuals or, as the case may be, others in paragraph (2)(a).

(4) An order made under paragraph (2) or regulations made by virtue of paragraph (3) do not affect the amount of any penalty recoverable under this Article by reason of an act or omission occurring before the order or, as the case may be, regulations are made.

(5) Where—

- (a) apart from this paragraph, a penalty under this Article is recoverable from a body corporate by reason of any act or omission of the body^{F8} . . . , and
- (b) the act or omission was done with the consent or connivance of, or is attributable to any neglect on the part of, any persons mentioned in paragraph (6),

this Article applies to each of those persons who consented to or connived in the act or omission or to whose neglect the act or omission was attributable.

(6) The persons referred to in paragraph (5)(b) are—

- (a) any director, manager, secretary, or other similar officer of the body corporate, or a person purporting to act in any such capacity, and
- (b) where the affairs of the body corporate are managed by its members, any member in connection with his functions of management.

(7) Where the Authority requires any person to pay a penalty by virtue of paragraph (5), they may not also require the body corporate in question to pay a penalty in respect of the same act or omission.

(8) A penalty under this Article is recoverable by the Authority.

[^{F9}(8A) Any penalty recoverable under this Article shall, if a county court so orders, be enforceable as if it were payable under an order of that court.]

(9) The Authority must pay to the Department any penalty recovered under this Article.

F8 2005 NI 1

F9 1999 NI 11

Modifications etc. (not altering text)

- C1** Art. 10 applied (6.4.2007) by [Pensions \(Northern Ireland\) Order 2005 \(S.I. 2005/255 \(N.I. 1\)\)](#), arts. 1(2), 137(8), 141(8), 210A(7); S.R. 2006/352, art. 2(5), Sch. Pt. 2
- C2** Art. 10 power to apply conferred (15.12.2008) by [Pensions \(No. 2\) Act \(Northern Ireland\) 2008 \(c. 13\)](#), ss. 59(2), 118(2)(j) (with s. 73)
- C3** Art. 10 applied by [S.I. 2005/255 \(N.I. 1\)](#), art. 35A(7) (as inserted (15.12.2008) by [Pensions \(No. 2\) Act \(Northern Ireland\) 2008 \(c. 13\)](#), ss. 103, 118(3)(a)(v), [Sch. 8 para. 9](#))
- C4** Art. 10 applied by [S.I. 2005/255 \(N.I. 1\)](#), art. 39A(4) (as inserted (15.12.2008) by [Pensions \(No. 2\) Act \(Northern Ireland\) 2008 \(c. 13\)](#), ss. 103, 118(3)(a)(v), [Sch. 8 para. 10](#))
- C5** Art. 10 applied by 1993 c. 49, s. 20H(5) (as inserted (3.3.2009 for certain purposes otherwise 6.4.2009) by [Pensions Act \(Northern Ireland\) 2008 \(c. 1\)](#), ss. 12(3), 21(1)(a); S.R. 2009/75, [art. 2](#))

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Powers to wind up schemes

11.—(1) Subject to paragraphs (2) to (7), the Authority may by order direct or authorise an occupational pension scheme to be wound up if they are satisfied that—

- (a) the scheme, or any part of it, ought to be replaced by a different scheme,
- (b) the scheme is no longer required, or
- (c) it is necessary in order to protect the interests of the generality of the members of the scheme that it be wound up.

(2) The Authority may not make an order under this Article on either of the grounds referred to in paragraph (1)(a) or (b) unless they are satisfied that the winding up of the scheme—

- (a) cannot be achieved otherwise than by means of such an order, or
- (b) can only be achieved in accordance with a procedure which—
 - (i) is liable to be unduly complex or protracted, or
 - (ii) involves the obtaining of consents which cannot be obtained, or can only be obtained with undue delay or difficulty,

and that it is reasonable in all the circumstances to make the order.

Para. (3) rep. by 2005 NI 1

[^{F10}(3A) The Authority may, during an assessment period (within the meaning of Article 116 of the Pensions (Northern Ireland) Order 2005 (meaning of “assessment period” for the purposes of Part III of that Order)) in relation to an occupational pension scheme, by order direct the scheme to be wound up if they are satisfied that it is necessary to do so in order—

- (a) to ensure that the scheme's protected liabilities do not exceed its assets, or
- (b) if those liabilities do exceed its assets, to keep the excess to a minimum.

(3B) In paragraph (3A)—

- (a) “protected liabilities” has the meaning given by Article 115 of the Pensions (Northern Ireland) Order 2005, and
- (b) references to the assets of the scheme are references to those assets excluding any assets representing the value of any rights in respect of money purchase benefits (within the meaning of that Order) under the scheme.]

(4) An order under this Article authorising a scheme to be wound up must include such directions with respect to the manner and timing of the winding up as the Authority think appropriate having regard to the purposes of the order.[^{F10} This paragraph is subject to Articles 24, 119 and 198 of the Pensions (Northern Ireland) Order 2005 (winding up order made when freezing order has effect in relation to scheme or during assessment period under Part III of that Order).]

(5) The winding up of a scheme in pursuance of an order of the Authority under this Article is as effective in law as if it had been made under powers conferred by or under the scheme.

(6) An order under this Article may be made and complied with in relation to a scheme—

- (a) in spite of any enactment or rule of law, or any rule of the scheme, which would otherwise operate to prevent the winding up, or
- (b) except for the purpose of the Authority determining whether they are satisfied as mentioned in paragraph (2), without regard to any such enactment, rule of law or rule of the scheme as would otherwise require, or might otherwise be taken to require, the implementation of any procedure or the obtaining of any consent, with a view to the winding up.

[^{F10}(6A) Paragraph (6) does not have effect to authorise the Authority to make an order as mentioned in sub-paragraph (a) or (b) of that paragraph, if their doing so would be unlawful as a result

of section 6(1) of the Human Rights Act 1998 (unlawful for public authority to act in contravention of a Convention right).]

(7) In the case of a public service pension scheme—

- (a) an order under paragraph (1) directing or authorising the scheme to be wound up may only be made on the grounds referred to in sub-paragraph (c), and
- (b) such an order may, as the Authority think appropriate, adapt, amend or repeal any enactment in which the scheme is contained or under which it is made.

F10 2005 NI 1

Powers to wind up public service schemes

12.—(1) The appropriate authority may by order direct a public service pension scheme to be wound up if they are satisfied that—

- (a) the scheme, or any part of it, ought to be replaced by a different scheme, or
- (b) the scheme is no longer required.

(2) Paragraph (2) of Article 11 applies for the purposes of this Article as it applies for the purposes of that, but as if references to the Authority were to the appropriate authority.

(3) In this Article, “the appropriate authority”, in relation to a scheme, means such Minister of the Crown or government department as may be designated by the Treasury or the Department of Finance and Personnel as having responsibility for the particular scheme.

(4) An order under this Article must include such directions with respect to the manner and timing of the winding up as the appropriate authority thinks appropriate.

(5) Such an order may, as the appropriate authority thinks appropriate, adapt, amend or repeal any enactment in which the scheme is contained or under which it is made.

Art. 13 rep. by 2005 NI 1

Restitution

14. If, on the application of the Authority, the High Court is satisfied—

- (a) that a power to make a payment, or distribute any assets, to the employer, has been exercised in contravention of Article 37, 76 or 77, or
- (b) that any act or omission of the trustees or managers of an occupational pension scheme was in contravention of Article 40,

the Court may order the employer and any other person who appears to the Court to have been knowingly concerned in the contravention to take such steps as the Court may direct for restoring the parties to the position in which they were before the payment or distribution was made, or the act or omission occurred.

Directions

15.—(1) The Authority may, where in the case of any trust scheme the employer fails to comply with any requirement included in regulations by virtue of Article 49(5), direct the trustees to make arrangements for the payment to the members of the benefit to which the requirement relates.

(2) The Authority may—

- (a) where in the case of any trust scheme an annual report is published, direct the trustees to include a statement prepared by the Authority in the report, and

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- (b) in the case of any trust scheme, direct the trustees to send to the members a copy of a statement prepared by the Authority.
- (3) A direction under this Article must be given in writing.
- (4) Where a direction under this Article is not complied with, ^{F11} Article 10 applies] to any trustee who has failed to take all such steps as are reasonable to secure compliance.

F11 2005 NI 1

Member-nominated trustees and directors

Requirement for member-nominated trustees

- ^{F12}**16.**—(1) The trustees of a trust scheme must ^{F13} (subject to Article 17) secure—
- (a) that such arrangements for ^{F14} persons selected by ^{F15} qualifying] members of the scheme to be trustees of the scheme as are required by this Article are made, and
 - (b) that those arrangements ^{F13}, and the appropriate rules, are implemented.
- (2) Persons who become trustees under the arrangements required by paragraph (1) are referred to in this Part as “member-nominated trustees”.
- (3) The arrangements must provide—
- (a) for any person who has been nominated and selected ^{F14} in accordance with the appropriate rules to become a trustee by virtue of his selection, and
 - (b) for the removal of such a person to require the agreement of all the other trustees.
- (4) Where a vacancy for a member-nominated trustee is not filled because insufficient nominations are received, the arrangements must provide for the filling of the vacancy, or for the vacancy to remain, until the expiry of the next period in which persons may be nominated and selected in accordance with ^{F14} the appropriate rules.
- (5) The arrangements must provide for the selection of a person as a member-nominated trustee to have effect for a period of not less than three nor more than six years ^{F16}.
- (6) The arrangements must provide for the number of member-nominated trustees to be—
- (a) at least two or (if the scheme comprises less than 100 ^{F15} qualifying] members) at least one, and
 - (b) at least one-third of the total number of trustees;
- but the arrangements must not provide for a greater number of member-nominated trustees than that required to satisfy that minimum unless the employer has given his approval to the greater number.
- ^{F16}(7) The arrangements must not provide for the functions of member-nominated trustees to differ from those of any other trustee but, for the purposes of this paragraph—
- (a) any provision made by an order under Article 8(4), and
 - (b) Article 25(2),
- shall be disregarded.
- (8) ^{F14}The arrangements must provide that, if a member-nominated trustee who was a ^{F15} qualifying] member of the scheme when he was appointed ceases to be ^{F15} such a member], he ceases to be a trustee by virtue of that fact ^{F16} ^{F17}.

- F12** prosp. (until 06/04/06) rep. by 2005 NI 1
F13 prosp. rep. by 2000 c. 4 (NI)
F14 prosp. subst.by 2000 c. 4 (NI)
F15 1999 NI 11
F16 prosp. inserted by 2000 c. 4 (NI)
F17 prosp. added by 2000 c. 4 (NI)

^{F18}Exceptions

^{F19}17.—(1) Article 16 does not apply to a trust scheme if—

- (a) a proposal has been made by the employer for the continuation of existing arrangements, or the adoption of new arrangements, for selecting the trustees of the scheme,
- (b) the arrangements referred to in the proposal are for the time being approved under the statutory consultation procedure, and
- (c) such other requirements as may be prescribed are satisfied.

(2) Where—

- (a) by virtue of paragraph (1), Article 16 does not apply to a trust scheme, and
- (b) the employer's proposal was for the adoption of new arrangements which, in consequence of paragraph (1)(b), are adopted,

the trustees shall secure that the proposed arrangements are made and implemented.

(3) For the purposes of this Article, the arrangements for selecting the trustees of a scheme include all matters relating to the continuation in office of the existing trustees, the selection or appointment of new trustees and the terms of their appointments and any special rules for decisions to be made by particular trustees.

(4) Article 16 does not apply to a trust scheme if—

- (a) the trustees of the scheme consist of all the^{F20} [qualifying] members, or
- (b) it falls within a prescribed class.

(5) Article 10 applies to any employer who—

- (a) makes such a proposal as is referred to in paragraph (1)(a), but
- (b) fails to give effect to the statutory consultation procedure.

- F18** prosp. rep. by 2000 c. 4 (NI)
F19 prosp. (until 06/04/06) rep. by 2005 NI 1
F20 1999 NI 11

Corporate trustees: member-nominated directors

^{F21}18.—(1) Where a company is a trustee of a trust scheme^{F22} and the employer is connected with the company or prescribed conditions are satisfied, the company must^{F23}, subject to Article 19 secure—

- (a) that such arrangements for^{F22} persons selected by the^{F24} [qualifying] members of the scheme to be directors of the company as are required by this Article are made, and
- (b) that those arrangements,^{F25} and the appropriate rules, are implemented.

(2) Persons who become directors under the arrangements required by paragraph (1) are referred to in this Part as “member-nominated directors”.

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(3) The arrangements must provide—

- (a) for any person who has been nominated and selected^{F22} in accordance with the appropriate rules to become a director by virtue of his selection, and
- (b) for the removal of such a person to require the agreement of all the other directors.

(4) Where a vacancy for a member-nominated director is not filled because insufficient nominations are received, the arrangements must provide for the filling of the vacancy, or for the vacancy to remain, until the expiry of the next period in which persons may be nominated and selected in accordance with^{F22} the appropriate rules.

(5) The arrangements must provide for the selection of a person as a member-nominated director to have effect for a period of not less than three nor more than six years^{F26}.

(6) The arrangements must provide for the number of member-nominated directors to be—

- (a) at least two or (if the scheme comprises less than 100^{F24} qualifying] members) at least one, and
- (b) at least one-third of the total number of directors;

but the arrangements must not provide for a greater number of member-nominated directors than that required to satisfy that minimum unless the employer has given his approval to the greater number.

^{F26}(7) ^{F22}The arrangements must provide that, if a member-nominated director who was a^{F24} qualifying] member of the scheme when he was appointed ceases to be^{F24} such a member], he ceases to be a director by virtue of that fact^{F26}.

^{F22}(8) Where this Article applies to a company which is—

- (a) a trustee of two or more trust schemes, and
- (b) a wholly-owned subsidiary (within the meaning of Article 4 of the Companies (Northern Ireland) Order 1986^{F27}) of a company which is the employer in relation to those schemes,

the following provisions apply as if those schemes were a single scheme and the members of each of the schemes were members of that scheme, that is: the preceding provisions of this Article, Article 20 and Article 21(7).^{F28}

- F21** prosp. (until 06/04/06) rep. by 2005 NI 1
- F22** prosp. subst. by 2000 c. 4 (NI)
- F23** prosp. rep. by 2000 c. 4 (NI)
- F24** 1999 NI 11
- F25** prosp. rep. by 2000 c. 4 (NI)
- F26** prosp. inserted by 2000 c. 4 (NI)
- F27** 1986 NI 6
- F28** prosp. added by 2000 c. 4 (NI)

F29

- F29** Art. 18A inserted (prosp.) by 2000 c. 4 (N.I.)
Art. 18A repealed (6.4.2006) by Pensions (Northern Ireland) Order 2005 (S.I. 2005/255 (N.I. 1)), arts. 1(2), 291, Sch. 11; S.R. 2005/543, art. 2(6), Sch. Pt. 6

Corporate trustees: exceptions

^{F30F31}19.—(1) Article 18 does not apply to a company which is a trustee of a trust scheme if—

- (a) a proposal has been made by the employer for the continuation of existing arrangements, or the adoption of new arrangements, for selecting the directors of the company,
- (b) the arrangements referred to in the proposal are for the time being approved under the statutory consultation procedure, and
- (c) such other requirements as may be prescribed are satisfied.

(2) Where—

- (a) by virtue of paragraph (1), Article 18 does not apply to a company which is a trustee of a trust scheme; and
- (b) the employer's proposal was for the adoption of new arrangements which, in consequence of paragraph (1)(b), are adopted,

the company must secure that the proposed arrangements are made and implemented.

(3) For the purposes of this Article, the arrangements for selecting the directors of a company include all matters relating to the continuation in office of the existing directors, the selection or appointment of new directors and the terms of their appointments and any special rules for decisions to be made by particular directors.

(4) Article 18 does not apply to a company which is a trustee of a trust scheme if the scheme falls within a prescribed class.

(5) Article 10 applies to any employer who—

- (a) makes such a proposal as is referred to in paragraph (1)(a), but
- (b) fails to give effect to the statutory consultation procedure.

F30 prosp. rep. by [2000 c. 4 \(NI\)](#)

F31 prosp. (until 06/04/06) rep. by [2005 NI 1](#)

Selection, and eligibility, of member-nominated trustees and directors

^{F32F33}**20.**—(1) For the purposes of Articles 16 to 21, the appropriate rules are rules which—

- (a) make the provision required or authorised by this Article, and no other provision, and
- (b) are for the time being approved under the statutory consultation procedure or, if no rules are for the time being so approved, are prescribed rules;

and the arrangements required by Article 16 or 18 to be made must not make any provision which is required or authorised to be made by the rules.

(2) The appropriate rules—

- (a) must determine the procedure for the nomination and selection of a person to fill a vacancy as a member-nominated trustee, and
- (b) may determine, or provide for the determination of, the conditions required of a person for filling such a vacancy.

(3) The appropriate rules must provide for a member-nominated trustee to be eligible for re-selection at the end of his period of service.

(4) Where a vacancy for a member-nominated trustee is not filled because insufficient nominations are received, the appropriate rules must provide for determining the next period in which persons may be nominated and selected in accordance with the rules, being a period ending at a prescribed time.

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(5) The appropriate rules must provide that, where the employer so requires, a person who is not a^{F34} [qualifying] member of the scheme must have the employer's approval to qualify for selection as a member-nominated trustee.

(6) Where Article 18 applies to a trust scheme, references in this Article to a member-nominated trustee include a member-nominated director.

F32 prosp. rep. by 2000 c. 4 (NI)

F33 prosp. (until 06/04/06) rep. by 2005 NI 1

F34 1999 NI 11

Member-nominated trustees and directors: supplementary

^{F35}21.—(1) If, in the case of a trust scheme—

- (a) such arrangements as are required by Article 16(1) or^{F36} 17(2) to be made have not been made, or
- (b) arrangements required by Article 16(1) or^{F36} 17(2) to be implemented^{F37}, or the appropriate rules, are not being implemented,

^{F38}Articles 3 and 10 apply to any trustee who has failed to take all such steps as are reasonable to secure compliance.

(2) If, in the case of a company which is a trustee of a trust scheme—

- (a) such arrangements as are required by Article 18(1) or^{F36} 19(2) to be made have not been made, or
- (b) arrangements required by Article 18(1) or^{F36} 19(2) to be implemented^{F37}, or the appropriate rules, are not being implemented,

^{F38}Articles 3 and 10 apply to the company.

^{F38}(3) Regulations may make provision for determining the time by which—

- (a) such arrangements^{F37} (or further arrangements) as are referred to in Article 16(1),^{F36} 17(2), 18(1) or 19(2) are required to be made,^{F37} and

^{F37}(b) trustees or directors are required to be selected in pursuance of the appropriate rules.

^{F37}(4) Regulations may make provision for determining when any approval under the statutory consultation procedure—

- (a) of the appropriate rules, or
- (b) of arrangements for selecting the trustees of a scheme, or the directors of a company, given on a proposal by the employer

is to cease to have effect.

(5) The Department may by regulations modify Articles 16 to^{F36} 20 and this Article in their application to prescribed cases.

^{F38}(6) In Articles^{F36} 17 to 20^{F37} and this Article,

[^{F39}(a) “qualifying member”, in relation to a trust scheme, means a person who is an active, deferred or pensioner member of the scheme,^{F37} and]

[^{F39}(b)] ^{F37}“the statutory consultation procedure” means the prescribed procedure for obtaining the views of [^{F39}qualifying] members of schemes.

(7) For the purposes of this and those Articles—

- (a) approval^{F36} of the appropriate rules, or of arrangements, under the statutory consultation procedure must be given by—
- (i) the active and pensioner members of the scheme, and
 - (ii) if the trustees so determine, such deferred members of the scheme as the trustees may determine,
- taken as a whole,^{F37} and
- ^{F37}(b) references to the approval of the appropriate rules, or of arrangements under Article 17 or 19, by any persons under the statutory consultation procedure are to prescribed conditions in respect of those rules or, as the case may be, arrangements being satisfied in the case of those persons in pursuance of the procedure, and those conditions may relate to the extent to which those persons have either endorsed, or not objected to, the rules or, as the case may be, arrangements.

F35 prosp. (until 06/04/06) rep. by 2005 NI 1

F36 prosp. subst. by 2000 c. 4 (NI)

F37 prosp. rep. by 2000 c. 4 (NI)

F38 prosp. inserted by 2000 c. 4 (NI)

F39 1999 NI 11

Independent trustees

Circumstances in which following provisions apply

22^{F40}.—(1^{F40} This Article applies in relation to a trust scheme—

- (a) if a person (referred to in this Article and Articles 23^{[F41} to 26] as “the practitioner”) begins to act as an insolvency practitioner in relation to a company which, or an individual who, is the employer in relation to the scheme, or
- (b) if the official receiver becomes—
 - (i) the liquidator or provisional liquidator of a company which is the employer in relation to the scheme,^{F41} . . .
 - ^{[F41}(ia) the interim receiver of the property of a person who is the employer in relation to the scheme, or]
 - (ii) the receiver and the manager, or the trustee, of the estate of a bankrupt who is the employer in relation to the scheme.

(2^{F40} Where this Article applies in relation to a scheme^{[F41} by virtue of paragraph (1)], it ceases to do so—

- (a) if some person other than the employer mentioned in paragraph (1) becomes the employer, or
- (b) if at any time neither the practitioner nor the official receiver is acting in relation to the employer;

but this paragraph does not affect the application of this Article in relation to the scheme on any subsequent occasion when the conditions specified in paragraph (1)(a) or (b) are satisfied in relation to it.

^{[F41}(2A^{F40} To the extent that it does not already apply by virtue of paragraph (1), this Article also applies in relation to a trust scheme—

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- (a) at any time during an assessment period (within the meaning of Article 116 of the Pensions (Northern Ireland) Order 2005) in relation to the scheme, and
- (b) at any time, not within sub-paragraph (a), when the scheme is authorised under Article 137 of that Order (closed schemes) to continue as a closed scheme.]

[^{F41}(2B ^{F40} The responsible person must, as soon as reasonably practicable, give notice of an event within paragraph (2C) to—

- (a) the Authority,
- (b) the Board of the Pension Protection Fund, and
- (c) the trustees of the scheme.

(2C ^{F40} The events are—

- (a) the practitioner beginning to act as mentioned in paragraph (1)(a), if immediately before he does so this Article does not apply in relation to the scheme;
- (b) the practitioner ceasing to so act, if immediately after he does so this Article does not apply in relation to the scheme;
- (c) the official receiver beginning to act in a capacity mentioned in paragraph (1)(b)(i), (ia) or (ii), if immediately before he does so this Article does not apply in relation to the scheme;
- (d) the official receiver ceasing to act in such a capacity, if immediately after he does so this Article does not apply in relation to the scheme.

(2D ^{F40} For the purposes of paragraph (2B) “the responsible person” means—

- (a) in the case of an event within paragraph (2C)(a) or (b), the practitioner, and
- (b) in the case of an event within paragraph (2C)(c) or (d), the official receiver.

(2E ^{F40} Regulations may require prescribed persons in prescribed circumstances where this Article begins or ceases to apply in relation to a trust scheme by virtue of paragraph (2A) to give a notice to that effect to—

- (a) the Authority,
- (b) the Board of the Pension Protection Fund, and
- (c) the trustees of the scheme.

(2F ^{F40} A notice under paragraph (2B), or under regulations under paragraph (2E), must be in writing and contain such information as may be prescribed.]

(3 ^{F40} In this Article and Articles 23[^{F41} to 26]

“acting as an insolvency practitioner” and “official receiver” shall be construed in accordance with Articles 3 and 2 of the Insolvency (Northern Ireland) Order 1989, “bankrupt” has the meaning given by Article 9 of the Insolvency (Northern Ireland) Order 1989^{F42},

“company” means a company within the meaning given by Article 3 of the Companies (Northern Ireland) Order 1986^{F43} or a company which may be wound up under Part VI of the Insolvency (Northern Ireland) Order 1989 (unregistered companies).

F40 mod. by SR 2005/169

F41 2005 NI 1

F42 1989 NI 19

F43 1986 NI 6

[^{F44} Power to appoint independent trustees

23 ^{F45}.—(1) While Article 22 applies in relation to a trust scheme, the Authority may by order appoint as a trustee of the scheme a person who—

- (a) is an independent person in relation to the scheme, and
- (b) is registered in the register maintained by the Authority in accordance with regulations under paragraph (4).

(2) In relation to a particular trust scheme, no more than one trustee may at any time be an independent trustee appointed under paragraph (1).

(3) For the purposes of this Article a person is independent in relation to a trust scheme only if—

- (a) he has no interest in the assets of the employer or of the scheme otherwise than as trustee of the scheme,
- (b) he is neither connected with, nor an associate of—
 - (i) the employer,
 - (ii) any person for the time being acting as an insolvency practitioner in relation to the employer, or
 - (iii) the official receiver acting in any of the capacities mentioned in Article 22(1)(b) in relation to the employer, and
- (c) he satisfies any prescribed requirements;

and any reference in this Part to an independent trustee is to be construed accordingly.

(4) Regulations must provide for the Authority to compile and maintain a register of persons who satisfy the prescribed conditions for registration.

(5) Regulations under paragraph (4) may provide—

- (a) for copies of the register or of extracts from it to be provided to prescribed persons in prescribed circumstances;
- (b) for the inspection of the register by prescribed persons in prescribed circumstances.

(6) The circumstances which may be prescribed under paragraph (5)(a) or (b) include the payment by the person to whom the copy is to be provided, or by whom the register is to be inspected, of such reasonable fee as may be determined by the Authority.

(7) This Article is without prejudice to the powers conferred by Article 7.]

F44 2005 NI 1

F45 mod. by SR 2005/169

Appointment and powers of independent trustees: further provisions

25 ^{F46}.—(1) If, immediately before the appointment of an independent trustee under [^{F47} Article 23(1)], there is no trustee of the scheme other than the employer, the employer shall cease to be a trustee upon the appointment of the independent trustee.

(2) While Article 22 applies in relation to a scheme [^{F47} and there is an independent trustee of the scheme appointed under Article 23(1)]

- (a) any power vested in the trustees of the scheme and exercisable at their discretion may be exercised only by the independent trustee, and
- (b) any power—

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- (i) which the scheme confers on the employer (otherwise than as trustee of the scheme), and
- (ii) which is exercisable by him at his discretion but only as trustee of the power, may be exercised only by the independent trustee,

^{F47} . . .

(3) While Article 22 applies in relation to a scheme^{F47} and there is an independent trustee of the scheme appointed under Article 23(1), the independent trustee may not] be removed from being a trustee by virtue only of any provision of the scheme.

(4) If a trustee appointed under^{F47} Article 23(1)] ceases to be an independent person^{F47} (within the meaning of Article 23(3)]], then—

^{F47}(a) he must as soon as reasonably practicable give written notice of that fact to the Authority, and]

(b) subject to paragraph (5), he shall cease to be a trustee of the scheme.

(5) If, in a case where paragraph (4) applies, there is no other trustee of the scheme than the former independent trustee, he shall not cease by virtue of that paragraph to be a trustee until such time as another trustee is appointed.

^{F47}(5A) Article 10 applies to any person who, without reasonable excuse, fails to comply with paragraph (4)(a).]

^{F47}(6) An order under Article 23(1) may provide for any fees and expenses of the trustee appointed under the order to be paid—

- (a) by the employer,
- (b) out of the resources of the scheme, or
- (c) partly by the employer and partly out of those resources.

(7) Such an order may also provide that an amount equal to the amount (if any) paid out of the resources of the scheme by virtue of paragraph (6)(b) or (c) is to be treated for all purposes as a debt due from the employer to the trustees of the scheme.

(8) Where, by virtue of paragraph (6)(b) or (c), an order makes provision for any fees or expenses of the trustee appointed under the order to be paid out of the resources of the scheme, the trustee is entitled to be so paid in priority to all other claims falling to be met out of the scheme's resources.]

F46 mod. by SR 2005/169

F47 2005 NI 1

Insolvency practitioner or official receiver to give information to trustees

26^{F48}.—(1) Notwithstanding anything in Article 133 of the Insolvency (Northern Ireland) Order 1989^{F49} (court orders for inspection, etc.), while Article 22 applies in relation to a scheme^{F50} by virtue of paragraph (1) of that Article], the practitioner or official receiver must provide the trustees of the scheme, as soon as practicable after the receipt of a request, with any information which the trustees may reasonably require for the purposes of the scheme.

(2) Any expenses incurred by the practitioner or official receiver in complying with a request under paragraph (1) are recoverable by him as part of the expenses incurred by him in discharge of his duties.

(3) The practitioner or official receiver is not required under paragraph (1) to take any action which involves expenses that cannot be so recovered, unless the trustees of the scheme undertake to meet them.

F48 mod. by SR 2005/169

F49 1989 NI 19

F50 2005 NI 1

Arts. 26A - 26C rep. by 2005 NI 1

Trustees: general

Trustee not to be auditor or actuary of the scheme

27.—(1) A trustee of a trust scheme, and any person who is connected with, or an associate of, such a trustee, is ineligible to act as an auditor or actuary of the scheme.

(2) Paragraph (1) does not make a person who is a director, partner or employee of a firm of actuaries ineligible to act as an actuary of a trust scheme merely because another director, partner or employee of the firm is a trustee of the scheme.

(3) Paragraph (1) does not make a person who falls within a prescribed class or description ineligible to act as an auditor or actuary of a trust scheme.

(4) A person must not act as an auditor or actuary of a trust scheme if he is ineligible under this Article to do so.

(5) In this Article and Article 28 references to a trustee of a trust scheme do not include—

- (a) a trustee, or
- (b) a trustee of a scheme,

falling within a prescribed class or description.

Article 27: consequences

28.—(1) Any person who acts as an auditor or actuary of a trust scheme in contravention of Article 27(4) is guilty of an offence and liable—

- (a) on summary conviction, to a fine not exceeding the statutory maximum, and
- (b) on conviction on indictment, to imprisonment or a fine, or both.

(2) An offence under paragraph (1) may be charged by reference to any day or longer period of time; and a person may be convicted of a second or subsequent offence under that paragraph by reference to any period of time following the preceding conviction of the offence.

(3) Acts done as an auditor or actuary of a trust scheme by a person who is ineligible under Article 27 to do so are not invalid merely because of that fact.

Para. (4) rep. by 2005 NI 1

Persons disqualified for being trustees

29.—(1) Subject to paragraph (5), a person is disqualified for being a trustee of any trust scheme if—

- (a) he has been convicted of any offence involving dishonesty or deception,
- (b) he has been adjudged bankrupt or sequestration of his estate has been awarded and (in either case) he has not been discharged,

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- (c) where the person is a company, if any director of the company is disqualified under this Article,
- (d) where the person is a Scottish partnership, if any partner is disqualified under this Article,
- (e) he has made an arrangement or a composition contract with, or granted a trust deed for the behoof of, his creditors and has not been discharged in respect of it, or
- (f) he is subject to a disqualification order^{F51} or disqualification undertaking under the Company Directors Disqualification (Northern Ireland) Order 2002 or to such an order or undertaking] under any corresponding enactment for the time being in force in Great Britain.

(2) In paragraph (1)—

- (a) sub-paragraph (a) applies whether the conviction occurred before or after the coming into operation of that paragraph, but does not apply in relation to any conviction which is a spent conviction for the purposes of the Rehabilitation of Offenders (Northern Ireland) Order 1978^{F52},
- (b) sub-paragraph (b) applies whether the adjudication of bankruptcy or the sequestration occurred before or after the coming into operation of that paragraph,
- (c) sub-paragraph (e) applies whether the arrangement or composition contract was made, or the trust deed was granted, before or after the coming into operation of that paragraph, and
- (d) sub-paragraph (f) applies in relation to orders made before or after the coming into operation of that paragraph.

Paras. (3) & (4) rep. by 2005 NI 1

(5) The Authority may, on the application of any person disqualified under this Article—

- (a) give notice in writing to him waiving his disqualification,

Sub-para. (b) rep. by 2005 NI 1

either generally or in relation to a particular scheme or particular^{F53} description] of schemes.

(6) A notice given^{F53} . . . at any time by virtue of paragraph (5) cannot affect anything done before that time.

F51 2002 NI 4
F52 1978 NI 27
F53 2005 NI 1

Persons disqualified: consequences

30.—^{F54}(1) Where a person who is a trustee of a trust scheme becomes disqualified under Article 29 in relation to the scheme, his becoming so disqualified has the effect of removing him as a trustee.]

(2) Where—

- (a) a trustee of a trust scheme becomes disqualified under Article 29,^{F54} . . .

Sub-para. (b) rep. by 2005 NI 1

the Authority may exercise^{F54} by order] the same jurisdiction and powers as are exercisable by the High Court for vesting any property in, or transferring any property to, the trustees.

(3) A person who purports to act as a trustee of a trust scheme while he is disqualified under Article 29 is guilty of an offence and liable—

- (a) on summary conviction to a fine not exceeding the statutory maximum, and
- (b) on conviction on indictment, to a fine or imprisonment or both.

(4) An offence under paragraph (3) may be charged by reference to any day or longer period of time; and a person may be convicted of a second or subsequent offence under that paragraph by reference to any period of time following the preceding conviction of the offence.

(5) Things done by a person disqualified under Article 29 while purporting to act as trustee or a trust scheme are not invalid merely because of that disqualification.

(6) Nothing in Article 29 or this Article affects the liability of any person for things done, or omitted to be done, by him while purporting to act as trustee of a trust scheme.

Paras. (7) & (8) rep. by 2005 NI 1

F54 2005 NI 1

Art. 30A rep. by 2005 NI 1

Art. 31 rep. by 2005 NI 1

Functions of trustees

Decisions by majority

32.—(1) Decisions of the trustees of a trust scheme may, unless the scheme provides otherwise, be taken by agreement of a majority of the trustees.

(2) Where decisions of the trustees of a trust scheme may be taken by agreement of a majority of the trustees—

- (a) the trustees may, unless the scheme provides otherwise, by a determination under this paragraph require not less than the number of trustees specified in the determination to be present when any decision is so taken, and
- (b) notice of any occasions at which decisions may be so taken must, unless the occasion falls within a prescribed class or description, be given to each trustee to whom it is reasonably practicable to give such notice.

(3) Notice under paragraph (2)(b) must be given in a prescribed manner and not later than the beginning of a prescribed period.

(4) This Article is subject to Articles 8(4)(b),^{F55} 16(3)(b) and 25(2).

(5) If paragraph (2)(b) is not complied with,^{F55} Articles 3 and 10 apply to any trustee who has failed to take all such steps as are reasonable to secure compliance.

F55 prosp. subst. by 2005 NI 1

Investment powers: duty of care

33.—(1) Liability for breach of an obligation under any rule of law to take care or exercise skill in the performance of any investment functions, where the function is exercisable—

- (a) by a trustee of a trust scheme, or
- (b) by a person to whom the function has been delegated under Article 34,

cannot be excluded or restricted by an instrument or agreement.

(2) In this Article, references to excluding or restricting liability include—

- (a) making the liability or its enforcement subject to restrictive or onerous conditions,

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- (b) excluding or restricting any right or remedy in respect of the liability, or subjecting a person to any prejudice in consequence of his pursuing any such right or remedy, or
- (c) excluding or restricting rules of evidence or procedure.
- (3) This Article does not apply—
 - (a) to a scheme falling within any prescribed class or description, or
 - (b) to any prescribed description of exclusion or restriction.

Power of investment and delegation

34.—(1) The trustees of a trust scheme have, subject to^{F56} Article 36(1) and to] any restriction imposed by the scheme, the same power to make an investment of any kind as if they were absolutely entitled to the assets of the scheme.

- (2) Any discretion of the trustees of a trust scheme to make any decision about investments—
 - (a) may be delegated by or on behalf of the trustees to a fund manager to whom paragraph (3) applies to be exercised in accordance with Article 36, but
 - (b) may not otherwise be delegated except under section 26 of the Trustee Act (Northern Ireland) 1958^{F57} (delegation of trusts for period not exceeding 12 months) or paragraph (5).

[^{F58}(3) This paragraph applies to a fund manager who, in relation to the investments, may take the decisions in question without contravening the prohibition imposed by section 19 of the Financial Services and Markets Act 2000 (prohibition on carrying on regulated activities unless authorised or exempt).]

(4) The trustees are not responsible for the act or default of any fund manager in the exercise of any discretion delegated to him under paragraph (2)(a) if they have taken all such steps as are reasonable to satisfy themselves or the person who made the delegation on their behalf has taken all such steps as are reasonable to satisfy himself—

- (a) that the fund manager has the appropriate knowledge and experience for managing the investments of the scheme, and
- (b) that he is carrying out his work competently and complying with Article 36.

(5) Subject to any restriction imposed by a trust scheme—

- (a) the trustees may authorise two or more of their number to exercise on their behalf any discretion to make any decision about investments, and
- (b) any such discretion may, where giving effect to the decision would not constitute^{F58} "the carrying on, in the United Kingdom, of a regulated activity (within the meaning of the Financial Services and Markets Act 2000)], be delegated by or on behalf of the trustees to a fund manager to whom paragraph (3) does not apply to be exercised in accordance with Article 36;

but in either case the trustees are liable for any acts or defaults in the exercise of the discretion if they would be so liable if they were the acts or defaults of the trustees as a whole.

(6) Article 33 does not prevent the exclusion or restriction of any liability of the trustees of a trust scheme for the acts or defaults of a fund manager in the exercise of a discretion delegated to him under paragraph (5)(b) where the trustees have taken all such steps as are reasonable to satisfy themselves, or the person who made the delegation on their behalf has taken all such steps as are reasonable to satisfy himself—

- (a) that the fund manager has the appropriate knowledge and experience for managing the investments of the scheme, and
- (b) that he is carrying out his work competently and complying with Article 36;

and paragraph (2) of Article 33 applies for the purposes of this paragraph as it applies for the purposes of that Article.

(7) The provisions of this Article override any restriction inconsistent with the provisions imposed by any rule of law or by or under any enactment, other than an enactment contained in, or made under, this Part or the Pension Schemes Act.

F56 2005 NI 1

F57 1958 c. 23 (NI)

F58 SI 2001/3649

[^{F59}Investment principles

35.—(1) The trustees of a trust scheme must secure—

- (a) that a statement of investment principles is prepared and maintained for the scheme, and
- (b) that the statement is reviewed at such intervals, and on such occasions, as may be prescribed and, if necessary, revised.

(2) In this Article “statement of investment principles”, in relation to a trust scheme, means a written statement of the investment principles governing decisions about investments for the purposes of the scheme.

(3) Before preparing or revising a statement of investment principles, the trustees of a trust scheme must comply with any prescribed requirements.

(4) A statement of investment principles must be in the prescribed form and cover, amongst other things, the prescribed matters.

(5) Neither a trust scheme nor a statement of investment principles may impose restrictions (however expressed) on any power to make investments by reference to the consent of the employer.

(6) If in the case of a trust scheme—

- (a) a statement of investment principles has not been prepared, is not being maintained or has not been reviewed or revised, as required by this Article, or
- (b) the trustees have not complied with the obligation imposed on them by paragraph (3),

Article 10 applies to any trustee who has failed to take all reasonable steps to secure compliance.

(7) Regulations may provide that this Article is not to apply to any scheme which is of a prescribed description.]

F59 2005 NI 1

Choosing investments

36.—[^{F60}(1) The trustees of a trust scheme must exercise their powers of investment in accordance with regulations and in accordance with paragraphs (3) and (4), and any fund manager to whom any discretion has been delegated under Article 34 must exercise the discretion in accordance with regulations.

(1A) Regulations under paragraph (1) may, in particular—

- (a) specify criteria to be applied in choosing investments, and
- (b) require diversification of investments.]

Para. (2) rep. by 2005 NI 1

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(3) Before investing in any manner (other than in a manner mentioned in Part I of Schedule 1 to the Trustee Investments Act 1961^{F61}) the trustees must obtain and consider proper advice on the question whether the investment is satisfactory having regard to^{F60} the requirements of regulations under paragraph (1), so far as relating to the suitability of investments, and to] the principles contained in the statement under Article 35.

(4) Trustees relating any investment must—

- (a) determine at what intervals the circumstances, and in particular the nature of the investment, make it desirable to obtain such advice as is mentioned in paragraph (3), and
- (b) obtain and consider such advice accordingly.

(5) The trustees, or the fund manager to whom any discretion has been delegated under Article 34, must exercise their powers of investment with a view to giving effect to the principles contained in the statement under Article 35, so far as reasonably practicable.

(6) For the purposes of this Article, “proper advice” means—

- [^{F62}(a) if the giving of the advice constitutes the carrying on, in the United Kingdom, of a regulated activity (within the meaning of the Financial Services and Markets Act 2000), advice given by a person who may give it without contravening the prohibition imposed by section 19 of that Act (prohibition on carrying on regulated activities unless authorised or exempt);]
- (b) in any other case, the advice of a person who is reasonably believed by the trustees to be qualified by his ability in and practical experience of financial matters and to have the appropriate knowledge and experience of the management of the investments of trust schemes.

(7) Trustees shall not be treated as having complied with paragraph (3) or (4) unless the advice was given or has subsequently been confirmed in writing.

[^{F60}(8) If the trustees of a trust scheme—

- (a) fail to comply with regulations under paragraph (1), or
- (b) do not obtain and consider advice in accordance with this Article,

Article 10 applies to any trustee who has failed to take all reasonable steps to secure compliance.]

[^{F60}(9) Regulations may exclude the application of any of the preceding provisions of this Article to any scheme which is of a prescribed description.]

F60 2005 NI 1
F61 1961 c. 62
F62 SI 2001/3649

[^{F63}**Restriction on borrowing by trustees**

36A. Regulations may prohibit the trustees of a trust scheme, or the fund manager to whom any discretion has been delegated under Article 34, from borrowing money or acting as a guarantor, except in prescribed cases.]

F63 2005 NI 1

^{F64}**Payment of surplus to employer**

37.—(1) This Article applies to a trust scheme if—

- (a) apart from this Article, power is conferred on any person (including the employer) to make payments to the employer out of funds which are held for the purposes of the scheme.
- (b) the scheme is one to which Schedule 22 to the Taxes Act 1988^{F65} (reduction of pension fund surpluses in certain exempt approved schemes) applies, and
- (c) the scheme is not being wound up.

(2) Where the power referred to in paragraph (1)(a) is conferred by the scheme on a person other than the trustees, it cannot be exercised by that person but may be exercised instead by the trustees; and any restriction imposed by the scheme on the exercise of the power shall, so far as capable of doing so, apply to its exercise by the trustees.

(3) The power referred to in paragraph (1)(a) cannot be exercised unless the requirements of paragraphs (4) and (in prescribed circumstances (5), and any prescribed requirements, are satisfied.

(4) The requirements of this paragraph are that—

- (a) the power is exercised in pursuance of proposals approved under paragraph 6(1) of Schedule 22 to the Taxes Act 1988,
- (b) the trustees are satisfied that it is in the interests of the members that the power be exercised in the manner so proposed,
- (c) where the power is conferred by the scheme on the employer, the employer has asked for the power to be exercised, or consented to its being exercised, in the manner so proposed,
- ^{F66}(d) the annual rates of the pensions under the scheme are increased, at intervals of not more than twelve months, by at least the relevant percentage, and]
- (e) notice has been given in accordance with prescribed requirements of the scheme of the proposal to exercise the power.

(5) The requirements of this paragraph are that the Authority are of the opinion that—

- (a) any requirements prescribed by virtue of paragraph (3) are satisfied, and
- (b) the requirements of paragraph (4) are satisfied.

^{F67}(5A) For the purposes of paragraph (4)(d), the relevant percentage is the percentage which, for the purposes of the increases of the annual rates of the pensions under the scheme—

- (a) falls to be computed by reference to a period which, except in the case of the first increase—
 - (i) begins with the end of the period by reference to which the last preceding increase was made, and
 - (ii) ends with a date which falls after the date of the last preceding increase, and
- (b) is equal to whichever is the lesser of—
 - (i) the percentage increase in the retail prices index over the period by reference to which the increase is made, and
 - (ii) the equivalent over that period of 5 per cent. per annum.]

^{F66}(6) ^{F66}In this Article—

^{F66}(a) “annual rate” has the same meaning as in Article 54, and]

(b) “pension” does not include—

- (i) any guaranteed minimum pension (as defined in section 4(2) of the Pension Schemes Act) or any increase in such a pension under section 105 of that Act, or
- (ii) any money purchase benefit (as defined in section 176(1) of that Act).

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(7) This Article does not apply to any payment to which, by virtue of section 601(3) of the Taxes Act 1988^{F68}, section 601(2) of that Act does not apply.

(8) If, where this Article applies to any trust scheme, the trustees purport to exercise the power referred to in paragraph (1)(a) by making a payment to which this Article applies without complying with the requirements of this Article, Articles 3 and 10 apply to any trustee who has failed to take all such steps as are reasonable to secure compliance.

(9) If, where this Article applies to any trust scheme, any person, other than the trustees, purports to exercise the power referred to in paragraph (1)(a) by making a payment to which this Article applies, Article 10 applies to him.

(10) Regulations may provide that, in prescribed circumstances, this Article does not apply to schemes falling within a prescribed class or description, or applies to them with prescribed modifications.

F64 prosp. subst. by 2005 NI 1

F65 1988 c. 1

F66 2000 c. 4 (NI)

F67 2000 c. 4 (NI)

F68 1988 c. 1

Power to defer winding up

38.—(1) If, apart from this Article, the rules of a trust scheme would require the scheme to be wound up, the trustees may determine

- [^{F69}(a) that the scheme is not for the time being to be wound up but that no new members are to be admitted to it, or
- (b) that the scheme is not for the time being to be wound up but that no new members, except pension credit members, are to be admitted to it.]

(2) Where the trustees make a determination under paragraph (1), this may also determine—

- (a) that no further contributions are to be paid towards the scheme[^{F70} (other than those due to be paid before the determination is made)], or
- (b) that no^{F70} . . . benefits are to accrue to, or in respect of, members of the scheme;

^{F69}

[^{F69}(2A) Paragraph (2) does not authorise the trustees to determine—

- (a) where there are accrued rights or pension credit rights to any benefit, that the benefit is not to be increased, or
- (b) where the power conferred by that paragraph is exercisable by virtue of a determination under paragraph (1)(b), that members of the scheme may not acquire pension credit rights under it.]

(3) This Article does not apply to—

- (a) a money purchase scheme, or
- (b) a scheme falling within a prescribed class or description.

[^{F70}(4) This Article also does not apply in relation to a trust scheme where the trustees are required to wind up, or continue the winding up of, the scheme under Article 138(1) of the Pensions (Northern Ireland) Order 2005 (requirement to wind up certain schemes with sufficient assets to meet protected liabilities).]

F69 1999 NI 11

F70 2005 NI 1

Exercise of powers by member trustees

39. No rule of law that a trustee may not exercise the powers vested in him so as to give rise to a conflict between his personal interest and his duties to the beneficiaries shall apply to a trustee of a trust scheme, who is also a member of the scheme, exercising the powers vested in him in any manner, merely because their exercise in that manner benefits, or may benefit, him as a member of the scheme.

Functions of trustees or managers

Restriction on employer-related investments

40.—(1) The trustees or managers of an occupational pension scheme must secure that the scheme complies with any prescribed restrictions with respect to the proportion of its resources that may at any time be invested in, or in any description of, employer-related investments.

(2) In this Article—

“employer-related investments” means—

- (a) shares or other securities issued by the employer or by any person who is connected with, or an associate of, the employer,
- (b) land which is occupied or used by, or subject to a lease in favour of, the employer or any such person,
- (c) property (other than land) which is used for the purposes of any business carried on by the employer or any such person,
- (d) loans to the employer or any such person, and
- (e) other prescribed investments,

Definition rep. by SI 2001/3649

[^{F71}(2A) In the definition of “employer-related investments” in paragraph (2), “securities” means—

- (a) shares,
- (b) instruments creating or acknowledging indebtedness,
- (c) instruments giving entitlements to investments,
- (d) certificates representing securities.

(2B) Paragraph (2A) must be read with—

- (a) section 22 of the Financial Services and Markets Act 2000,
- (b) any relevant order made under that section, and
- (c) Schedule 2 to that Act.]

(3) To the extent (if any) that sums due and payable by a person to the trustees or managers of an occupational pension scheme remain unpaid—

- (a) they shall be regarded for the purposes of this Article as loans made to that person by the trustees or managers, and
- (b) resources of the scheme shall be regarded as invested accordingly.

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(4) If in the case of a trust scheme paragraph (1) is not complied with, ^[F72] Article 10 applies] to any trustee who fails to take all such steps as are reasonable to secure compliance.

(5) If any resources of an occupational pension scheme are invested in contravention of paragraph (1), any trustee or manager who agreed in the determination to make the investment is guilty of an offence and liable—

- (a) on summary conviction, to a fine not exceeding the statutory maximum, and
- (b) on conviction on indictment, to a fine or imprisonment, or both.

F71 SI 2004/355

F72 2005 NI 1

Provision of documents for members

41.—(1) Regulations may require the trustees or managers of an occupational pension scheme—

- (a) to obtain at prescribed times the documents mentioned in paragraph (2), and
- (b) to make copies of them, and of the documents mentioned in paragraph (3), available to the persons mentioned in paragraph (4).

(2) The documents referred to in paragraph (1)(a) are—

- (a) the accounts audited by the auditor of the scheme,
- (b) the auditor's statement about contributions under the scheme,

Sub-para. (c) rep. by 2005 NI 1

^[F73](3) The documents referred to in paragraph (1)(b) are—

- (a) any statement of funding principles prepared or revised under Article 202 of the Pensions (Northern Ireland) Order 2005,
- (b) any valuation or report prepared by the actuary under Article 203 of that Order,
- (c) any certificate given by the actuary under Article 204 or 206 of that Order.]

(4) The persons referred to in paragraph (1)(b) are—

- (a) members and prospective members of the scheme,
- (b) spouses^[F74] or civil partners] of members and of prospective members,
- (c) persons within the application of the scheme and qualifying or prospectively qualifying for its benefits,
- (d) independent trade unions recognised to any extent for the purposes of collective bargaining in relation to members and prospective members of the scheme.

^[F75](5) Regulations may in the case of occupational pension schemes provide for—

- (a) prescribed persons,
- (b) persons with prescribed qualifications or experience, or
- (c) persons approved by the Department,

to act for the purposes of paragraph (2) instead of scheme auditors or actuaries.

(5A) Regulations may impose duties on the trustees or managers of an occupational pension scheme to disclose information to, and make documents available to, a person acting under paragraph (5).

(5B) If any duty imposed under paragraph (5A) is not complied with, [F73 Article 10 applies to any trustee, and] to any manager, who has failed to take all such steps as are reasonable to secure compliance.]

(6) Regulations shall make provision for referring to an industrial tribunal any question whether an organisation is such a trade union as is mentioned in paragraph (4)(d) and may make provision as to the form and content of any such document as is referred to in paragraph (2).

F73 2005 NI 1

F74 SR 2005/434

F75 2000 c. 4 (NI)

Arts. 42#46 rep. by 1996 NI 16

Advisers

Professional advisers

47.—(1) For every occupational pension scheme there shall be—

- (a) an individual, or a firm, appointed by the trustees or managers as auditor (referred to in this Part, in relation to the scheme, as “the auditor”), and
- (b) an individual appointed by the trustees or managers as actuary (referred to in this Part, in relation to the scheme, as “the actuary”).

(2) For every occupational pension scheme the assets of which consist of or include investments^{F76}. . . there shall be an individual or a firm appointed by or on behalf of the trustees or managers as fund manager.

[F76(2A) References in this Article to investments must be read with—

- (a) section 22 of the Financial Services and Markets Act 2000;
- (b) any relevant order under that section; and
- (c) Schedule 2 to that Act.]

(3) If in the case of an occupational pension scheme any person—

- (a) is appointed otherwise than by the trustees or managers as legal adviser or to exercise any prescribed functions in relation to the scheme, or
- (b) is appointed otherwise than by or on behalf of the trustees or managers as a fund manager,

^{F77} Articles 3 and 10 apply to any trustee, and Article 10 applies to any manager, who in exercising any of his functions places reliance on the skill or judgement of that person.

(4) In this Part, in relation to an occupational pension scheme—

- (a) the auditor, actuary and legal adviser appointed by the trustees or managers,
- (b) any fund manager appointed by or on behalf of the trustees or managers, and
- (c) any person appointed by the trustees or managers to exercise any of the functions referred to in paragraph (3)(a),

are referred to as “professional advisers”.

(5) This Article does not apply to an occupational pension scheme falling within a prescribed class or description and regulations may—

- (a) make exceptions to paragraphs (1) to (3),

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- (b) specify the qualifications and experience, or approval, required for appointment as a professional adviser.
- (6) Regulations may make provision as to—
 - (a) the manner in which professional advisers may be appointed and removed,
 - (b) the terms on which professional advisers may be appointed (including the manner in which the professional advisers may resign).
- (7) Subject to regulations made by virtue of paragraph (6), professional advisers shall be appointed on such terms as the trustees or managers may determine.
- (8) If in the case of an occupational pension scheme an auditor, actuary or fund manager is required under this Article to be appointed but the appointment has not been made, or not been made in accordance with any requirements imposed under this Article,^{F77} Articles 3 and 10 apply to any trustee, and Article 10 applies to any manager, who has failed to take all such steps as are reasonable to secure compliance.
- (9) Regulations may in the case of occupational pension schemes—
 - (a) impose duties on any person who is or has been the employer, and on any person who acts as auditor or actuary to such a person, to disclose information to the trustees or managers and to the scheme's professional advisers.
 - (b) impose duties on the trustees or managers to disclose information to, and make documents available to, and make documents available to, the scheme's professional advisers.
- (10) If in the case of an occupational pension scheme a person fails to comply with any duty imposed under paragraph (9)(a), Article 10 applies to him.
- (11) If in the case of an occupational pension scheme any duty imposed under paragraph (9)(b) is not complied with,^{F77} Articles 3 and 10 apply to any trustee, and Article 10 applies to any manager, who has failed to take all such steps as are reasonable to secure compliance.

F76 SI 2001/3649

F77 prosp. (until 06/04/06) subst. by [2005 NI 1](#)

Art. 48 rep. by 2005 NI 1

Receipts, payments and records

Other responsibilities of trustees, employers, etc.

49.—(1) The trustees of any trust scheme must, except in any prescribed circumstances, keep any money received by them in a separate account kept by them^{F78} with a deposit-taker].

Para. (1A) rep. by SI 2001/3649

- (2) Regulations may require the trustees of any trust scheme to keep—
 - (a) records of their meetings (including meetings of any of their number), and
 - (b) books and records relating to any prescribed transaction.
- (3) Regulations may, in the case of any trust scheme, require the employer, and any prescribed person acting in connection with the scheme, to keep books and records relating to any prescribed transaction.
- (4) Regulations may require books or records kept under paragraph (2) or (3) to be kept in a prescribed form and manner and for a prescribed period.

(5) Regulations must, in cases where payments of benefit to members of trust schemes are made by the employer, require the employer to make into a separate account kept by him^{F78} with a deposit-taker] and payments of benefit which have not been made to the members within any prescribed period.

(6) If in the case of any trust scheme any requirements imposed by or under paragraph (1) or (2) are not complied with,^{F79} Article 10 applies] to any trustee who has failed to take all such steps as are reasonable to secure compliance.

(7) If in the case of any trust scheme any person fails to comply with any requirement imposed under paragraph (3) or (5), Article 10 applies to him.

^{F80}(8) Where on making a payment of any earnings in respect of any employment there is deducted any amount corresponding to any contribution payable on behalf of an active member of an occupational pension scheme, the amount deducted is to be paid, within a prescribed period, to the trustees or managers of the scheme.

^{F78}(8A) “Deposit taker” means—

- (a) a person who has permission under Part 4 of the Financial Services and Markets Act 2000 to accept deposits;
- (b) an EEA firm of the kind mentioned in paragraph 5(b) of Schedule 3 to that Act which has permission under paragraph 15 of that Schedule (as a result of qualifying for authorisation under paragraph 12 of that Schedule) to accept deposits;
- (c) the Bank of England or the central bank of a member state other than the United Kingdom;
- (d) the National Savings Bank; or
- (e) a municipal bank, that is to say a company which was, immediately before the repeal of the Banking Act 1987, exempted from the prohibition in section 3 of that Act by virtue of section 4(1) of, and paragraph 4 of Schedule 2 to, that Act.

(8B) Paragraph (8A) must be read with—

- (a) section 22 of the Financial Services and Markets Act 2000;
- (b) any relevant order under that section; and
- (c) Schedule 2 to that Act.]

(9) If in any case there is a failure to comply with paragraph (8)—

- (a) Article 10 applies to the employer;^{F81} and
- ^{F82}(b) except in prescribed circumstances, the trustees or managers must give notice of the failure, within the prescribed period, to the Authority and the member]
[if the trustees or managers have reasonable cause to believe that the failure is likely to
^{F83}(b) be of material significance in the exercise by the Authority of any of their functions, they must, except in prescribed circumstances, give notice of the failure to the Authority and the member within a reasonable period after the end of the prescribed period under paragraph (8).]

(10) If in any case paragraph (9)(b) is not complied with—

Sub-para. (a) rep. by 2005 NI 1

- (b) Article 10 applies to any trustee or manager who has failed to take all^{F79} reasonable steps to secure compliance].

^{F84}(11) If any person is knowingly concerned in the fraudulent evasion of the obligation imposed by paragraph (8) in any case, he is guilty of an offence.

(12) A person guilty of an offence under paragraph (11) is liable—

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- (a) on summary conviction, to a fine not exceeding the statutory maximum; and
 - (b) on conviction on indictment, to imprisonment for a term not exceeding seven years or a fine or both.
- (13) A person shall not be required by virtue of paragraph (9)(a) to pay a penalty under Article 10 in respect of a failure if in respect of that failure he has been—
- (a) required to pay a penalty under that Article by virtue of Article 5(7) of the Welfare Reform and Pensions (Northern Ireland) Order 1999 (failures in respect of stakeholder pensions), or
 - (b) convicted of an offence under paragraph (11).]

F78 SI 2001/3649

F79 2005 NI 1

F80 1999 NI 11

F81 prosp. rep. by 2000 c. 4 (NI)

F82 Art. 49(9)(b) substituted (1.7.2005 for certain purposes, otherwise 6.4.2006) by [Pensions \(Northern Ireland\) Order 2005 \(S.I. 2005/255 \(N.I. 1\)\)](#), [arts. 1\(2\)](#), 246(1); S.R. 2005/321, art. 2(15), [Sch. Pt. 2](#)

F83 Art. 49(9)(b) substituted (1.7.2005 for certain purposes, otherwise 6.4.2006) by [Pensions \(Northern Ireland\) Order 2005 \(S.I. 2005/255 \(N.I. 1\)\)](#), [arts. 1\(2\)](#), 246(1); S.R. 2005/321, art. 2(15), [Sch. Pt. 2](#)

F84 prosp. inserted by 2000 c. 4 (NI)

[^{F85}Record of winding-up decisions

49A.—(1) Except in so far as regulations otherwise provide, the trustees or managers of an occupational pension scheme shall keep written records of—

- (a) any determination for the winding-up of the scheme in accordance with its rules,
- (b) decisions as to the time from which steps for the purposes of the winding-up of the scheme are to be taken,
- (c) determinations under Article 38,
- (d) determinations in accordance with the rules of the scheme to postpone the commencement of a winding-up of the scheme.

(2) For the purpose of this Article—

- (a) the determinations and decisions of which written records must be kept under this Article include determinations and decisions by persons who—
 - (i) are not trustees or managers of a scheme, but
 - (ii) are entitled, in accordance with the rules of a scheme, to make a determination for its winding-up, and
- (b) regulations may, in relation to such determinations or decisions as are mentioned in subparagraph (a), impose obligations to keep written records on the persons making the determinations or decisions (as well as, or instead of, on the trustees or managers).

(3) Regulations may provide for the form and content of any records that are required to be kept under this Article.

Para. (4) rep. by 2005 NI 1

(5) Article 10 applies to any trustee or manager of a scheme who fails to take all such steps as are reasonable to secure compliance by the trustees or managers of that scheme with those obligations.]

F85 2000 c. 4 (NI)

Resolution of disputes

^{F86}Resolution of disputes

50.—(1) The trustees or managers of an occupational pension scheme must secure that such arrangements as are required by or under this Article for the resolution of disagreements between prescribed persons about matters in relation to the scheme are made and implemented.

(2) The arrangements must—

- (a) provide for a person, on the application of a complainant of a prescribed description, to give a decision on such a disagreement, and
- (b) require the trustees or managers, on the application of such a complainant following a decision given in accordance with sub-paragraph (a), to reconsider the matter in question and confirm the decision or give a new decision in its place.

(3) Regulations may make provision about—

- (a) applications for decisions under such arrangements, and
- (b) the procedure for reaching and giving such decisions,

including the times by which applications are to be made and decisions given.

(4) Applications and decisions under paragraph (2) must be in writing.

(5) Arrangements under paragraph (1) must, in the case of existing schemes, have effect as from the commencement of this Article.

(6) If, in the case of any occupational pension scheme, such arrangements as are required by this Article to be made have not been made, or are not being implemented, Article 10 applies to any of the trustees or managers who have failed to take all such steps as are reasonable to secure that such arrangements are made or implemented.

(7) This Article does not apply to a scheme of a prescribed description and paragraph (1) does not apply to prescribed matters in relation to the scheme.

F86 prosp. subst. by 2005 NI 1

VALID FROM 12/03/2008

^{F87}Meaning of “person with an interest in the scheme”

50A.—(1) For the purposes of Article 50 a person is a person with an interest in an occupational pension scheme if—

- (a) he is a member of the scheme,
- (b) he is a widow, widower, surviving civil partner or surviving dependant of a deceased member of the scheme,
- (c) he is a surviving non-dependant beneficiary of a deceased member of the scheme,
- (d) he is a prospective member of the scheme,
- (e) he has ceased to be within any of the categories of persons referred to in sub-paragraphs (a) to (d), or
- (f) he claims to be such a person as is mentioned in sub-paragraphs (a) to (e) and the dispute relates to whether he is such a person.

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(2) In paragraph (1)(c) a “non-dependant beneficiary”, in relation to a deceased member of an occupational pension scheme, means a person who, on the death of the member, is entitled to the payment of benefits under the scheme.

(3) In paragraph (1)(d) a “prospective member” means any person who, under the terms of his contract of service or the rules of the scheme—

- (a) is able, at his own option, to become a member of the scheme,
- (b) will become so able if he continues in the same employment for a sufficiently long period,
- (c) will be admitted to the scheme automatically unless he makes an election not to become a member, or
- (d) may be admitted to it subject to the consent of his employer.]

F87 Arts. 50, 50A, 50B substituted (12.3.2008 for specified purposes, otherwise 6.4.2008) for art. 50 by Pensions (Northern Ireland) Order 2005 (S.I. 2005/255 (N.I. 1)), arts. 1(2), 250 (as amended (5.12.2005) by Civil Partnership (Pensions and Benefit Payments) (Consequential, etc. Provisions) Order (Northern Ireland) 2005 (S.R. 2005/434), arts. 1(3), 2, Sch. para. 30) (with savings in art. 285(5)); S.R. 2008/104, art. 2

VALID FROM 12/03/2008

[^{F88}The dispute resolution procedure

50B.—(1) The procedure provided for by the dispute resolution arrangements in pursuance of Article 50 (4) must (in accordance with Article 50(6)) include the following provision.

(2) The procedure must provide that an application for the resolution of a pension dispute under Article 50(4) may be made or continued on behalf of a person who is a party to the dispute mentioned in Article 50(3)(a)(ii)—

- (a) where the person dies, by his personal representative,
- (b) where the person is a minor or is otherwise incapable of acting for himself, by a member of his family or some other person suitable to represent him, and
- (c) in any other case, by a representative nominated by him.

(3) The procedure—

- (a) must include provision requiring an application to which paragraph (3A) applies to be made by the end of such reasonable period as is specified;
- (b) may include provision about the time limits for making such other applications for the resolution of pension disputes as are specified.

(3A) This paragraph applies to—

- (a) any application by a person with an interest in a scheme as mentioned in Article 50A(1) (e), and
- (b) any application by a person with an interest in a scheme as mentioned in Article 50A(1) (f) who is claiming to be such a person as is mentioned in Article 50A(1)(e).

(4) The procedure must include provision about—

- (a) the manner in which an application for the resolution of a pension dispute is to be made,
- (b) the particulars which must be included in such an application, and

(c) the manner in which any decisions required in relation to such an application are to be reached and given.

(4A) The provision made under paragraph (4)(c) may include provision for decisions of the trustees or managers to be taken on their behalf by one or more of their number.

(5) The procedure must provide that if, after an application for the resolution of a pension dispute has been made, the dispute becomes an exempted dispute within the meaning of Article 50(9)(a) or (b), the resolution of the dispute under the procedure ceases.]

F88 Arts. 50, 50A, 50B substituted (12.3.2008 for specified purposes, otherwise 6.4.2008) for art. 50 by Pensions (Northern Ireland) Order 2005 (S.I. 2005/255 (N.I. 1)), arts. 1(2), 250 (as amended (11.2.2008) by Pensions Act (Northern Ireland) 2008 (c. 1), s. 14) (with savings in art. 285(5)); S.R. 2008/104, art. 2

Indexation

Annual increase in rate of pension

51.—(1) Subject to paragraph (6), this Article applies to a pension under an occupational pension scheme if—

(a) the scheme—

(i) is an approved scheme, within the meaning of Chapter I of Part XIV of the Taxes Act 1988^{F89} (retirement benefit schemes approved by the Commissioners of Inland Revenue) or is a scheme for which such approval has been applied for under that Chapter and not refused,^{F90} . . .

(ii) is not a public service pension scheme, and

[^{F90}(iii) in the case where the pension becomes a pension in payment on or after the commencement day, is not a money purchase scheme, and]

[^{F90}(b) the whole, or any part of, the pension is attributable—

(i) to pensionable service on or after the appointed day, or

(ii) in the case of money purchase benefits where the pension is in payment before the commencement day, to payments in respect of employment carried on on or after the appointed day, and

(c) apart from this Article—

(i) the annual rate of the pension, or

(ii) if only part of the pension is attributable as described in sub-paragraph (b), so much of the annual rate as is attributable to that part,

would not be increased each year by at least the appropriate percentage of that rate.]

(2) [^{F91}Subject to Articles 51A and 52], where a pension to which this Article applies, or any part of it, is attributable to pensionable service on or after the appointed day or, in the case of money purchase benefits[^{F90} where the pension is in payment before the commencement day], to payments in respect of employment carried on on or after the appointed day—

(a) the annual rate of the pension, or

(b) if only part of the pension is attributable to pensionable service or, as the case may be, to payments in respect of employment carried on on or after the appointed day, so much of the annual rate as is attributable to that part,

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must be increased annually by at least the appropriate percentage.

(3) Paragraph (2) does not apply to a pension under an occupational pension scheme if the rules of the scheme require—

- (a) the annual rate of the pension, or
- (b) if only part of the pension is attributable to pensionable service or, as the case may be, to payments in respect of employment carried on on or after the appointed day, so much of the annual rate as is attributable to that part,

to be increased at intervals of not more than twelve months by at least the relevant percentage and the scheme complies with any prescribed requirements.

(4) For the purposes of paragraph (3) the relevant percentage is—

- (a) the percentage increase in the retail prices index for the reference period, being a period determined, in relation to each periodical increase under the rules, or
- (b) the percentage for that period which corresponds to^{F90}

- [^{F90}(i) in the case of a category X pension, 5 per cent. per annum, and
- (ii) in the case of a category Y pension, 2.5 per cent. per annum.,]

whichever is the lesser.

[^{F90}(4A) For the purposes of this Article, a pension is a category X pension if it is—

- (a) a pension which became a pension in payment before the commencement day, or
- (b) a pension—
 - (i) which becomes a pension in payment on or after the commencement day, and
 - (ii) the whole of which is attributable to pensionable service before that day.

(4B) For the purposes of this Article, a pension is a category Y pension if it is a pension—

- (a) which becomes a pension in payment on or after the commencement day, and
- (b) the whole of which is attributable to pensionable service on or after the commencement day.

(4C) For the purposes of applying this Article in the case of a pension—

- (a) which becomes a pension in payment on or after the commencement day,
- (b) part of which is attributable to pensionable service before the commencement day, and
- (c) part of which is attributable to pensionable service on or after that day,

each of those parts of the pension is to be treated as if it were a separate pension.]

(5) Regulations may provide that[^{F90} any of the provisions of this Article] apply in relation to a pension as if so much of it as would not otherwise be attributable to pensionable service or to payments in respect of employment were attributable to pensionable service or, as the case may be, payments in respect of employment—

- (a) before the appointed day[^{F90} or the commencement day],
- (b) on or after that day, or
- (c) partly before and partly on or after that day.

(6) This Article does not apply to any pension or part of a pension[^{F92} which is attributable (directly or indirectly) to a pension credit or] which, in the opinion of the trustees or managers, is derived from the payment by any member of the scheme of voluntary contributions.

F90 2005 NI 1
F91 2000 c. 4 (NI)
F92 1999 NI 11

Modifications etc. (not altering text)

C6 mod. by SR 2005/170

[^{F93}Meaning of “the appropriate percentage”

51ZA. For the purposes of Article 51(1)(c) and (2), “the appropriate percentage” in relation to an increase in the whole or part of the annual rate of a pension—

(a) in the case of a category X pension, means the revaluation percentage for the latest revaluation period specified in the latest revaluation order (revaluation of accrued pension benefits) which is in force at the time of the increase, and

(b) in the case of a category Y pension, means whichever is the lesser of—

- (i) the revaluation percentage for the latest revaluation period specified in the latest revaluation order which is in force at the time of the increase, and
- (ii) 2.5 per cent.]

F93 2005 NI 1

[^{F94}Restriction on increase where annuity tied to investments

51A.—(1) No increase under Article 51 is required to be made, at any time on or after the relevant date, of so much of any pension under a money purchase scheme as—

- (a) is payable by way of an annuity the amount of which for any year after the first year of payment is determined (whether under the terms of the scheme or under the terms of the annuity contract in pursuance of which it is payable) by reference to fluctuations in the value of, or the return from, particular investments,
- (b) does not represent benefits payable in respect of the protected rights of any member of the scheme, and
- (c) satisfies such other conditions (if any) as may be prescribed.

(2) For the purposes of this Article it shall be immaterial whether the annuity in question is payable out of the funds of the scheme in question or under an annuity contract entered into for the purposes of the scheme.

(3) In this Article “the relevant date” means the date appointed for the coming into operation of section 47 of the Child Support, Pensions and Social Security Act (Northern Ireland) 2000.]

F94 2000 c. 4 (NI)

Restriction on increase where member is under 55

52.—(1) Subject to paragraph (2), no increase under Article 51 is required to be paid to or for a member of a scheme whose pension is in payment but who has not attained the age of 55 at the time when the increase takes effect.

(2) Paragraph (1) does not apply if the member—

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- (a) is permanently incapacitated by mental or physical infirmity from engaging in regular full-time employment, or
 - (b) has retired on account of mental or physical infirmity from the employment in respect of which, or on retirement from which, the pension is payable.
- (3) The rules of a scheme may provide that if, in a case where a pension has been paid to or for a member under the age of 55 at an increased rate in consequence of paragraph (2), the member—
- (a) ceases to suffer from the infirmity in question before he attains the age of 55, but
 - (b) continues to be entitled to the pension,
- any increases subsequently taking effect under Article 51 in the annual rate of the pension shall not be paid or shall not be paid in full.
- (4) In any case where—
- (a) by virtue only of paragraph (1) or (3), increases are not paid to or for a member or are not paid in full, but
 - (b) the member attains the age of 55 or, in a case falling within paragraph (3), again satisfies the condition set out in paragraph (2)(a) or (b),
- his pension shall then become payable at the annual rate at which it would have been payable apart from paragraph (1) or (3).

Effect of increases above the statutory requirement

53.—(1) Where in any tax year the trustees or managers of an occupational pension scheme make an increase in a person's pension, not being an increase required by section 105 of the Pension Schemes Act or Article 51, they may deduct the amount of the increase from any increase which, but for this paragraph, they would be required to make under that section or Article in the next tax year.

(2) Where in any tax year the trustees or managers of such a scheme make an increase in a person's pension and part of the increase is not required by section 105 of the Pension Schemes Act or Article 51, they may deduct that part of the increase from any increase which, but for this paragraph, they would be required to make under that section or Article in the next tax year.

(3) Where by virtue of paragraph (1) or (2) any pensions are not required to be increased in pursuance of section 105 of the Pension Schemes Act or Article 51, or not by the full amount that they otherwise would be, their amount shall be calculated for any purpose as if they had been increased in pursuance of that section or Article or, as the case may be, by that full amount.

[^{F95}(3A) In paragraphs (1) and (2), the references to a person's pension do not include any pension which is attributable (directly or indirectly) to a pension credit.]

(4) In section 106 of the Pension Schemes Act (resources for annual increase of guaranteed minimum pension)—

- (a) subsections (2) to (4) are omitted, and
- (b) in subsection (1), for “subsection (2) or (3)” substitute “Article 53 of the Pensions (Northern Ireland) Order 1995”.

F95 1999 NI 11

Articles 51 to 53: supplementary

54.—(1) The first increase required by Article 51 in the rate of a pension must take effect not later than the first anniversary of the date on which the pension is first paid; and subsequent increases must take effect at intervals of not more than twelve months.

(2) Where the first such increase is to take effect on a date when the pension has been in payment for a period of less than twelve months, the increase must be of an amount at least equal to one twelfth of the amount of the increase so required (apart from this paragraph) for each complete month in that period.

(3) In Articles 51 to 53 and this Article—

“annual rate”, in relation to a pension, means the annual rate of the pension, as previously increased under the rules of the scheme or under Article 51,

“the appointed day” means the day appointed under Article 1 for the commencement of Article 51,

Definition rep. by 2005 NI 1

[^{F96}“the commencement day” means the day appointed for the coming into operation of Article 255 of the Pensions (Northern Ireland) Order 2005 (amendments to Article 51);]

“pension”, in relation to a scheme, means any pension in payment under the scheme and includes an annuity,

“reference period” has the meaning given by paragraph 2 of Schedule 3 to the Pension Schemes Act 1993^{F97},

“revaluation order” means an order under paragraph 2(1) of Schedule 2 to the Pension Schemes Act,

“revaluation percentage” means a percentage specified for a revaluation period by a revaluation order;

“revaluation period” has the meaning given by paragraph 2(2) of Schedule 2 to the Pension Schemes Act.

F96 2005 NI 1

F97 1993 c. 48

Article 51: end of annual increase in GMP

55. In section 105 of the Pension Schemes Act (annual increase of guaranteed minimum pensions), in subsection (1) (increase in rate of that part of guaranteed minimum pension attributable to earnings factors for tax year 1988#89 and subsequent tax years) for “the tax year 1988#89 and subsequent tax years” substitute “the tax years in the relevant period as defined in that section”.

Arts. 56 - 61 rep. by 2005 NI 1

Equal treatment

The equal treatment rule

62.—(1) An occupational pension scheme which does not contain an equal treatment rule shall be treated as including one.

(2) An equal treatment rule is a rule which relates to the terms on which—

- (a) persons become members of the scheme, and
- (b) members of the scheme are treated.

(3) Subject to paragraph (6), an equal treatment rule has the effect that where—

- (a) a woman is employed on like work with a man in the same employment,

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- (b) a woman is employed on work rated as equivalent with that of a man in the same employment, or
- (c) a woman is employed on work which, not being work in relation to which sub-paragraph (a) or (b) applies, is, in terms of the demands made on her (for instance under such headings as effort, skill and decision) or equal value to that of a man in the same employment,

but (apart from the rule) any of the terms referred to in paragraph (2) is or becomes less favourable to the woman than it is to the man, the term shall be treated as so modified as not to be less favourable.

(4) An equal treatment rule does not operate in relation to any difference as between a woman and a man in the operation of any of the terms referred to in paragraph (2) if the trustees or managers of the scheme prove that the difference is genuinely due to a material factor which—

- (a) is not the difference of sex, but
- (b) is a material difference between the woman's case and the man's case.

(5) References in paragraph (4) and Articles 63 to 65 to the terms referred to in paragraph (2), or the effect of any of those terms, include—

- (a) a term which confers on the trustees or managers of an occupational pension scheme, or any other person, a discretion which, in a case within any of sub-paragraphs (a) to (c) of paragraph (3)—
 - (i) may be exercised so as to affect the way in which persons become members of the scheme, or members of the scheme are treated, and
 - (ii) may (apart from the equal treatment rule) be so exercised in a way less favourable to the woman than to the man, and
- (b) the effect of any exercise of such a discretion;

and references to the terms on which members of the scheme are treated are to be read accordingly.

(6) In the case of a term within paragraph (5)(a) the effect of an equal treatment rule is that the term shall be treated as so modified as not to permit the discretion to be exercised in a way less favourable to the woman than to the man.

Equal treatment rule: supplementary

63.—(1) The reference in Article 62(2) to the terms on which members of a scheme are treated includes those terms as they have effect for the benefit of dependants of members, and the reference in Article 62(5) to the way in which members of a scheme are treated includes the way they are treated as it has effect for the benefit of dependants of members.

(2) Where the effect of any of the terms referred to in Article 62(2) on persons of the same sex differs according to their^{F98} family, marital or civil partnership status], the effect of the term is to be compared for the purposes of Article 62 with its effect on persons of the other sex who have the same status.

(3) An equal treatment rule has effect subject to paragraphs 5 and 6 of Schedule 5 to the Social Security (Northern Ireland) Order 1989^{F99} (employment-related benefit schemes: maternity and family leave provisions).

(4) Article 62 shall be construed as one with section 1 of the Equal Pay Act (Northern Ireland) 1970^{F100} (requirement of equal treatment for men and women in the same employment); and sections 2 and 2A of that Act (disputes and enforcement) shall have effect for the purposes of Article 62 as if—

- (a) references to an equality clause were to an equal treatment rule,

- (b) references to employers and employees were to the trustees or managers of the scheme (on the one hand) and the members, or prospective members, of the scheme (on the other),

(c) ^{F101} for section 2(4) there were substituted—

“(4) No claim in respect of the operation of an equal treatment rule in respect of an occupational pension scheme shall be referred to an industrial tribunal otherwise than by virtue of subsection (3) unless the woman concerned has been employed in a description^{F102} or category of employment to which the scheme relates within the six months preceding the date of the reference.”, and

(d) references to section 1(2)(c) were to Article 62(3)(c).

(5) Regulations may make provision for the Equal Pay Act (Northern Ireland) 1970^{F103} to have effect, in relation to an equal treatment rule, with prescribed modifications; and paragraph (4) shall have effect subject to any regulations made by virtue of this paragraph.

(6) Article 62, so far as it relates to the terms on which members of a scheme are treated, is to be treated as having had effect in relation to any pensionable service on or after 17th May 1990.

F98 SR 2005/434

F99 1989 NI 13

F100 1970 c. 32 (NI)

F101 mod. by SR 2005/377

F102 prosp. rep. by 2005 NI 1

F103 1970 c. 32 (NI)

Equal treatment rule: exceptions

64.—(1) An equal treatment rule does not operate in relation to any variation as between a woman and a man in the effect of any of the terms referred to in Article 62(2) if the variation is permitted by or under any of the provisions of this Article.

(2) Where a man and a woman are eligible, in prescribed circumstances, to receive different amounts by way of pension, the variation is permitted by this paragraph if, in prescribed circumstances, the differences are attributable only to differences between men and women in the benefits under sections 43 to 55 of the Contributions and Benefits Act (state retirement pensions) to which, in prescribed circumstances, they are or would be entitled.

(3) A variation is permitted by this paragraph if—

(a) the variation consists of the application of actuarial factors which differ for men and women to the calculation of contributions to a scheme by employers, being factors which fall within a prescribed class or description, or

(b) the variation consists of the application of actuarial factors which differ for men and women to the determination benefits falling within a prescribed class or description;

and in this paragraph “benefits” include any payment or other benefit made to or in respect of a person as a member of the scheme.

(4) Regulations may—

(a) permit further variations, or

(b) amend or repeal paragraph (2) or (3);

and regulations made by virtue of this paragraph may have effect in relation to pensionable service on or after 17th May 1990 and before the date on which the regulations are made.

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Equal treatment rule: consequential alteration of schemes

65.—(1) The trustees or managers of an occupational pension scheme may, if—

- (a) they do not (apart from this Article) have power to make such alterations to the scheme as may be required to secure conformity with an equal treatment rule, or
- (b) they have such power, but the procedure for doing so—
 - (i) is liable to be unduly complex or protracted, or
 - (ii) involves the obtaining of consents which cannot be obtained, or can only be obtained with undue delay or difficulty,

by resolution make such alterations to the scheme.

(2) The alterations may have effect in relation to a period before the alterations are made.

Equal treatment rule: effect on terms of employment, etc.

66.—(1) In section 6 of the Equal Pay Act (Northern Ireland) 1970^{F104} (exclusions), for subsections (1A) and (2) (exclusion for terms related to death or retirement) substitute—

“(1B) An equality clause shall not operate in relation to terms relating to a person's membership of, or rights under, an occupational pension scheme, being terms in relation to which, by reason only of any provision made by or under Articles 62 to 64 of the Pensions (Northern Ireland) Order 1995 (equal treatment), an equal treatment rule would not operate if the terms were included in the scheme.

(1C) In subsection (1B), “occupational pension scheme” has the same meaning as in the Pension Schemes (Northern Ireland) Act 1993 and “equal treatment rule” has the meaning given by Article 62 of the Pensions (Northern Ireland) Order 1995.”.

(2) In Article 6(1) of the Sex Discrimination (Northern Ireland) Order 1976^{F105} (victimisation of complainants, etc.)—

- (a) in sub-paragraphs (a) to (c), after “Equal Pay Act” insert “or Articles 62 to 65 of the Pensions (Northern Ireland) Order 1995”, and
- (b) at the end of sub-paragraph (d) add “ or under Articles 62 to 65 of the Pensions (Northern Ireland) Order 1995 ”.

(3) In Article 8 of the Sex Discrimination (Northern Ireland) Order 1976 (discrimination against applicants and employees), for paragraph (4) substitute—

“(4) Paragraphs (1)(b) and (2) do not render it unlawful for a person to discriminate against a woman in relation to her membership of, or rights under, an occupational pension scheme in such a way that, were any term of the scheme to provide for discrimination in that way, then, by reason only of any provision made by or under Articles 62 to 64 of the Pensions (Northern Ireland) Order 1995 (equal treatment), an equal treatment rule would not operate in relation to that term.

(4A) In paragraph (4), “occupational pension scheme” has the same meaning as in the Pension Schemes (Northern Ireland) Act 1993 and “equal treatment rule” has the meaning given by Article 62 of the Pensions (Northern Ireland) Order 1995.”.

(4) Regulations may make provision—

- (a) for the Equal Pay Act (Northern Ireland) 1970^{F106} to have effect, in relation to terms of employment relating to membership of, or rights under, an occupational pension scheme with prescribed modifications, and
- (b) for imposing requirements on employers as to the payment of contributions and otherwise in case of their failing or having failed to comply with any such terms.

- (5) References in paragraph (4) to terms of employment include (where the context permits)—
- (a) any collective agreement or pay structure, and
 - (b) an agricultural wages order within section 5 of the Equal Pay Act (Northern Ireland) 1970^{F107}.

F104 1970 c. 32 (NI)

F105 1976 NI 15

F106 1970 c. 32 (NI)

F107 1970 c. 32 (NI)

[^{F108}Treatment of overseas residents, etc.]

F108 2000 c. 4 (NI)

Prohibition on different rules for overseas residents, etc.

66A.—(1) This Article applies where an occupational pension scheme contains provisions contravening paragraph (2) or (3).

(2) Except so far as regulations otherwise provide, provisions of an occupational pension scheme contravene this paragraph to the extent that they would (apart from this Article) have an effect with respect to—

- (a) the entitlement of any person to benefits under the scheme, or
- (b) the payment to any person of benefits under the scheme,

which would be different according to whether or not a place outside the United Kingdom is specified by that person as the place to which he requires payments of benefits under the scheme to be made to him.

(3) Except so far as regulations otherwise provide, provisions of an occupational pension scheme contravene this paragraph to the extent that they would (apart from this Article) have an effect with respect to—

- (a) the entitlement of any person to remain a member of the scheme,
- (b) the eligibility of any person to remain a person by or in respect of whom contributions are made towards or under the scheme, or
- (c) the making by or in respect of any person who is a member of the scheme of any contributions towards or under the scheme,

which would be different according to whether that person works wholly in the United Kingdom or wholly or partly outside the United Kingdom.

(4) Provisions contravening paragraph (2) shall have effect, in relation to all times after the coming into operation of section 51 of the Child Support, Pensions and Social Security Act (Northern Ireland) 2000, as if they made the same provision in relation to a person who requires payments of benefits to be made to a place outside the United Kingdom as they make in relation to a person in whose case all payments of benefits fall to be made to a place in the United Kingdom.

(5) Provisions contravening paragraph (3) shall have effect, in relation to all times after the coming into operation of section 51 of the Child Support, Pensions and Social Security Act (Northern Ireland) 2000, as if they made the same provision in relation to persons working wholly or partly outside the United Kingdom as they make in relation to persons working wholly in the United Kingdom.

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(6) This Article—

- (a) shall be without prejudice to any statutory provision under which any amount is to be or may be deducted, or treated as deducted, from amounts payable by way of benefits under the scheme or treated as so payable; and
- (b) shall not apply in relation to so much of any provision of a scheme as is required for securing compliance with the conditions of any approval, exemption or relief given or available under the Tax Acts.

Modification of schemes

[^{F109}The subsisting rights provisions

67.—(1) The subsisting rights provisions apply to any power conferred on any person by an occupational pension scheme to modify the scheme other than a power conferred by—

- (a) a public service pension scheme, or
- (b) a prescribed scheme or a scheme of a prescribed description.

(2) Any exercise of such a power to make a regulated modification is voidable in accordance with Article 67G unless the following are satisfied in respect of the modification—

- (a) in the case of each affected member—
 - (i) if the modification is a protected modification, the consent requirements (see Article 67B),
 - (ii) if it is not, either the consent requirements or the actuarial equivalence requirements (see Article 67C),
- (b) the trustee approval requirement (see Article 67E), and
- (c) the reporting requirement (see Article 67F).

(3) The subsisting rights provisions do not apply in relation to the exercise of a power—

- (a) for a purpose connected with debits under Article 26(1) of the Welfare Reform and Pensions (Northern Ireland) Order 1999, or
- (b) in a prescribed manner.

(4) References in this Article and Articles 67A to 67I to “the subsisting rights provisions” are to this Article and those Articles.

(5) Paragraph (6) applies in relation to the exercise of a power to which the subsisting rights provisions apply to make a regulated modification where a member of the scheme dies before the requirements mentioned in paragraph (2), so far as they apply in his case, have been complied with in respect of the modification if—

- (a) before he died he had given his consent to the modification in accordance with Article 67B(4)(b), or
- (b) before he died, or before the trustees of the scheme had become aware that he had died, the trustees had complied with Article 67C(4)(a), (b) and (d) in respect of the modification in his case.

(6) Any of the requirements mentioned in paragraph (2), as it applies in respect of the modification—

- (a) which is satisfied in the case of the member, or
- (b) which would have been satisfied in his case had he not died before it was satisfied,

is to be taken to be satisfied in the case of any survivor of the member in respect of the modification.]

F109 Arts. 67, 67A-67I substituted (1.11.2005 for certain purposes, otherwise 6.4.2006) for art. 67 by Pensions (Northern Ireland) Order 2005 (S.I. 2005/255 (N.I. 1)), arts. 1(2), 239; S.R. 2005/411, art. 2(5), Sch. Pt. 2

[^{F110}The subsisting rights provisions: interpretation

67A.—(1) In the subsisting rights provisions, each of the following expressions has the meaning given to it by the following provisions of this Article—

“regulated modification”

“protected modification”

“detrimental modification”

“affected member”

“subsisting right”

“scheme rules”.

(2) “Regulated modification” means a modification which is—

(a) a protected modification, or

(b) a detrimental modification,

or is both.

(3) “Protected modification” means a modification of an occupational pension scheme which—

(a) 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 money purchase benefits becoming, or being replaced with, a right or entitlement to money purchase benefits under the scheme rules,

(b) would or might result in a reduction in the prevailing rate of any pension in payment under the scheme rules, or

(c) is of a prescribed description.

For the purposes of sub-paragraph (a), the reference in the definition of “money purchase benefits” in section 176(1) of the Pension Schemes Act to the widow or widower of a member of an occupational pension scheme is to be read as including any other survivor of the member.

(4) “Detrimental modification” means a modification of an occupational pension scheme which on taking effect would or might adversely affect any subsisting right of—

(a) any member of the scheme, or

(b) any survivor of a member of the scheme.

(5) A person is an “affected member”

(a) in relation to a protected modification within sub-paragraph (a) or (b) of paragraph (3), if, at the time the modification takes effect, he is—

(i) a member of the scheme, or

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

and, on taking effect, the modification would or might affect any of his subsisting rights as mentioned in that sub-paragraph,

(b) in relation to a protected modification within sub-paragraph (c) of that paragraph, if he is of a prescribed description, and

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(c) in relation to a detrimental modification which is not a protected modification if, at the time the modification takes effect, he is—

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

and, on taking effect, the modification would or might adversely affect any of his subsisting rights.

(6) “Subsisting right” means—

(a) in relation to a member of an occupational pension scheme, at any time—

- (i) any right which at that time has accrued to or in respect of him to future benefits under the scheme rules, or
- (ii) any entitlement to the present payment of a pension or other benefit which he has at that time, under the scheme rules, and

(b) in relation to the survivor of a member of an occupational pension scheme, at any time, any entitlement to benefits, or right to future benefits, which he has at that time under the scheme rules in respect of the member.

For this purpose, “right” includes a pension credit right.

(7) At any time when the pensionable service of a member of an occupational pension scheme is continuing, his subsisting rights are to be determined as if he had opted, immediately before that time, to terminate that service.

(8) “Scheme rules”, in relation to a scheme, means—

- (a) the rules of the scheme, except so far as overridden by a relevant legislative provision,
- (b) the relevant legislative provisions, to the extent that they have effect in relation to the scheme and are not reflected in the rules of the scheme, and
- (c) any provision which the rules of the scheme do not contain but which the scheme must contain if it is to conform with the requirements of Chapter 1 of Part IV of the Pension Schemes Act (preservation of benefit under occupational pension schemes).

(9) For the purposes of paragraph (8)—

(a) “relevant legislative provision” means any provision contained in any of the following provisions—

- (i) Schedule 5 to the Social Security (Northern Ireland) Order 1989 (equal treatment for men and women);
- (ii) Chapters 2 to 5 of Part IV of the Pension Schemes Act (certain protection for early leavers) or regulations made under any of those Chapters;
- (iii) Part IVA of that Act (requirements relating to pension credit benefit) or regulations made under that Part;
- (iv) section 106(1) of that Act (requirement as to resources for annual increase of guaranteed minimum pensions);
- (v) this Part (occupational pensions) or orders or regulations made or having effect as if made under this Part;
- (vi) Article 28 of the Welfare Reform and Pensions (Northern Ireland) Order 1999 (pension debits: reduction of benefit);
- (vii) any provision mentioned in Article 279(2) of the Pensions (Northern Ireland) Order 2005;

(b) a relevant legislative provision is to be taken to override any of the provisions of the scheme if, and only if, it does so by virtue of any of the following provisions—

- (i) paragraph 3 of Schedule 5 to the Social Security (Northern Ireland) Order 1989;
 - (ii) section 125(1) of the Pension Schemes Act;
 - (iii) Article 114(1);
 - (iv) Article 28(4) of the Welfare Reform and Pensions (Northern Ireland) Order 1999;
 - (v) Article 279(1) of the Pensions (Northern Ireland) Order 2005.
- (10) For the purposes of this Article—
- (a) “survivor”, in relation to a member of an occupational pension scheme, means a person who—
 - (i) is the widow or widower of the member, or
 - (ii) has survived the member and has any entitlement to benefit, or right to future benefits, under the scheme rules in respect of the member, and
 - (b) a modification would or might adversely affect a person's subsisting right if it would alter the nature or extent of the entitlement or right so that the benefits, or future benefits, to which the entitlement or right relates would or might be less generous.
- (11) In the subsisting rights provisions, in relation to—
- (a) the exercise of a power to modify an occupational pension scheme to which the subsisting rights provisions apply, or
 - (b) a modification made, or to be made, in exercise of such a power,
- references to “the scheme” are to be read as references to the scheme mentioned in subparagraph (a).]

F110 Arts. 67, 67A-67I substituted (1.11.2005 for certain purposes, otherwise 6.4.2006) for art. 67 by Pensions (Northern Ireland) Order 2005 (S.I. 2005/255 (N.I. 1)), arts. 1(2), 239; S.R. 2005/411, art. 2(5), Sch. Pt. 2

Modifications etc. (not altering text)

- C7** Art. 67A(6)(7) modified by S.I. 2005/255 (N.I. 1), art. 34A(8)(b) (as inserted (15.12.2008 for certain purposes, otherwise 29.6.2009) by Pensions (No. 2) Act (Northern Ireland) 2008 (c. 13), ss. 103, 118(3)(a)(ii)(b), Sch. 8 para. 2(2)); S.R. 2009/249, art. 2(b)(ii)
- C8** Art. 67A(6)(7) modified by S.I. 2005/255 (N.I. 1), art. 35B(4)(b) (as inserted (15.12.2008) by Pensions (No. 2) Act (Northern Ireland) 2008 (c. 13), ss. 103, 118(3)(a)(v)(b), Sch. 8 para. 9)
- C9** Art. 67A(6)(7) modified by S.I. 2005/255 (N.I. 1), art. 39B(4)(b) (as inserted (15.12.2008) by Pensions (No. 2) Act (Northern Ireland) 2008 (c. 13), ss. 103, 118(3)(a)(v)(b), Sch. 8 para. 10)

[F111] The consent requirements

67B.—(1) References in the subsisting rights provisions to the consent requirements, in respect of a regulated modification, are to be read in accordance with this Article.

- (2) The consent requirements apply in the case of an affected member—
 - (a) if the modification is a protected modification;
 - (b) if it is not a protected modification, unless the actuarial equivalence requirements apply in his case.
- (3) The consent requirements consist of—
 - (a) the informed consent requirement (see paragraph (4)), and

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- (b) the timing requirement (see paragraph (6)).
- (4) The informed consent requirement is satisfied in the case of an affected member if before the modification is made—
 - (a) the trustees have—
 - (i) given him information in writing adequate to explain the nature of the modification and its effect on him,
 - (ii) notified him in writing that he may make representations to the trustees about the modification,
 - (iii) afforded him a reasonable opportunity to make such representations, and
 - (iv) notified him in writing that the consent requirements apply in his case in respect of the modification, and
 - (b) after the trustees have complied with sub-paragraph (a)(i), (ii) and (iv), the affected member has given his consent in writing to the modification.
- (5) If—
 - (a) the modification is not a protected modification, and
 - (b) before the modification is made the trustees notify an affected member in writing that—
 - (i) if he gives his consent to the modification for the purposes of the consent requirements, those requirements apply in his case in respect of the modification, but
 - (ii) otherwise, the actuarial equivalence requirements apply in his case in respect of the modification,

the trustees are to be taken to have complied with paragraph (4)(a)(iv) in respect of him.

- (6) The timing requirement is satisfied in the case of an affected member if the modification takes effect within a reasonable period after the member has given his consent to the modification in accordance with paragraph (4)(b).]

F111 Arts. 67, 67A-67I substituted (1.11.2005 for certain purposes, otherwise 6.4.2006) for art. 67 by Pensions (Northern Ireland) Order 2005 (S.I. 2005/255 (N.I. 1)), arts. 1(2), 239; S.R. 2005/411, art. 2(5), Sch. Pt. 2

[^{F112}The actuarial equivalence requirements

67C.—(1) References in the subsisting rights provisions to the actuarial equivalence requirements, in respect of a detrimental modification which is not a protected modification, are to be read in accordance with this Article and Article 67D.

- (2) The actuarial equivalence requirements apply in the case of an affected member only if—
 - (a) the modification is not a protected modification, and
 - (b) the trustees of the scheme determine that they are to apply in his case.
- (3) The actuarial equivalence requirements consist of—
 - (a) the information requirement (see paragraph (4)),
 - (b) the actuarial value requirement (see paragraph (5)), and
 - (c) the actuarial equivalence statement requirement (see paragraph (6)).
- (4) The information requirement is satisfied in the case of an affected member if before the modification is made the trustees have taken all reasonable steps to—

- (a) give him information in writing adequate to explain the nature of the modification and its effect on him,
 - (b) notify him in writing that he may make representations to the trustees about the modification,
 - (c) afford him a reasonable opportunity to make such representations, and
 - (d) notify him in writing that the actuarial equivalence requirements apply in his case in respect of the modification.
- (5) The actuarial value requirement is satisfied in the case of an affected member if before the modification is made the trustees have made such arrangements, or taken such steps, as are adequate to secure that actuarial value will be maintained.
- (6) The actuarial equivalence statement requirement is satisfied in the case of an affected member if the trustees have, within a reasonable period beginning with the date on which the modification takes effect, obtained an actuarial equivalence statement relating to the affected member in respect of the modification.
- (7) For the purposes of paragraph (6) “actuarial equivalence statement” means a statement in writing which—
- (a) is given by—
 - (i) the actuary appointed in relation to the scheme under Article 47(1)(b), or
 - (ii) a person with prescribed qualifications or experience or who is approved by the Department, and
 - (b) certifies that actuarial value has been maintained.
- (8) For the purposes of paragraphs (5) and (7) as they apply in relation to an affected member, actuarial value is maintained if the actuarial value, immediately after the time at which the modification takes effect, of the affected member's subsisting rights is equal to or greater than the actuarial value of his subsisting rights immediately before that time.]

F112 Arts. 67, 67A-67I substituted (1.11.2005 for certain purposes, otherwise 6.4.2006) for art. 67 by Pensions (Northern Ireland) Order 2005 (S.I. 2005/255 (N.I. 1)), arts. 1(2), 239; S.R. 2005/411, art. 2(5), Sch. Pt. 2

The actuarial equivalence requirements: further provisions

[^{F113}**67D.**—(1) This Article applies for the purposes of Article 67C.

(2) Where—

- (a) the information requirement has been satisfied in the case of an affected member in respect of a proposed modification (“the original modification”),
- (b) before the trustees have made a determination, or given their consent, for the purposes of Article 67E(1) in relation to the original modification, the original modification has been revised, and
- (c) the modification as so revised (“the revised modification”) does not differ from the original modification in any material respect,

the information requirement is to be taken to have been satisfied in relation to the revised modification.

(3) The trustees are to be regarded as having taken all reasonable steps to notify an affected member as mentioned in Article 67C(4)(d) in respect of a modification if they have taken all reasonable steps to notify him in writing that—

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- (a) if he gives his consent to the modification for the purposes of the consent requirements, those requirements apply in his case in respect of the modification, but
 - (b) otherwise, the actuarial equivalence requirements apply in his case in respect of the modification.
- (4) Any calculation for the purposes of Article 67C of the actuarial value of an affected member's subsisting rights at any time must conform with such requirements as may be prescribed.
- (5) Requirements prescribed by regulations under paragraph (4) may include requirements for any such calculation to be made in accordance with guidance that—
- (a) is prepared and from time to time revised by a prescribed body, and
 - (b) if the regulations so provide, is approved by the Department.
- (6) Nothing in paragraphs (6) and (7) of Article 67C precludes actuarial equivalence statements relating to—
- (a) two or more affected members, or
 - (b) affected members of any particular description,
- in respect of a modification being given in a single document.]

F113 Arts. 67, 67A-67I substituted (1.11.2005 for certain purposes, otherwise 6.4.2006) for art. 67 by Pensions (Northern Ireland) Order 2005 (S.I. 2005/255 (N.I. 1)), arts. 1(2), 239; S.R. 2005/411, art. 2(5), Sch. Pt. 2

[^{F114}The trustee approval requirement

67E.—(1) For the purposes of Article 67(2)(b), the trustee approval requirement is satisfied in relation to the exercise of a power to make a regulated modification if—

- (a) the trustees of the scheme have determined to exercise the power to make the modification, or
- (b) if the power is exercised by another person, the trustees have consented to the exercise of the power to make the modification,

and the making of the determination, or giving of consent, complies with paragraphs (2) and (3).

(2) The trustees must not make a determination, or give their consent, for the purposes of paragraph (1) unless, in the case of each affected member—

- (a) if the modification is a protected modification, the informed consent requirement is satisfied (within the meaning of Article 67B), or
- (b) if it is not a protected modification—
 - (i) the informed consent requirement is satisfied, or
 - (ii) the information and actuarial value requirements are satisfied (within the meaning of Article 67C),

in respect of the modification.

(3) The trustees must not make a determination, or give their consent, for the purposes of paragraph (1) more than a reasonable period after the first consent given by an affected member under Article 67B(4)(b) in respect of the modification was given.]

F114 Arts. 67, 67A-67I substituted (1.11.2005 for certain purposes, otherwise 6.4.2006) for art. 67 by Pensions (Northern Ireland) Order 2005 (S.I. 2005/255 (N.I. 1)), arts. 1(2), 239; S.R. 2005/411, art. 2(5), Sch. Pt. 2

[^{F115}The reporting requirement

67F.—(1) For the purposes of Article 67(2)(c), the reporting requirement is satisfied in relation to the exercise of a power to which the subsisting rights provisions apply to make a regulated modification if the trustees have, in accordance with paragraph (2)—

- (a) notified each affected member in whose case the consent requirements apply in respect of the modification, and
- (b) taken all reasonable steps to notify each affected member in whose case the actuarial equivalence requirements apply in respect of the modification,

that they have made a determination, or given their consent, for the purposes of Article 67E(1) in relation to the exercise of the power to make the modification.

(2) The trustees must give (or, where the actuarial equivalence requirements apply, take all reasonable steps to give) the notification—

- (a) within a reasonable period beginning with the date of the determination or giving of consent mentioned in paragraph (1), and
- (b) before the date on which the modification takes effect.]

F115 Arts. 67, 67A-67I substituted (1.11.2005 for certain purposes, otherwise 6.4.2006) for art. 67 by Pensions (Northern Ireland) Order 2005 (S.I. 2005/255 (N.I. 1)), arts. 1(2), 239; S.R. 2005/411, art. 2(5), Sch. Pt. 2

[^{F116}Powers of the Authority: voidable modifications

67G.—(1) Paragraph (2) applies in relation to a regulated modification made in exercise of a power to which the subsisting rights provisions apply which is voidable by virtue of—

- (a) Article 67(2), or
- (b) Article 67H(3).

(2) The Authority may make an order declaring that paragraph (6) applies in relation to the regulated modification.

(3) An order under paragraph (2) relating to a regulated modification may also declare that paragraph (6) applies in relation to—

- (a) any other modification of the scheme made by the exercise of the power mentioned in paragraph (1), or
- (b) the grant of any rights under the scheme (whether by virtue of the attribution of notional periods as pensionable service or otherwise) in connection with the regulated modification.

(4) An order under paragraph (2) relating to a regulated modification must specify the affected member or affected members or description of affected members in respect of whom paragraph (6) applies (“the specified persons”).

(5) An order under paragraph (2) relating to a regulated modification may also—

- (a) require the trustees to take, within the time specified in the order, such steps as are so specified for the purpose of giving effect to the order;
- (b) declare that paragraph (7) applies in relation to anything done by the trustees after the time at which the modification would, disregarding the order, have taken effect which—
 - (i) would not have contravened any provision of the scheme rules if the modification had taken effect at that time, but

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- (ii) as a result of the modification being void to any extent by virtue of the order, would (but for that paragraph) contravene such a provision.

This is without prejudice to Article 166(3).

(6) Where the Authority make an order declaring that this paragraph applies in relation to a modification of a scheme, or the grant of any rights under the scheme, the modification or grant is void to the extent specified in the order, and in respect of the specified persons, as from the time when it would, disregarding the order, have taken effect.

(7) Where, by virtue of paragraph (5)(b), the Authority make an order under paragraph (2) declaring that this paragraph applies in relation to anything done by the trustees, that thing is to be taken, for such purposes as are specified in the order, not to have contravened any provision of the trust deed or scheme rules.

(8) An order under paragraph (2) relating to a regulated modification, or other modification, of a scheme or the grant of any rights under the scheme may be made before or after the time at which the modification or grant would, disregarding the order, have taken effect.]

F116 Arts. 67, 67A-67I substituted (1.11.2005 for certain purposes, otherwise 6.4.2006) for art. 67 by Pensions (Northern Ireland) Order 2005 (S.I. 2005/255 (N.I. 1)), arts. 1(2), 239; S.R. 2005/411, art. 2(5), Sch. Pt. 2

[^{F117} Powers of the Authority to intervene

67H.—(1) Paragraph (2) applies where the Authority have reasonable grounds to believe that a power to which the subsisting rights provisions apply—

- (a) will be exercised, or
- (b) has been exercised,

to make a regulated modification in circumstances where the modification will be voidable by virtue of Article 67(2).

(2) The Authority may by order—

- (a) in a case within paragraph (1)(a), direct the person on whom the power is conferred not to exercise the power to make the regulated modification;
- (b) require the trustees to take, within the time specified in the order, such steps as are so specified for the purpose of securing that any of the requirements mentioned in Article 67(2) is satisfied.

(3) A regulated modification made in exercise of a power to which the subsisting rights provisions apply is voidable in accordance with Article 67G if—

- (a) the exercise of the power contravened an order under sub-paragraph (a) of paragraph (2), or
- (b) the trustees fail to comply with a requirement imposed by an order under sub-paragraph (b) of that paragraph relating to any exercise of the power to make the modification.]

F117 Arts. 67, 67A-67I substituted (1.11.2005 for certain purposes, otherwise 6.4.2006) for art. 67 by Pensions (Northern Ireland) Order 2005 (S.I. 2005/255 (N.I. 1)), arts. 1(2), 239; S.R. 2005/411, art. 2(5), Sch. Pt. 2

[^{F118} Subsisting rights provisions: civil penalties

67I.—(1) Paragraphs (2) and (3) apply where a regulated modification is voidable by virtue of Article 67(2).

(2) Where the modification was made by the exercise of a power—

- (a) by the trustees of the scheme, or
- (b) by any other person in circumstances which do not fall within paragraph (3),

Article 10 applies to any trustee who has failed to take all reasonable steps to secure that the modification is not so voidable.

(3) Article 10 applies to any person other than the trustees of the scheme who, without reasonable excuse, exercises a power to make the modification if—

- (a) the trustees have not given their consent, for the purposes of Article 67E(1), to the exercise of the power to make the modification, or
- (b) in the case of any affected member, the timing requirement is not satisfied (within the meaning of Article 67B) in respect of the modification.

(4) Where the trustees fail to comply with any requirement imposed, by virtue of paragraph (5) (a) of Article 67G, by an order under paragraph (2) of that Article, Article 10 applies to any trustee who has failed to take all reasonable steps to secure such compliance.

(5) Where a regulated modification is made by the exercise of a power in contravention of an order under Article 67H(2)(a)—

- (a) if the power is exercised by the trustees, Article 10 applies to any trustee who has failed to take all reasonable steps to secure that the order was not contravened,
- (b) Article 10 applies to any other person who without reasonable excuse exercises the power in contravention of the order.

(6) Where the trustees fail to comply with any requirement specified in an order under Article 67H(2)(b), Article 10 applies to any trustee who has failed to take all reasonable steps to secure such compliance.]

F118 Arts. 67, 67A-67I substituted (1.11.2005 for certain purposes, otherwise 6.4.2006) for art. 67 by Pensions (Northern Ireland) Order 2005 (S.I. 2005/255 (N.I. 1)), arts. 1(2), 239; S.R. 2005/411, art. 2(5), Sch. Pt. 2

Power of trustees to modify schemes by resolution

68.—(1) The trustees of a trust scheme may by resolution modify the scheme with a view to achieving any of the purposes specified in paragraph (2).

(2) The purposes referred to in paragraph (1) are—

- (a) to extend the class of persons who may receive benefits under the scheme in respect of the death of a member of the scheme,
- (b) to enable the scheme to conform with such arrangements as are required by^{F119} Article 16(1) or^{F120} 17(2),
- [^{F121}(c) to enable the scheme to comply with such terms and conditions as may be imposed by the Board of the Pension Protection Fund in relation to any payment made by it under Article 168 or 169 of the Pensions (Northern Ireland) Order 2005,]
- (d) to enable the scheme to conform with Article 37(2), 76(2), 89 or 90,
- [^{F122}(da) to enable the scheme to accommodate persons with pension credits or pension credit rights, and]
- (e) prescribed purposes.

(3) No modification may be made by virtue of paragraph (2)(a) without the consent of the employer.

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(4) Modifications made by virtue of paragraph (2)(b) may include in particular—

- (a) modification of any limit on the number of, or of any category of, trustees, or
- (b) provision for the transfer or vesting of property.

(5) Regulations may provide that this Article does not apply to trust schemes falling within a prescribed class or description.

F119 prosp. (until 06/04/06) subst. by [2005 NI 1](#)

F120 prosp. subst. by [2000 c. 4 \(NI\)](#)

F121 [2005 NI 1](#)

F122 [1999 NI 11](#)

Grounds for applying for modifications

69.—(1) The Authority may, on an application made to them by persons competent to do so, make an order in respect of an occupational pension scheme (other than a public service pension scheme)—

- (a) authorising the modification of the scheme with a view to achieving any of the purposes mentioned in paragraph (3), or
- (b) modifying the scheme with a view to achieving any such purpose.

(2) Regulations may make provision^{F123} about the manner of dealing with applications under this Article.

(3) The purposes referred to in paragraph (1) are—

- ^{F124}(a) in the case of a scheme to which Schedule 22 to the Taxes Act 1988^{F125} (reduction of pension fund surpluses in certain exempt approved schemes) applies, to reduce or eliminate on any particular occasion any excess in accordance with any proposal submitted under paragraph 3(1) of that Schedule, where any requirements mentioned in Article 37(4), and any other prescribed requirements, will be satisfied in relation to the reduction or elimination,
- (b) in the case of an exempt approved scheme (within the meaning given by section 592(1) of the Taxes Act 1988) which is being wound up, to enable assets remaining after the liabilities of the scheme have been fully discharged to be distributed to the employer, where prescribed requirements in relation to the distribution are satisfied, or
- (c) to enable the scheme to be so treated during a prescribed period that an employment to which the scheme applies may be contracted-out employment by reference to it.

(4) The persons competent to make an application under this Article are—

- (a) in the case of the purposes referred to in sub-paragraph^{F124} (a) or (b) of paragraph (3), the trustees of the scheme, and
- (b) in the case of the purposes referred to in sub-paragraph (c) of that paragraph—
 - (i) the trustees or managers of the scheme,
 - (ii) the employer, or
 - (iii) any person other than the trustees or managers who has power to alter the rules of the scheme.

(5) An order under paragraph (1)(a) must be framed—

- (a) if made with a view to achieving^{F124} either of the purposes referred to in^{F123} paragraph (3)^{F124} (a) or (b), so as to confer the power of modification on the trustees, and

- (b) if made with a view to achieving the purposes referred to in paragraph (3)(c), so as to confer the power of modification on such persons (who may include persons who were not parties to the application made to the Authority) as the Authority think appropriate.

(6) Regulations may provide that in prescribed circumstances this Article does not apply to occupational pension schemes falling within a prescribed class or description or applies to them with prescribed modifications.

F123 prosp. subst. by [2005 NI 1](#)

F124 prosp. rep. by [2005 NI 1](#)

F125 [1988 c. 1](#)

Article 69: supplementary

70.—(1) The Authority may not make an order under Article 69 unless they are satisfied that the purposes for which the application for the order was made—

- (a) cannot be achieved otherwise than by means of such an order, or
- (b) can only be achieved in accordance with a procedure which—
 - (i) is liable to be unduly complex or protracted, or
 - (ii) involves the obtaining of consents which cannot be obtained, or can only be obtained with undue delay or difficulty.

(2) The extent of the Authority's powers to make such an order is not limited, in relation to any purposes for which they are exercisable, to the minimum necessary to achieve those purposes.

(3) The Authority may not make an order under Article 69 with a view to achieving the purpose referred to in paragraph (3)(c) of that Article unless they are satisfied that it is reasonable in all the circumstances to make it.

Effect of orders under Article 69

71.—(1) An order under sub-paragraph (a) of paragraph (1) of Article 69 may enable those exercising any power conferred by the order to exercise it retrospectively (whether or not the power could otherwise be so exercised) and an order under sub-paragraph (b) of that paragraph may modify a scheme retrospectively.

(2) Any modification of a scheme made in pursuance of an order of the Authority under Article 69 is as effective in law as if it had been made under powers conferred by or under the scheme.

(3) An order under Article 69 may be made and complied with in relation to a scheme—

- (a) in spite of any enactment or rule of law, or any rule of the scheme, which would otherwise operate to prevent the modification being made, or
- (b) without regard to any such enactment, rule of law or rule of the scheme as would otherwise require, or might otherwise be taken to require, the implementation of any procedure or the obtaining of any consent, with a view to the making of the modification.

(4) In this Article, “retrospectively” means with effect from a date before that on which the power is exercised or, as the case may be, the order is made.

[^{F126}Modification by Authority to secure winding-up

71A.—(1) The Authority may at any time while—

- (a) an occupational pension scheme is being wound up, and
- (b) the employer in relation to the scheme is subject to an insolvency procedure,

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make an order modifying that scheme with a view to ensuring that it is properly wound up.

(2) The Authority shall not make such an order except on an application made to them, at a time such as is mentioned in paragraph (1), by the trustees or managers of the scheme.

(3) Except in so far as regulations otherwise provide, an application for the purposes of this Article must be made in writing.

(4) Regulations may make provision—

- (a) for the form and manner in which an application for the purposes of this Article is to be made to the Authority,
- (b) for the matters which are to be contained in such an application,
- (c) for the documents which must be attached to an application for the purposes of this Article or which must otherwise be delivered to the Authority with or in connection with any such application,
- (d) for persons to be required,^{F127} before such time as may be prescribed, to give such notifications of the making of^{F127} an application for the purposes of this Article as may be prescribed,
- (e) for the matters which are to be contained in a notification of such an application,
- ^{F128}(f) for persons to have the opportunity, for a prescribed period, to make representations to the Authority about the matters to which such an application relates,
- ^{F128}(g) for the manner in which the Authority are to deal with any such application.

(5) The power of the Authority to make an order under this Article—

- (a) shall be limited to what they consider to be the minimum modification necessary to enable the scheme to be properly wound up, and
- (b) shall not include power to make any modification that would have a significant adverse effect on—
 - (i) the accrued rights of any member of the scheme, or
 - (ii) any person's entitlement under the scheme to receive any benefit.

(6) A modification of an occupational pension scheme by an order of the Authority under this Article shall be as effective in law as if—

- (a) it had been made under powers conferred by or under the scheme,
- (b) the modification made by the order were capable of being made in exercise of such powers notwithstanding any enactment, rule of law or rule of the scheme that would have prevented their exercise for the making of that modification, and
- (c) the exercise of such powers for the making of that modification would not have been subject to any enactment, rule of law or rule of the scheme requiring the implementation of any procedure or the obtaining of any consent in connection with the making of a modification.

(7) Regulations may provide that, in prescribed circumstances, this Article—

- (a) does not apply in the case of occupational pension schemes of a prescribed class or description, or
- (b) in the case of occupational pension schemes of a prescribed class or description applies with prescribed modifications.

(8) The times when an employer in relation to an occupational pension scheme shall be taken for the purposes of this Article to be subject to an insolvency procedure are—

- (a) in the case of a trust scheme, while Article 22 applies in relation to the scheme, and

- (b) in the case of a scheme that is not a trust scheme, while Article 22 would apply in relation to the scheme if it were a trust scheme,

and for the purposes of this paragraph no account shall be taken of modifications or exclusions contained in any regulations under Article 115.

(9) The Authority shall not be entitled to make an order under this Article in relation to a public service pension scheme.]

F126 2000 c. 4 (NI)

F127 prosp. subst. by 2005 NI 1

F128 prosp. rep. by 2005 NI 1

Modification of public service pension schemes

72.—(1) The appropriate authority may make such provision for the modification of a public service pension scheme as could be made in respect of a scheme, other than a public service pension scheme, by an order of the Authority under Article 69(1)(b).

(2) In this Article, “the appropriate authority”, in relation to a scheme, means such Minister of the Crown or government department as may be designated by the Treasury or the Department of Finance and Personnel as having responsibility for the particular scheme.

(3) The powers of the appropriate authority under this Article are exercisable by means of an order—

- (a) directly modifying the scheme (without regard, in the case of a scheme contained in or made under powers conferred by an enactment, to the terms of the enactment or any of its restrictions), or
- (b) modifying an enactment under which the scheme was made or by virtue of which it has effect.

(4) Any such order may adapt, amend or repeal any such enactment as is referred to in paragraph (3)(a) or (b) as the appropriate authority thinks appropriate.

[^{F129}Supervision of winding-up]

F129 2000 c. 4 (NI)

[^{F130}Reports to Authority about winding-up]

72A.—(1) Where—

- (a) an occupational pension scheme is being wound up, and
- (b) the winding-up is one beginning at a time (whether before or after the making of this Order) by reference to which regulations provide that it is to be a winding-up to which this Article applies,

it shall be the duty of the trustees or managers, in accordance with this Article, to make periodic reports in writing to the Authority about the progress of the winding-up.

(2) In the case of each winding-up, the first report to be made under this Article shall be made—

- (a) except in a case to which sub-paragraph (b) applies—
- (i) after the end of the prescribed period beginning with the day on which the winding-up began, and

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- (ii) before the end of the prescribed period that begins with the end of the period that applies for the purposes of head (i), and
- (b) in a case where the winding-up began before the coming into operation of the regulations which (for the purposes of paragraph (1)(b)) prescribe the time by reference to which the winding-up is one to which this Article applies, before such date as may be prescribed by those regulations.
- (3) ^{F131}Each subsequent report made under this Article in the case of a winding-up shall be made no more than twelve months after the date which ^{F131}was the latest date for the making of the previous report required to be made in the case of that winding-up.
- ^{F131F131F131}(7) A report under this Article—
 - (a) shall contain such information and statements as may be prescribed, and
 - (b) shall be made in accordance with the prescribed requirements.
- (8) Regulations may—
 - (a) provide that, in prescribed circumstances, there shall be no obligation to make a report that would otherwise fall to be made under this Article,
- ^{F131F131}(9) If there is any failure by the trustees or managers of any scheme to comply with their duty to make a report in accordance with the requirements imposed by or under this Article—
Sub-para. (a) rep. by 2005 NI 1
 - (b) Article 10 applies (irrespective of the description of scheme involved) to any trustee or manager who has failed to take all such steps.]

F130 2000 c. 4 (NI)

F131 prosp. inserted by 2000 c. 4 (NI)

^{F132}**Directions by Authority for facilitating winding-up**

^{F129}**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.
- ^{F133}(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,
 - ^{F133}(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,

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- (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.]]

F132 2000 c. 4 (NI)

F133 prosp. rep. by 2005 NI 1

[^{F129}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.

Para. (2) rep. by 2005 NI 1

(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.]

Winding up

[^{F134}Preferential liabilities on winding up

73.—(1) This Article applies where an occupational pension scheme to which this Article applies is being wound up to determine the order in which the assets of the scheme are to be applied towards satisfying the liabilities of the scheme in respect of pensions and other benefits.

(2) This Article applies to an occupational pension scheme other than a scheme which is—

- (a) a money purchase scheme, or
- (b) a prescribed scheme or a scheme of a prescribed description.

(3) The assets of the scheme must be applied first towards satisfying the amounts of the liabilities mentioned in paragraph (4) and, if the assets are insufficient to satisfy those amounts in full, then—

- (a) the assets must be applied first towards satisfying the amounts of the liabilities mentioned in earlier sub-paragraphs of paragraph (4) before the amounts of the liabilities mentioned in later sub-paragraphs, and
 - (b) where the amounts of the liabilities mentioned in one of those sub-paragraphs cannot be satisfied in full, those amounts must be satisfied in the same proportions.
- (4) The liabilities referred to in paragraph (3) are—
- (a) where—
 - (i) the trustees or managers of the scheme are entitled to benefits under a relevant pre-1997 contract of insurance entered into in relation to the scheme, and
 - (ii) either that contract may not be surrendered or the amount payable on surrender does not exceed the liability secured by the contract,the liability so secured;
 - (b) ^{F135} any liability for pensions or other benefits to the extent that the amount of the liability does not exceed the corresponding PPF liability, other than a liability within sub-paragraph (a);
 - (c) any liability for pensions or other benefits which, in the opinion of the trustees or managers, are derived from the payment by any member of voluntary contributions, other than a liability within sub-paragraph (a) or (b);
 - (d) any other liability in respect of pensions or other benefits.
- (5) For the purposes of paragraph (4)—
- “corresponding PPF liability” in relation to any liability for pensions or other benefits means—
- (a) where the liability is to a member of the scheme, the cost of securing benefits for or in respect of the member corresponding to the compensation which would be payable to or in respect of the member in accordance with the pension compensation provisions if the Board of the Pension Protection Fund assumed responsibility for the scheme in accordance with Chapter 3 of Part III of the Pensions (Northern Ireland) Order 2005 (pension protection), and
 - (b) where the liability is to another person in respect of a member of the scheme, the cost of securing benefits for that person corresponding to the compensation which would be payable to that person in respect of the member in accordance with the pension compensation provisions if the Board assumed responsibility for the scheme in accordance with that Chapter;
- “relevant pre-1997 contract of insurance” means a contract of insurance which was entered into before 6th April 1997 with a view to securing the whole or part of the scheme's liability for—
- (a) any pension or other benefit payable to or in respect of one particular person whose entitlement to payment of a pension or other benefit has arisen, and
 - (b) any benefit which will be payable in respect of that person on his death.
- (6) For the purposes of this Article, when determining the corresponding PPF liability in relation to any liability of a scheme to, or in respect of, a member for pensions or other benefits, the pension compensation provisions apply with such modifications as may be prescribed.
- (7) Regulations may modify paragraph (4).
- (8) For the purposes of that paragraph—
- (a) regulations may prescribe how it is to be determined whether a liability for pensions or other benefits which, in the opinion of the trustees or managers of the scheme, are derived from the payment by any member of voluntary contributions falls within sub-paragraph (a) or (b) of that paragraph;

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- (b) no pension or other benefit which is attributable (directly or indirectly) to a pension credit is to be regarded for the purposes of sub-paragraph (c) of that paragraph as derived from the payment of voluntary contributions.

(9) Where, on the commencement of the winding up period, a member becomes a person to whom Chapter 5 of Part IV of the Pension Schemes Act (early leavers: cash transfer sums and contribution refunds) applies, that Chapter applies in relation to him with such modifications as may be prescribed.

(10) For the purposes of this Article—

“assets” of a scheme to which this Article applies do not include any assets representing the value of any rights in respect of money purchase benefits under the scheme rules;

“liabilities” of such a scheme do not include any liabilities in respect of money purchase benefits under the scheme rules;

“the pension compensation provisions” has the same meaning as in Part III of the Pensions (Northern Ireland) Order 2005 (see Article 146 of that Order);

“scheme rules” has the same meaning as in the Pensions (Northern Ireland) Order 2005 (see Article 2 of that Order);

“winding up period”, in relation to an occupational pension scheme to which this Article applies, means the period which—

- (a) begins with (and includes) the day on which the time immediately after the beginning of the winding up of the scheme falls, and
- (b) ends when the winding up of the scheme is completed.]

F134 2005 NI 1

F135 mod. by SR 2005/171

Operation of scheme during winding up period

73A.—(1) This Article applies where an occupational pension scheme to which Article 73 applies is being wound up.

(2) During the winding up period, the trustees or managers of the scheme—

- (a) ^{F136} must secure that any pensions or other benefits (other than money purchase benefits) paid to or in respect of a member are reduced, so far as necessary, to reflect the liabilities of the scheme to or in respect of the member which will be satisfied in accordance with Article 73, and
- (b) ^{F136} may, for the purposes of sub-paragraph (a), take such steps as they consider appropriate (including steps adjusting future payments) to recover any overpayment or pay any shortfall.

(3) During the winding up period—

- (a) no benefits may accrue under the scheme rules to, or in respect of, members of the scheme, and
- (b) no new members of any class may be admitted to the scheme.

(4) Paragraph (3) does not prevent any increase, in a benefit, which would otherwise accrue in accordance with the scheme or any statutory provision.

(5) Paragraph (3) does not prevent the accrual of money purchase benefits to the extent that they are derived from income or capital gains arising from the investment of payments which are made by, or in respect of, a member of the scheme.

(6) Where a person is entitled to a pension credit derived from another person's shareable rights under the scheme, paragraph (3) does not prevent the trustees or managers of the scheme discharging their liability in respect of the credit under Chapter 1 of Part V of the Welfare Reform and Pensions (Northern Ireland) Order 1999 (sharing of rights under pension arrangements) by conferring appropriate rights under the scheme on that person.

(7) Regulations may require the trustees or managers of the scheme, in prescribed circumstances—

- (a) to adjust the entitlement of a person to a pension or other benefit under the scheme rules where the entitlement arises as a result of a discretionary award which takes effect during the winding up period;
- (b) to adjust the entitlement of a person (“the survivor”) to a pension or other benefit under the scheme rules where—
 - (i) a member of the scheme, or a person who was (or might have become) entitled to a pension or other benefit in respect of a member, dies during the winding up period, and
 - (ii) the survivor's entitlement is to a pension or other benefit in respect of the member (whether arising on the date of that death or subsequently).

(8) Regulations under paragraph (7) may, in particular—

- (a) prescribe how the required adjustments to entitlement are to be determined and the manner in which they are to be made;
- (b) in a case where the commencement of the winding up of the scheme is backdated (whether in accordance with Article 138 of

the Pensions (Northern Ireland) Order 2005 (requirement to wind up schemes with sufficient assets to meet protected liabilities) or otherwise), require any adjustment to a person's entitlement to be made with effect from the time the award takes effect;

- (c) without prejudice to Articles 10(3) to (9), 73B(2) and 113, make provision about the consequences of breaching the requirements of the regulations.

(9) If the scheme confers power on any person other than the trustees or managers of the scheme to apply the assets of the scheme in respect of pensions or other benefits (including increases in pensions or benefits), it cannot be exercised by that person but may, subject to the provisions made by or by virtue of this Article and Articles 73 and 73B, be exercised instead by the trustees or managers.

(10) For the purposes of this Article—

“appropriate rights” has the same meaning as in paragraph 5 of Schedule 5 to the Welfare Reform and Pensions (Northern Ireland) Order 1999 (pension credits: mode of discharge);

“discretionary award” means an award of a prescribed description;

“shareable rights” has the same meaning as in Chapter 1 of Part V of the Welfare Reform and Pensions (Northern Ireland) Order 1999 (sharing of rights under pension arrangements);

and paragraph (10) of Article 73 applies as it applies for the purposes of that Article.

F136 mod. by SR 2005/363

Articles 73 and 73A: supplementary

73B.—(1) Any action taken in contravention of Article 73A(3) is void.

(2) If any provision made by or by virtue of the winding up provisions is not complied with in relation to a scheme to which Article 73 applies, Article 10 applies to any trustee or manager of the scheme who has failed to take all reasonable steps to secure compliance.

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(3) For the purposes of paragraph (2), when determining whether Article 73A(3) has been complied with paragraph (1) of this Article is to be disregarded.

(4) Regulations may—

(a) prescribe how, for the purposes of the winding up provisions—

- (i) the assets and liabilities of a scheme to which Article 73 applies, and
- (ii) their value or amount,

are to be determined, calculated and verified;

(b) modify any of the winding up provisions as it applies—

- (i) to prescribed schemes or prescribed descriptions of schemes;
- (ii) in relation to a scheme where only part of the scheme is being wound up;
- (iii) in relation to a case where any liability of the scheme in respect of a member has been discharged by virtue of regulations under Article 119(4) of the Pensions (Northern Ireland) Order 2005 (power to make regulations permitting discharge of scheme's liabilities during an assessment period).

(5) Without prejudice to the generality of paragraph (4), regulations under sub-paragraph (b)(i) of that paragraph may, in particular, modify any of the winding up provisions as it applies in relation to a scheme in relation to which there is more than one employer.

(6) The winding up provisions do not apply—

- (a) in relation to any liability for an amount by way of pensions or other benefits which a person became entitled to payment of, under the scheme rules, before commencement of the winding up period,
- (b) in prescribed circumstances, in relation to any liability in respect of rights of a prescribed description to which a member of the scheme became entitled under the scheme rules by reason of his pensionable service under the scheme terminating before the commencement of the winding up period,
- (c) in relation to any liability in respect of rights of prescribed descriptions to which a member of the scheme had become entitled under the scheme rules before the commencement of the winding up period, or
- (d) in relation to any liability the discharge of which is validated under Article 120 of the Pensions (Northern Ireland) Order 2005 (power to validate actions taken during an assessment period to discharge liabilities of a scheme).

(7) But nothing in paragraph (6) prevents the winding up provisions applying in relation to a liability under Chapter 4 of Part IV of the Pension Schemes Act (transfer values) which—

- (a) arose before the commencement of the winding up of the scheme, and
- (b) was not discharged before the commencement of the winding up period.

(8) Regulations may provide that, in prescribed circumstances, where—

- (a) an occupational pension scheme to which Article 73 applies is being wound up,
- (b) a member of the scheme died before the winding up began, and
- (c) during the winding up period a person becomes entitled under the scheme rules to a benefit of a prescribed description in respect of the member,

his entitlement to payment of all or part of the benefit is, for the purposes of paragraph (6), to be treated as having arisen immediately before the commencement of the winding up period.

(9) If, immediately before the winding up period in relation to an occupational pension scheme to which Article 73 applies, a person is entitled to an amount but has postponed payment of it, he

is not, for the purposes of paragraph (6), to be regarded as having become entitled to payment of the amount before that period.

(10) For the purposes of this Article—

- (a) “winding up provisions” means this Article and Articles 73, 73A and 74, and
- (b) paragraph (10) of Article 73 applies as it applies for the purposes of that Article.

Discharge of liabilities by insurance, etc.

74.—^{F137}(1) This Article applies where an occupational pension scheme to which Article 73 applies is being wound up.]

(2) A liability to or in respect of a member of the scheme in respect of pensions or other benefits^{F137} . . . is to be treated as discharged (to the extent that it would not be so treated apart from this Article) if the trustees or managers of the scheme have, in accordance with prescribed arrangements, provided for the discharge of the liability in one or more of the ways mentioned in paragraph (3).

(3) The ways referred to in paragraph (2) are—

- (a) by acquiring transfer credits allowed under the rules of another occupational pension scheme which satisfies prescribed requirements and the trustees or managers of which are able and willing to accept payment in respect of the member,
- (b) by acquiring rights allowed under the rules of a personal pension scheme which satisfies prescribed requirements and the trustees or managers of which are able and willing to accept payment in respect of the member's accrued rights^{F138} or pension credit rights],
- (c) by purchasing one or more annuities which satisfy prescribed requirements from one or more^{F139} insurers], being companies willing to accept payment in respect of the member from the trustees or managers,
- (d) by subscribing to other pension arrangements which satisfy prescribed requirements.

^{F137}(e) by the payment of a cash sum in circumstances where prescribed requirements are met.]

(4) If the assets of the scheme are insufficient to satisfy in full the liabilities, as calculated in accordance with the^{F137} scheme rules], in respect of pensions and other benefits^{F137} . . . , the reference in paragraph (2) to providing for the discharge of any liability in one or more of the ways mentioned in paragraph (3) is to applying any amount available, in accordance with Article 73, in one or more of those ways.

(5) Regulations may provide for this Article—

- (a) to have effect in relation to so much of any liability as may be determined in accordance with the regulations,^{F137} . . .

Sub-para. (b) rep. by 2005 NI 1

^{F137}(6) For the purposes of this Article—

- (a) references to assets of the scheme do not include any assets representing the value of any rights in respect of money purchase benefits under the scheme rules, and
- (b) references to liabilities of the scheme do not include any liabilities in respect of money purchase benefits under the scheme rules;

and “scheme rules” has the same meaning as in the Pensions (Northern Ireland) Order 2005 (see Article 2 of that Order).]

F137 2005 NI 1

F138 1999 NI 11

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F139 SI 2002/1555

Deficiencies in the assets

75.—^{F140}(1) This Article applies in relation to an occupational pension scheme other than a scheme which is—

- (a) a money purchase scheme, or
- (b) a prescribed scheme or a scheme of a prescribed description.

(2) If—

- (a) at any time which falls—
 - (i) when a scheme is being wound up, but
 - (ii) before any relevant event in relation to the employer which occurs while the scheme is being wound up,
 the value of the assets of the scheme is less than the amount at that time of the liabilities of the scheme, and
- (b) the trustees or managers of the scheme designate that time for the purposes of this paragraph (before the occurrence of an event within sub-paragraph (a)(ii)),

an amount equal to the difference shall be treated as a debt due from the employer to the trustees or managers of the scheme.

This is subject to paragraph (3).

(3) Paragraph (2) applies only if—

- (a) either—
 - (i) no relevant event within paragraph (6A)(a) or (b) occurred in relation to the employer during the period beginning with (and including) the appointed day and ending with the commencement of the winding up of the scheme, or
 - (ii) during the period—
 - (a) beginning with the occurrence of the last such relevant event which occurred during the period mentioned in head (i), and
 - (b) ending with the commencement of the winding up of the scheme,
 a cessation notice was issued in relation to the scheme and became binding, and
- (b) no relevant event within paragraph (6A)(c) has occurred in relation to the employer during the period mentioned in sub-paragraph (a)(i).

(4) Where—

- (a) immediately before a relevant event (“the current event”) occurs in relation to the employer the value of the assets of the scheme is less than the amount at that time of the liabilities of the scheme,
- (b) the current event—
 - (i) occurred on or after the appointed day, and
 - (ii) did not occur in prescribed circumstances,
- (c) if the scheme was being wound up immediately before that event, paragraph (2) has not applied in relation to the scheme to treat an amount as a debt due from the employer to the trustees or managers of the scheme,
- (d) if the current event is within paragraph (6A)(a) or (b), either—

(i) no relevant event within paragraph (6A)(a) or (b) occurred in relation to the employer during the period beginning with (and including) the appointed day and ending immediately before the current event, or

(ii) a cessation event has occurred in relation to the scheme in respect of a cessation notice issued during the period—

(a) beginning with the occurrence of the last such relevant event which occurred during the period mentioned in head (i), and

(b) ending immediately before the current event, and

(e) no relevant event within paragraph (6A)(c) has occurred in relation to the employer during the period mentioned in sub-paragraph (d)(i),

an amount equal to the difference shall be treated as a debt due from the employer to the trustees or managers of the scheme.

(4A) Where the current event is within paragraph (6A)(a) or (b), the debt under paragraph (4) is to be taken, for the purposes of the law relating to insolvency as it applies to the employer, to arise immediately before the occurrence of the current event.

(4B) Paragraph (4C) applies if, in a case within paragraph (4)—

- (a) the current event is within paragraph (6A)(a) or (b), and
- (b) the scheme was not being wound up immediately before that event.

(4C) Where this paragraph applies, the debt due from the employer under paragraph (4) is contingent upon—

- (a) a scheme failure notice being issued in relation to the scheme after the current event and the following conditions being satisfied—
- (i) the scheme failure notice is binding,
- (ii) no relevant event within paragraph (6A)(c) has occurred in relation to the employer before the scheme failure notice became binding, and
- (iii) a cessation event has not occurred in relation to the scheme in respect of a cessation notice issued during the period—
- (a) beginning with the occurrence of the current event, and
- (b) ending immediately before the issuing of the scheme failure notice, and the occurrence of such a cessation event in respect of a cessation notice issued during that period is not a possibility, or
- (b) the commencement of the winding up of the scheme before—
- (i) any scheme failure notice or cessation notice issued in relation to the scheme becomes binding, or
- (ii) any relevant event within paragraph (6A)(c) occurs in relation to the employer.]

(5) For the purposes of^{F140} paragraphs (2) and (4)], the liabilities and assets to be taken into account, and their amount or value, must be determined, calculated and verified by a prescribed person and in the prescribed manner.

(6) In calculating the value of any liabilities for those purposes, a provision of the scheme^{F140} rules] which limits the amount of its liabilities by reference to the amount of its assets is to be disregarded.^{F140} In this paragraph “scheme rules” has the same meaning as in the Pensions (Northern Ireland) Order 2005 (“the 2005 Order”) (see Article 2 of that Order).]

^{F140}(6A) For the purposes of this Article, a relevant event occurs in relation to the employer in relation to an occupational pension scheme if and when—

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- (a) an insolvency event occurs in relation to the employer,
 - (b) the trustees or managers of the scheme make an application under paragraph (1) of Article 113 of the 2005 Order or receive a notice from the Board of the Pension Protection Fund ("the Board") under paragraph (5)(a) of that Article, or
 - (c) a resolution is passed for a voluntary winding up of the employer in a case where a declaration of solvency has been made under Article 75 of the Insolvency (Northern Ireland) Order 1989 (members' voluntary winding up).
- (6B) For the purposes of this Article—
- (a) a “cessation notice”, in the case of a relevant event within paragraph (6A)(a), means—
 - (i) a withdrawal notice issued under Article 106(2)(b) of the 2005 Order (scheme rescue has occurred);
 - (ii) a withdrawal notice issued under Article 132 of that Order (no insolvency event has occurred or is likely to occur);
 - (iii) a notice issued under Article 106(4) of that Order (inability to confirm status of scheme) in a case where the notice has become binding and Article 132 of that Order does not apply,
 - (b) a “cessation notice” in the case of a relevant event within paragraph (6A)(b), means a withdrawal notice issued under Article 114(3) of the 2005 Order (scheme rescue has occurred),
 - (c) a cessation event occurs in relation to a scheme when a cessation notice in relation to the scheme becomes binding,
 - (d) the occurrence of a cessation event in relation to a scheme in respect of a cessation notice issued during a particular period (“the specified period”) is a possibility until each of the following is no longer reviewable—
 - (i) any cessation notice which has been issued in relation to the scheme during the specified period;
 - (ii) any failure to issue such a cessation notice during the specified period;
 - (iii) any notice which has been issued by the Board under Chapter 2 or 3 of Part III of the 2005 Order which is relevant to the issue of a cessation notice in relation to the scheme during the specified period or to such a cessation notice which has been issued during that period becoming binding;
 - (iv) any failure to issue such a notice as is mentioned in head (iii),
 - (e) the issue or failure to issue a notice is to be regarded as reviewable—
 - (i) during the period within which it may be reviewed by virtue of Chapter 6 of Part III of the 2005 Order, and
 - (ii) if the matter is so reviewed, until—
 - (a) the review and any reconsideration,
 - (b) any reference to the Ombudsman for the Board of the Pension Protection Fund in respect of the matter, and
 - (c) any appeal against his determination or directions,
 has been finally disposed of, and
 - (f) a “scheme failure notice” means a scheme failure notice issued under Article 106(2)(a) or 114(2) of the 2005 Order (scheme rescue not possible).
- (6C) For the purposes of this Article—

- (a) Article 105 of the 2005 Order applies for the purposes of determining if and when an insolvency event has occurred in relation to the employer,
 - (b) “appointed day” means the day appointed under Article 110(2) of the 2005 Order (no pension protection under Chapter 3 of Part III of that Order if the scheme begins winding up before the day appointed by the Department),
 - (c) references to a relevant event in relation to an employer do not include a relevant event which occurred in relation to him before he became the employer in relation to the scheme,
 - (d) references to a cessation notice becoming binding are to the notice in question mentioned in paragraph (6B)(a) or (b) and issued under Part III of the 2005 Order becoming binding within the meaning given in that Part of that Order, and
 - (e) references to a scheme failure notice becoming binding are to the notice in question mentioned in paragraph (6B)(f) and issued under Part III of the 2005 Order becoming binding within the meaning given in that Part of that Order.
- (6D) Where—
- (a) a resolution is passed for a voluntary winding up of the employer in a case where a declaration of solvency has been made under Article 75 of the Insolvency (Northern Ireland) Order 1989 (members' voluntary winding up), and
 - (b) either—
 - (i) the voluntary winding up of the employer is stayed other than in prescribed circumstances, or
 - (ii) a meeting of creditors is held in relation to the employer under Article 81 of that Order (creditors' meeting which has the effect of converting a members' voluntary winding up into a creditors' voluntary winding up),

this Article has effect as if that resolution had never been passed and any debt which arose under this Article by virtue of the passing of that resolution shall be treated as if it had never arisen.]

(7) This Article does not prejudice any other right or remedy which the trustees or managers may have in respect of a deficiency in the scheme's assets.

(8) A debt due by virtue only of this Article shall not be regarded as a preferential debt for the purposes of the Insolvency (Northern Ireland) Order 1989^{F141}.

Para. (9) rep. by 2005 NI 1

(10) Regulations may modify this Article as it applies in prescribed circumstances.

F140 Art. 75(1)-(4C) substituted for art. 75(1)-(4) by [The Pensions \(Northern Ireland\) Order 2005 \(S.I. 2005/255 \(N.I. 1\)\)](#), [arts. 1, 248](#)

F141 1989 NI 19

Modifications etc. (not altering text)

C10 mod. by [2005 NI 1](#)

C11 mod. by SR 2005/168

[^{F142}Deficiencies in the assets: multi-employer schemes

75A.—(1) Regulations may modify Article 75 (deficiencies in the assets) as it applies in relation to multi-employer schemes.

(2) The regulations may in particular provide for the circumstances in which a debt is to be treated as due under Article 75 from an employer in relation to a multi-employer scheme (a “multi-employer debt”).

Status: Point in time view as at 01/01/2006. This version of this part contains provisions that are not valid for this point in time.

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(3) Those circumstances may include circumstances other than those in which the scheme is being wound up or a relevant event occurs (within the meaning of Article 75).

(4) For the purposes of regulations under this Article, regulations under Article 75(5) may prescribe alternative manners for determining, calculating and verifying—

- (a) the liabilities and assets of the scheme to be taken into account, and
- (b) their amount or value.

(5) The regulations under this Article may in particular—

- (a) provide for the application of each of the prescribed alternative manners under Article 75(5) to depend upon whether prescribed requirements are met,
- (b) provide that, where in a particular case a prescribed alternative manner under Article 75(5) is applied, the Authority may in prescribed circumstances issue a direction—
 - (i) that any resulting multi-employer debt is to be unenforceable for such a period as the Authority may specify, and
 - (ii) that the amount of the debt is to be re-calculated applying a different prescribed manner under Article 75(5) if prescribed requirements are met within that period.

(6) The prescribed requirements mentioned in paragraph (5) may include a requirement that a prescribed arrangement, the details of which are approved in a notice issued by the Authority, is in place.

(7) The regulations may provide that the Authority may not approve the details of such an arrangement unless prescribed conditions are met.

(8) Those prescribed conditions may include a requirement that—

- (a) the arrangement identifies one or more persons to whom the Authority may issue a contribution notice under the regulations, and
- (b) the Authority are satisfied of prescribed matters in respect of each of those persons.

(9) For the purposes of paragraph (8) a “contribution notice” is a notice stating that the person to whom it is issued is under a liability to pay the sum specified in the notice—

- (a) to the trustees of the multi-employer scheme in question, or
- (b) where the Board of the Pension Protection Fund has assumed responsibility for the scheme in accordance with Chapter 3 of Part III of the Pensions (Northern Ireland) Order 2005 (pension protection), to the Board.

(10) The regulations may provide for the Authority to have power to issue a contribution notice to a person identified in an arrangement as mentioned in paragraph (8) if—

- (a) the arrangement ceases to be in place or the Authority consider that the arrangement is no longer appropriate, and
- (b) the Authority are of the opinion that it is reasonable to impose liability on the person to pay the sum specified in the notice.

(11) Where a contribution notice is issued to a person under the regulations as mentioned in paragraph (8), the sum specified in the notice is to be treated as a debt due from that person to the person to whom it is to be paid as specified in the notice.

(12) Where the regulations provide for the issuing of a contribution notice by the Authority as mentioned in paragraph (8)—

- (a) the regulations must—
 - (i) provide for how the sum specified by the Authority in a contribution notice is to be determined,

- (ii) provide for the circumstances (if any) in which a person to whom a contribution notice is issued is jointly and severally liable for the debt,
 - (iii) provide for the matters which the notice must contain, and
 - (iv) provide for who may exercise the powers to recover the debt due by virtue of the contribution notice, and
 - (b) the regulations may apply with or without modifications some or all of the provisions of Articles 43 to 47 of the Pensions (Northern Ireland) Order 2005 (contribution notices where non-compliance with financial support direction) in relation to contribution notices issued under the regulations.
- (13) In this Article “multi-employer scheme” means a trust scheme which applies to earners in employments under different employers.
- (14) This Article is without prejudice to the powers conferred by—
- Article 75(5) (power to prescribe the manner of determining, calculating and verifying assets and liabilities etc.),
 - Article 75(10) (power to modify Article 75 as it applies in prescribed circumstances),
 - Article 115(1)(a) (power to modify any provisions of this Part in their application to multi-employer trust schemes), and
 - Article 122(3) (power to extend for the purposes of this Part the meaning of “employer”).]

F142 2005 NI 1

Excess assets on winding up

- 76.—(1) This Article applies to a trust scheme in any circumstances if—
- (a) it is an exempt approved scheme, within the meaning given by section 592(1) of the Taxes Act 1988^{F143},
 - (b) the scheme is being wound up, and
 - (c) in those circumstances, power is conferred on the employer or the trustees to distribute assets to the employer on a winding up.
- (2) The power referred to in paragraph (1)(c) cannot be exercised unless the requirements of paragraphs (3) and (in prescribed circumstances) (4), and any prescribed requirements, are satisfied.
- (3) The requirements of this paragraph are that—
- (a) the liabilities of the scheme have been fully discharged,
 - (b) where there is any power under the scheme, after the discharge of those liabilities, to distribute assets to any person other than the employer, the power has been exercised or a decision has been made not to exercise it,
 - ^{F144}(c) the annual rates of the pensions under the scheme which commence or have commenced are increased by the appropriate percentage, and
 - (d) notice has been given in accordance with prescribed requirements to the members of the scheme of the proposal to exercise the power.
- (4) The requirements of this paragraph are that the Authority are of the opinion that—
- (a) any requirements prescribed by virtue of paragraph (2) are satisfied, and
 - (b) the requirements of paragraph (3) are satisfied.
- ^{F144}(5) In paragraph (3)—

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- (a) “annual rate” and “appropriate percentage” have the same meaning as in Article 54, and
- (b) “pension” does not include—
 - (i) any guaranteed minimum pension (as defined in section 4(2) of the Pension Schemes Act) or any increase in such a pension under section 105 of that Act, or
 - (ii) any money purchase benefit (as defined in section 176(1) of that Act).

(6) If, where this Article applies to any trust scheme, the trustees purport to exercise the power referred to in paragraph (1)(c) without complying with the requirements of this Article,^{F145} Articles 3 and 10 apply to any of them who have failed to take all such steps as are reasonable to secure compliance.

(7) If, where this Article applies to any trust scheme, any person other than the trustees purports to exercise the power referred to in paragraph (1)(c) without complying with the requirements of this Article, Article 10 applies to him.

(8) Regulations may provide that, in prescribed circumstances, this Article does not apply to schemes falling within a prescribed class or description, or applies to them with prescribed modifications.

F143 1988 c. 1

F144 prosp. rep. by 2005 NI 1

F145 prosp. (until 06/04/06) subst. by 2005 NI 1

Excess assets remaining after winding up: power to distribute

77.—(1) This Article applies to a trust scheme in any circumstances if—

- (a) it is an exempt approved scheme, within the meaning given by section 592(1) of the Taxes Act 1988^{F146},
- (b) the scheme is being wound up,
- (c) the liabilities of the scheme have been fully discharged,
- (d) where there is any power under the scheme, after the discharge of those liabilities, to distribute assets to any person other than the employer, the power has been exercised or a decision has been made not to exercise it,
- (e) any assets remain undistributed, and
- (f) the scheme prohibits the distribution of assets to the employer in those circumstances.

^{F147}(2) The annual rates of the pensions under the scheme which commence or have commenced must be increased by the appropriate percentage, so far as the value of the undistributed assets allows.

^{F147}(3) In paragraph (2)—

- (a) “annual rate” and “appropriate percentage” have the same meaning as in Article 54, and
- (b) “pension” does not include—
 - (i) any guaranteed minimum pension (as defined in section 4(2) of the Pension Schemes Act) or any increase in such a pension under section 105 of that Act, or
 - (ii) any money purchase benefit (as defined in section 176(1) of that Act).

(4) ^{F148}Where any assets remain undistributed after the discharge of the trustees' duty under paragraph (2)—

- (a) the trustees must use^{F148} those assets for the purpose of providing additional benefits or increasing the value of any benefits, but subject to prescribed limits, and

(b) the trustees may then distribute those assets (so far as undistributed) to the employer.

(5) If, where this Article applies to a trust scheme, the requirements of this Article are not complied with,^{F149} Articles 3 and 10 apply] to any trustee who has failed to take all such steps as are reasonable to secure compliance.

(6) Regulations may modify this Article as it applies in prescribed circumstances.

F146 1988 c. 1

F147 prosp. rep. by 2005 NI 1

F148 prosp. subst. by 2005 NI 1

F149 1999 NI 11

Arts. 78 - 84 rep. by 2005 NI 1

Money purchase schemes

Schedules of payments to money purchase schemes

85.—(1) This Article applies to an occupational pension scheme which is a money purchase scheme, other than one falling within a prescribed class or description.

(2) The trustees or managers of every occupational pension scheme to which this Article applies must secure that there is prepared, maintained and revised a schedule (referred to in this Article and Article 86 as a “payment schedule”) showing—

- (a) the rates of contributions payable towards the scheme by or on behalf of the employer and the active members of the scheme,
- (b) such other amounts payable towards the scheme as may be prescribed, and
- (c) the dates on or before which payments of such contributions or other amounts are to be made (referred to in those Articles as “due dates”).

(3) The payment schedule for a scheme must satisfy prescribed requirements.

(4) The matters shown in the payment schedule for a scheme—

- (a) to the extent that the scheme makes provision for their determination, must be so determined, and
- (b) otherwise—
 - (i) must be matters previously agreed between the employer and the trustees or managers of the scheme, or
 - (ii) if no such agreement has been made as to all matters shown in the schedule (other than those for whose determination the scheme makes provision), must be matters determined by the trustees or managers of the scheme.

(5) Where in the case of a scheme this Article is not complied with—

- ^{F150}(a) Article 3 applies to any trustee who has failed to take all such steps as are reasonable to secure compliance, and
- (b) Article 10 applies to any trustee or manager who has failed to take all such steps.

F150 prosp. rep. by 2005 NI 1

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Schedules of payments to money purchase schemes: supplementary

86.—^{F151}(1) Except in prescribed circumstances, the trustees or managers of an occupational pension scheme to which Article 85 applies must, where any amounts payable in accordance with the payment schedule have not been paid on or before the due date, give notice of that fact, within the prescribed period, to the Authority and to the members of the scheme.]

[^{F152}(1) Where, in the case of an occupational pension scheme to which Article 85 applies—

- (a) there is a failure to pay on or before the due date any amounts payable in accordance with the payment schedule, and
- (b) the trustees or managers have reasonable cause to believe that the failure is likely to be of material significance in the exercise by the Authority of any of their functions,

they must, except in prescribed circumstances, give notice of the failure to the Authority and to the members of the scheme within a reasonable period after the due date.]

(2) Any such amounts which for the time being remain unpaid after that date (whether payable by the employer or not) shall, if not a debt due from the employer to the trustees or managers apart from this paragraph, be treated as such a debt.

(3) Where any amounts payable in accordance with the payment schedule by or on behalf of the employer[^{F153} on the employer's own account] have not been paid on or before the due date, Article 10 applies to the employer.

(4) If, in the case of an occupational pension scheme to which Article 85 applies, paragraph (1) is not complied with—

- ^{F154}(a) Article 3 applies to any trustee who has failed to take all such steps as are reasonable to secure compliance, and
- (b) Article 10 applies to any trustee or manager who has failed to take all such steps.^{F155}

F151 Art. 86(1) substituted (1.7.2005 for certain purposes, otherwise 6.4.2006) by [Pensions \(Northern Ireland\) Order 2005 \(S.I. 2005/255 \(N.I. 1\)\)](#), [arts. 1\(2\)](#), 246(2); S.R. 2005/321, art. 2(15), [Sch. Pt. 2](#)

F152 Art. 86(1) substituted (1.7.2005 for certain purposes, otherwise 6.4.2006) by [Pensions \(Northern Ireland\) Order 2005 \(S.I. 2005/255 \(N.I. 1\)\)](#), [arts. 1\(2\)](#), 246(2); S.R. 2005/321, art. 2(15), [Sch. Pt. 2](#)

F153 1999 NI 11

F154 prosp. rep. by [2005 NI 1](#)

F155 prosp. added by [2000 c. 4 \(NI\)](#)

Application of further provisions to money purchase schemes

87.—(1) In the case of money purchase schemes falling within a prescribed class or description, regulations may—

- (a) provide for any of the provisions of [^{F156}Part IV of the Pensions (Northern Ireland) Order 2005] to apply, or apply with prescribed modifications (in spite of anything in [^{F156}that Part]), and
- (b) provide for any of the provisions of Articles 85 and 86 to apply with prescribed modifications or not to apply,

to such extent as may be prescribed.

(2) Regulations may provide for any of the provisions of Article 75 to apply, or apply with prescribed modifications, to money purchase schemes to such extent as may be prescribed (in spite of anything in that Article), and the power conferred by this paragraph includes power to apply Article

75 in circumstances other than those in which the scheme is being wound up or a relevant^{F157} . . . event occurs (within the meaning of that Article).

F156 2005 NI 1

F157 2005 NI 1

Unpaid contributions in cases of insolvency

88. In section 120 of the Pension Schemes Act (duty of Department to pay unpaid contributions to schemes), after subsection (3) insert—

“(3A) Where the scheme in question is a money purchase scheme, the sum payable under this section by virtue of subsection (3) shall be the lesser of the amounts mentioned in paragraphs (a) and (c) of that subsection.”.

and, accordingly, at the beginning of subsection (3) insert “Subject to subsection (3A),”.

Assignment, forfeiture, bankruptcy, etc.,

Inalienability of occupational pension

89.—(1) Subject to paragraph (5), where a person is entitled^{F158} to a pension under an occupational pension scheme or has a right to a future pension under such a scheme]

- (a) the entitlement or right cannot be assigned, commuted or surrendered,
- (b) the entitlement or right cannot be charged or a lien exercised in respect of it, and
- (c) no set-off can be exercised in respect of it,

and an agreement to effect any of those things is unenforceable.

(2) Where by virtue of this Article a person's entitlement^{F158} to a pension under an occupational pension scheme, or right to a future pension under such a scheme,] cannot, apart from paragraph (5), be assigned, no order can be made by any court the effect of which would be that he would be restrained from receiving that pension.

Para. (3) rep. by 1999 NI 11

(4) Paragraph (2) does not prevent the making of—

- (a) an attachment of earnings order under the Judgments Enforcement (Northern Ireland) Order 1981^{F159}, or
- (b) an income payments order under the Insolvency (Northern Ireland) Order 1989^{F160}.

(5) In the case of a person (“the person in question”) who is entitled^{F158} to a pension under an occupational pension scheme, or has a right to a future pension under such a scheme], paragraph (1) does not apply to any of the following, or any agreement to effect any of the following—

- (a) an assignment in favour of the person in question's widow, widower^{F161}, surviving civil partner] or dependant,
- (b) a surrender, at the option of the person in question, for the purpose of—
 - (i) providing benefits for that person's widow, widower^{F161}, surviving civil partner] or dependant, or
 - (ii) acquiring for the person in question entitlement to further benefits under the scheme,
- (c) a commutation—

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- (i) of the person in question's benefit on or after retirement or in exceptional circumstances of serious ill health,
- (ii) in prescribed circumstances, of any benefit for that person's widow, widower^{F161}, surviving civil partner] or dependant, or
- (iii) in other prescribed circumstances,
- (d) subject to paragraph (6), a charge or lien on, or set-off against, the person in question's entitlement, or^{F158} right,] (except to the extent that it includes transfer credits other than prescribed transfer credits) for the purpose of enabling the employer to obtain the discharge by him of some monetary obligation due to the employer and arising out of a criminal, negligent or fraudulent act or omission by him,
- (e) subject to paragraph (6), except in prescribed circumstances a charge or lien on, or set-off against, the person in question's entitlement, or^{F158} right], for the purpose of discharging some monetary obligation due from the person in question to the scheme and—
 - (i) arising out of a criminal, negligent or fraudulent act or omission by him, or
 - (ii) in the case of a trust scheme of which the person in question is a trustee, arising out of a breach of trust by him.
- ^{F162}(f) subject to paragraph (6), a charge or lien on, or set-off against, the person in question's entitlement, or right, for the purpose of discharging some monetary obligation due from the person in question to the scheme arising out of a payment made in error in respect of the pension.]
- (6) Where a charge, lien or set-off is exercisable by virtue of paragraph (5)(d)^{F162}, (e) or (f)]
 - (a) its amount must not exceed the amount of the monetary obligation in question, or (if less) the value (determined in the prescribed manner) of the person in question's entitlement or accrued right, and
 - (b) the person in question must be given a certificate showing the amount of the charge, lien or set-off and its effect on his benefits under the scheme,

and where there is a dispute as to its amount, the charge, lien or set-off must not be exercised unless the obligation in question has become enforceable under an order of a competent court or in consequence of an award of an arbitrator.

(7) This Article is subject to section 155 of the Pension Schemes Act (inalienability of guaranteed minimum pension and protected rights payments).

F158 1999 NI 11
F159 1981 NI 6
F160 1989 NI 19
F161 SR 2005/434
F162 2005 NI 1

Forfeiture, etc.

90.—(1) Subject to paragraphs (2) to (6) and Article 91, an entitlement^{F163} to a pension under an occupational pension scheme or a right to a future pension under such a scheme] cannot be forfeited.

(2) Paragraph (1) does not prevent forfeiture by reference to—

- (a) a transaction or purported transaction which under Article 89 is of no effect,^{F164} . . .

Sub#para. (b) rep. by 1999 NI 11

whether or not that event occurred before or after the pension became payable.

(3) Where such forfeiture as is mentioned in paragraph (2) occurs, any pension which was, or would but for the forfeiture have become, payable may, if the trustees or managers of the scheme so determine, be paid to all or any of the following—

(a) the member of the scheme to or in respect of whom the pension was, or would have become, payable,

[^{F165}(b) the spouse, civil partner, widow, widower or surviving civil partner of the member,]

(c) any dependant of the member, and

(d) any other person falling within a prescribed class.

(4) Paragraph (1) does not prevent forfeiture by reference to the [^{F163} pensioner, or prospective pensioner], having been convicted of one or more offences—

(a) which are committed before the pension becomes payable, and

(b) which are—

(i) offences of treason,

(ii) offences under the Official Secrets Acts 1911 to 1989 for which the person has been sentenced on the same occasion to a term of imprisonment of, or to two or more consecutive terms amounting in the aggregate to, at least 10 years, or

(iii) prescribed offences.

(5) Paragraph (1) does not prevent forfeiture by reference to a failure by any person to make a claim for pension—

(a) where the forfeiture is in reliance on any enactment relating to the limitation of actions, or

(b) where the claim is not made within six years of the date on which the pension becomes due.

(6) Paragraph (1) does not prevent forfeiture in prescribed circumstances.

(7) In this Article and Article 91, references to forfeiture include any manner of deprivation or suspension.

F163 1999 NI 11

F164 1999 NI 11

F165 SR 2005/434

Forfeiture by reference to obligation to employer

91.—(1) Subject to paragraph (2), Article 90(1) does not prevent forfeiture of a person's entitlement [^{F166} to a pension under an occupational pension scheme or right to a future pension under such a scheme] by reference to the person having incurred some monetary obligation due to the employer and arising out of a criminal, negligent or fraudulent act or omission by the person.

(2) A person's entitlement [^{F166} right] may be forfeited by reason of paragraph (1) to the extent only that it does not exceed the amount of the monetary obligation in question, or (if less) the value (determined in the prescribed manner) of the person's entitlement or [^{F166} right].

(3) Such forfeiture as is mentioned in paragraph (1) must not take effect where there is a dispute as to the amount of the monetary obligation in question, unless the obligation has become enforceable under an order of a competent court or in consequence of an award of an arbitrator.

(4) Where a person's entitlement or [^{F166} right] is forfeited by reason of paragraph (1), the person must be given a certificate showing the amount forfeited and the effect of the forfeiture on his benefits under the scheme.

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(5) Where such forfeiture as is mentioned in paragraph (1) occurs, an amount not exceeding the amount forfeited may, if the trustees or managers of the scheme so determine, be paid to the employer.

F166 1999 NI 11

Articles 89 to 91: supplementary

92.—(1) Regulations may—

- (a) modify Articles 89 to 91 in their application to public service pension schemes or to other schemes falling within a prescribed class or description, or
- (b) provide that those Articles do not apply in relation to schemes falling within a prescribed class or description.

(2) In those Articles, “pension” in relation to an occupational pension scheme, includes any benefit under the scheme and any part of a pension and any payment by way of pension.

Art. 93 rep. by 1999 NI 11

Arts. 94 - 112 rep. by 2005 NI 1

General

Breach of regulations

113.—(1) Regulations made by virtue of any provisions of this Part may provide for the contravention of any provision contained in any such regulations to be an offence under this Part and for the recovery on summary conviction for any such offence of a fine not exceeding level 5 on the standard scale.

(2) An offence under any provision of the regulations may be charged by reference to any day or longer period of time; and a person may be convicted of a second or subsequent offence under such a provision by reference to any period of time following the preceding conviction of the offence.

(3) Where by reason of the contravention of any provision contained in regulations made by virtue of this Part—

- (a) a person is convicted of an offence under this Part, or
- (b) a person pays a penalty under Article 10,

then, in respect of that contravention, he shall not, in a case within sub-paragraph (a), be liable to pay such a penalty or, in a case within sub-paragraph (b), be convicted of such an offence.

Overriding requirements

114.—(1) Where any provision mentioned in paragraph (2) conflicts with the provisions of an occupational pension scheme—

- (a) the provision mentioned in paragraph (2), to the extent that it conflicts, overrides the provisions of the scheme, and
- (b) the scheme has effect with such modifications as may be required in consequence of sub-paragraph (a).

(2) The provisions referred to in paragraph (1) are those of—

- (a) this Part,
- (b) any subordinate legislation made or having effect as if made under this Part,^{F167} or

^{F167}(c) any arrangements under Article 16(1) or^{F168} 17(2).

F167 prosp. (until 06/04/06) rep. by [2005 NI 1](#)

F168 prosp. subst. by [2000 c. 4 \(NI\)](#)

Powers to modify this Part

115.—(1) Regulations may modify any provisions of this Part, in their application—

- (a) to a trust scheme which applies to earners in employments under different employers,
- (b) to a trust scheme of which there are no members who are in pensionable service under the scheme, or
- (c) to any case where a partnership is the employer, or one of the employers, in relation to a trust scheme.

(2) Regulations may provide for^{F169} some or all of the provisions of Articles 22^{F170} to 26]], and Article 114 (so far as it applies to those Articles), not to apply in relation to a trust scheme falling within a prescribed class or description.

Para. (3) rep. by 2005 NI 1

F169 [2000 c. 4 \(NI\)](#)

F170 [2005 NI 1](#)

Calculations, etc. under regulations: sub-delegation

116. Regulations made by virtue of Article^{F171} 56(3),^{F172} 73B(4)(a)] or 75 may provide for the values of the assets and the amounts of the liabilities there mentioned to be calculated and verified in accordance with guidance—

- (a) prepared and revised by a prescribed body, and
- (b) approved by the Department.

F171 prosp. rep. by [2005 NI 1](#)

F172 [2005 NI 1](#)

Consultations about regulations

117.—(1) Before the Department makes any regulations by virtue of this Part, It must consult such persons as it considers appropriate.

(2) Paragraph (1) does not apply—

- (a) to regulations made for the purpose only of consolidating other regulations revoked by them,
- (b) to regulations in the case of which the Department considers consultation inexpedient because of urgency,
- (c) to regulations made before the end of the period of six months beginning with the coming into operation of the provision of this Part by virtue of which the regulations are made,
- (d) to regulations which—
 - (i) state that they are consequential upon a specified enactment, and

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- (ii) are made before the end of the period of six months beginning with the coming into operation of that enactment, or
- (e) to regulations making only provision corresponding to provision contained in regulations made by the Secretary of State in relation to Great Britain.

Crown application

118.—(1) This Part applies to an occupational pension scheme managed by or on behalf of the Crown as it applies to other occupational pension schemes; and, accordingly, references in this Part to a person in his capacity as a trustee or manager of an occupational pension scheme include the Crown, or a person acting on behalf of the Crown, in that capacity.

(2) References in this Part to a person in his capacity as employer in relation to an occupational pension scheme include the Crown, or a person acting on behalf of the Crown, in that capacity.

(3) This Article does not apply to any provision made by or under this Part under which a person may be prosecuted for an offence; but such a provision applies to persons in the public service of the Crown as it applies to other persons.

(4) This Article does not apply to Article 42 to 46 (but see the amendment of Article 79 (1) of the Industrial Relations (Northern Ireland) Order 1976^{F173} in Schedule 1).

(5) Nothing in this Part applies to Her Majesty in Her private capacity (within the meaning of the Crown Proceedings Act 1947^{F174}).

(6) Subject to paragraphs (1) to (5), this Part binds the Crown to the full extent authorised by the constitutional laws of Northern Ireland.

F173 1976 NI 16

F174 1947 c. 44

Art. 119—Amendments

“Connected” and “associated” persons

120.—(1) Articles 4 and 7 of the Insolvency (Northern Ireland) Order 1989^{F175} (associated and connected persons) apply for the purposes of the provisions of this Order listed in paragraph (2) as they apply for the purposes of any provision of that Order.

(2) The provisions referred to in paragraph (1) are—

- (a) Article 23(3)(b)
- (b) Articles 27 and 28,
- (c) Article 40,

but in the case of Article 40 the provisions mentioned in paragraph (1) shall apply for those purposes with any prescribed modifications.

F175 1989 NI 19

Interpretation of Part II

121.—(1) In this Part—

“active member”, in relation to an occupational pension scheme, means a person who is in pensionable service under the scheme,

“the actuary” and “the auditor”, in relation to an occupational pension scheme, have the meanings given by Article 47,

[^{F176}“the Authority” means the Pensions Regulator;]

[^{F177}“civil partnership status” in relation to a person, means whether that person has previously formed a civil partnership and, if so, whether that civil partnership has ended,]

“the Compensation Board” means the Pensions Compensation Board.

“the compensation provisions” has the meaning given by Article 79(3),

“the Crown” means the Crown in right of Her Majesty's government in Northern Ireland or in right of Her Majesty's government in the United Kingdom;

“deferred member”, in relation to an occupational pension scheme, means a person (other than an active or pensioner member) who has accrued rights under the scheme,

“employer”, in relation to an occupational pension scheme, means the employer of persons in the description^{F178} or category of employment to which the scheme in question relates (but see Article 122(3)),

“equal treatment rule” has the meaning given by Article 62,

“firm” means a body corporate or a partnership,

“fund manager”, in relation to an occupational pension scheme, means a person who manages the investments held for the purposes of the scheme,

“government department” means a Northern Ireland department or a department of the government of the United Kingdom;

“independent trustee” has the meaning given by Article 23(3),

“managers”, in relation to an occupational pension scheme other than a trust scheme, means the persons responsible for the management of the scheme,

“member”, in relation to an occupational pension scheme, means any active, deferred[^{F179}, pensioner or pension credit] member (but see Article 122(4)),

^{F178}“member-nominated director” has the meaning given by Article 18(2),

^{F178}“member-nominated trustee” has the meaning given by Article 16(2),

^{F178}“the minimum funding requirement” has the meaning given by Article 56(1),

“normal pension age” has the meaning given by section 175 of the Pension Schemes Act,

“payment schedule” has the meaning given by Article 85(2),

[^{F179}“pension credit” means a credit under Article 26(1)(b) of the Welfare Reform and Pensions (Northern Ireland) Order 1999 or under section 29(1)(b) of the Welfare Reform and Pensions Act 1999,

“pension credit member”, in relation to an occupational pension scheme, means a person who has rights under the scheme which are attributable (directly or indirectly) to a pension credit,

“pension credit rights”, in relation to an occupational pension scheme, means rights to future benefits under the scheme which are attributable (directly or indirectly) to a pension credit,]

“pensionable service”, in relation to a member of an occupational pension scheme, means service in any description^{F178} or category of employment to which the scheme relates which qualifies the member (on the assumption that it continues for the appropriate period) for pension or other benefits under the scheme,

“pensioner member”, in relation to an occupational pension scheme, means a person who, in respect of his pensionable service under the scheme or by reason of transfer credits, is entitled

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to the present payment of pension or other benefits^{F180} and who is not an active member of the scheme],

“prescribed” means prescribed by regulations,

“professional adviser”, in relation to a scheme, has the meaning given by Article 47,

“public service pension scheme” has the meaning given by section 1 of the Pension Schemes Act,

“resources”, in relation to an occupational pension scheme, means the funds out of which the benefits provided by the scheme are payable from time to time, including the proceeds of any policy of insurance taken out, or annuity contract entered into, for the purposes of the scheme,

“the Taxes Act 1988” means the Income and Corporation Taxes Act 1988^{F181},

“transfer credits” means rights allowed to a member under the rules of an occupational pension scheme by reference to^{F182} a transfer to that scheme of his accrued rights from another scheme (including any transfer credits allowed by that scheme),

“trustees or managers”, in relation to an occupational pension scheme, means—

- (a) in the case of a trust scheme, the trustees of the scheme, and
- (b) in any other case, the managers of the scheme, “trust scheme” means an occupational pension scheme established under a trust

(2) For the purposes of this Part—

- (a) the accrued rights of a member of an occupational pension scheme at any time are the rights which have accrued to or in respect of him at that time to future benefits under the scheme, and
- (b) at any time when the pensionable service of a member of an occupational pension scheme is continuing, his accrued rights are to be determined as if he had opted, immediately before that time, to terminate that service,

and references to accrued pension or accrued benefits are to be interpreted accordingly.

[^{F179}(2A) In paragraph (2)(a), the reference to rights which have accrued to or in respect of the member does not include any rights which are pension credit rights.]

(3) In determining what is “pensionable service” for the purposes of this Part—

- (a) service notionally attributable for any purpose of the scheme is to be disregarded, and
- (b) no account is to be taken of any rules of the scheme by which a period of service can be treated for any purpose as being longer or shorter than it actually is^{F179} but, in its application for the purposes of Article 51, sub#paragraph (b) does not affect the operation of any rules of the scheme by virtue of which a period of service is to be rounded up or down by a period of less than a month].

[^{F180}(4) In a case of the winding-up of an occupational pension scheme in pursuance of an order of the Authority under Article 11 or of an order of a court, the winding-up shall (subject to paragraph (8)^{F183}) be taken for the purposes of this Part to begin—

- (a) if the order provides for a time to be the time when the winding-up begins, at that time, and
- (b) in any other case, at the time when the order comes into force.

(5) In a case of the winding-up of an occupational pension scheme in accordance with a requirement or power contained in the rules of the scheme, the winding-up shall (subject to paragraphs (6) to (8)^{F183}) be taken for the purposes of this Part to begin—

- (a) at the time (if any) which under those rules is the time when the winding-up begins, and

- (b) if sub-paragraph (a) does not apply, at the earliest time which is a time fixed by the trustees or managers as the time from which steps for the purposes of the winding-up are to be taken.
- (6) Paragraph (5) shall not require a winding-up of a scheme to be treated as having begun at any time before the end of any period during which effect is being given—
 - (a) to a determination under Article 38 that the scheme is not for the time being to be wound up, or
 - (b) to a determination in accordance with the rules of the scheme to postpone the commencement of a winding-up.
- (7) In paragraph (5)(b) the reference to the trustees or managers of the scheme shall have effect in relation to any scheme the rules of which provide for a determination that the scheme is to be wound up to be made by persons other than the trustees or managers as including a reference to those other persons.
- (8) Paragraphs (4) to (7) do not apply for such purposes as may be prescribed.]

F176 2005 NI 1
F177 SR 2005/434
F178 prosp. rep. by 2005 NI 1
F179 1999 NI 11
F180 2000 c. 4 (NI)
F181 1988 c. 1
F182 prosp. (until 06/04/06) subst. by 2005 NI 1
F183 prosp. (until 06/04/06) insertion by 2005 NI 1

Article 121: supplementary

- 122.**—(1) For the purposes of this Part, an occupational pension scheme is salary related if—
- (a) the scheme is not a money purchase scheme, and
 - (b) the scheme does not fall within a prescribed class or description,
- and “salary related trust scheme” is to be read accordingly.
- (2) Regulations may apply this Part with prescribed modifications to occupational pension schemes—
- (a) which are not money purchase schemes, but
 - (b) where some of the benefits that may be provided are money purchase benefits.
- (3) Regulations may, in relation to occupational pension schemes, extend for the purposes of this Part the meaning of “employer” to include^{F184} persons who have been the employer in relation to the scheme^{F184}.
- (4) For any of the purposes of this Part, regulations may in relation to occupational pension schemes—
- (a) extend or restrict the meaning of “member”,
 - (b) determine who is to be treated as a prospective member, and
 - (c) determine the times at which a person is to be treated as becoming, or as ceasing to be, a member or prospective member.

F184 prosp. insertion by 2005 NI 1

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