Status: *Point in time view as at 06/04/2006. This version of this Order contains provisions that are not valid for this point in time.*
Changes to legislation: *The Pensions (Northern Ireland) Order 2005 is up to date with all changes known to be in force on or before 03 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

STATUTORY INSTRUMENTS

2005 No. 255

The Pensions (Northern Ireland) Order 2005

PART I

INTRODUCTORY

Title and commencement

1.—(1) This Order may be cited as the Pensions (Northern Ireland) Order 2005.

(2) Subject to paragraphs (3) to (5), the provisions of this Order shall come into operation on such day or days as the Department may by order appoint.

(3) The following provisions shall come into operation on the expiration of seven days from the day on which this Order is made—

(a) this Article and Article 2 (other than paragraphs (5) and (6));

(b) in Part V, Article 213 (supply of housing benefit information);

(c) in Part VI, Article 258 (exemption from statutory revaluation requirement);

(d) in Part VIII—

(i) Article 272 (persons entitled to more than one Category B retirement pension),

(ii) Article 273(3) (commencement of amendments of state pension deferment provisions made by the 1995 Order), and

(iii) Article 274 (disclosure of state pension information), except paragraphs (4) and (5)(b);

(e) in Part IX (miscellaneous and supplementary)—

(i) Articles 277 and 278 (electronic working), and

(ii) Articles 285, 287 (other than paragraph (4)), 288 and 289;

(f) the repeal by this Order of Article 47(2) of the 1999 Order.

(4) Article 273 (and Schedule 9 (deferral of retirement pensions and shared additional pensions), other than the provisions coming into operation in accordance with paragraph (3)—

(a) shall come into operation on the expiration of seven days from the day on which this Order is made so far as is necessary for enabling the making of any regulations for which they provide, and

(b) otherwise, shall come into operation on 6th April 2005.

(5) The repeals by this Order of Article 131(3) of, and paragraph 18(13) and (14) of Schedule 2 to, the 1995 Order shall come into operation on 6th April 2005.

(6) Without prejudice to Article 287(3), the power to make an order under this Article includes power—

(a) to make transitional adaptations or modifications—

(i) of the provisions brought into operation by the order, or

(ii) in connection with those provisions, of any provisions of Parts II to VII of this Order, the Pension Schemes Act, the 1995 Order, Parts II, III or V of the 1999 Order or Chapter 2 of Part II of the 2000 Act, or

(b) to save the effect of any of the repealed provisions of any of those statutory provisions, or those provisions as adapted or modified by the order,

as it appears to the Department expedient, including different adaptations or modifications for different periods.

Subordinate Legislation Made

P1 Art. 1(2) power partly exercised: different dates appointed for specified provisions by S.R. 2005/48, art. 2, **Sch.** (with arts. 4-6);
different dates appointed for specified provisions by S.R. 2005/166, art. 2, **Sch. 1** (with arts. 3-5, Schs. 2, 3);
6.4.2005 appointed for specified provisions by S.R. 2005/192, art. 2(2), **Sch.** (with art. 2(3)(4));
different dates appointed for specified provisions by S.R. 2005/280, **art. 2**;
different dates appointed for specified provisions by S.R. 2005/321, art. 2, **Sch.**;
different dates appointed for specified provisions by S.R. 2005/411, art. 2, **Sch.**;
different dates appointed for specified provisions by S.R. 2005/543, arts. 2, 3, **Sch.**;
15.2.2006 appointed for specified provisions by S.R. 2006/45, **art. 2(2)**;
different dates appointed for specified provisions by S.R. 2006/95, art. 2, **Sch.**;
different dates appointed for specified provisions by S.R. 2006/352, art. 2, **Sch.** (with art. 3);
different dates appointed for specified provision by S.R. 2008/104, **art. 2**;
different dates appointed for specified provision by S.R. 2009/62, **art. 2**;
different dates appointed for specified provision by S.R. 2009/242, **art. 2**;
different dates appointed for specified provisions by S.R. 2010/100, **art. 2**

Interpretation

General interpretation

2 [F1]**.**—(1) The Interpretation Act (Northern Ireland) 1954 (c. 33) applies to this Order as it applies to an Act of the Assembly.

(2) In this Order, unless the context otherwise requires—

"the 1995 Order" means the Pensions (Northern Ireland) Order 1995 (NI 22);

"the 1999 Order" means the Welfare Reform and Pensions (Northern Ireland) Order 1999 (NI 11);

"the 2000 Act" means the Child Support, Pensions and Social Security Act (Northern Ireland) 2000 (c. 4);

"active member" has the meaning given by Article 121(1) of the 1995 Order;

"the Board" means the Board of the Pension Protection Fund;

"the Companies Order" means the Companies (Northern Ireland) Order 1986 (NI 6);

"the Contributions and Benefits Act" means the Social Security Contributions and Benefits (Northern Ireland) Act 1992 (c. 7);

"the Department" means the Department for Social Development;

"the Determinations Panel" means the committee established by the Regulator under section 9 of the Pensions Act 2004 (c. 35);

"direct payment arrangements", in relation to a personal pension scheme, has the same meaning as in section 107A of the Pension Schemes Act;

"earnings" has the meaning given by section 176(1) of the Pension Schemes Act;

"employee" has the meaning given by section 176(1) of the Pension Schemes Act;

"employer"

(a) in relation to an occupational pension scheme, means the employer of persons in the description of employment to which the scheme in question relates (but see paragraph (5)), and

(b) in relation to a personal pension scheme, where direct payment arrangements exist in respect of one or more members of the scheme who are employees, means an employer with whom those arrangements exist;

"enactment" includes any statutory provision;

"government department" means a Northern Ireland department or a department of the government of the United Kingdom;

"the Insolvency Order" means the Insolvency (Northern Ireland) Order 1989 (NI 19);

"managers", in relation to an occupational or personal pension scheme (other than a scheme established under a trust), means the persons responsible for the management of the scheme;

"member", in relation to an occupational pension scheme, means any active, deferred, pensioner or pension credit member within the meaning of Article 121(1) of the 1995 Order (but see paragraph (6));

"modifications" includes additions, omissions and amendments;

"money purchase benefit" has the meaning given by section 176(1) of the Pension Schemes Act;

"money purchase scheme" has the meaning given by section 176(1) of the Pension Schemes Act;

"occupational pension scheme" has the meaning given by section 1 of the Pension Schemes Act;

"pension credit" has the meaning given by Article 121(1) of the 1995 Order;

"the Pension Schemes Act" means the Pension Schemes (Northern Ireland) Act 1993 (c. 49);

"personal pension scheme" has the meaning given by section 1 of the Pension Schemes Act;

"the PPF Ombudsman" means the Ombudsman for the Board of the Pension Protection Fund;

"prescribed" means prescribed by regulations;

"professional adviser", in relation to an occupational pension scheme, has the meaning given by Article 47 of the 1995 Order;

"regulations" means regulations made by the Department;

"the Regulator" means the Pensions Regulator;

"statutory provision" has the meaning given by section 1(f) of the Interpretation Act (Northern Ireland) 1954 (c. 33);

"the Tribunal" means the Pensions Regulator Tribunal.

(3) In this Order, unless the context otherwise requires, references to the scheme rules, in relation to an occupational pension scheme, are references to—

(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).

(4) For the purposes of paragraph (3)—

(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 (NI 13) (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) Part II of the 1995 Order (occupational pensions) or orders or regulations made or having effect as if made under that Part;

(vi) Article 28 of the 1999 Order (pension debits: reduction of benefit);

(vii) any provision mentioned in Article 279(2);

(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) of the 1995 Order;

(iv) Article 28(4) of the 1999 Order;

(v) Article 279(1).

(5) Regulations may, in relation to occupational pension schemes, extend for the purposes of this Part and Parts II, III and V to VII the meaning of "employer" to include—

(a) persons who have been the employer in relation to the scheme;

(b) such other persons as may be prescribed.

(6) Regulations may for any purpose of any provision of this Order—

(a) prescribe the persons who are to be regarded as members or prospective members of an occupational or personal pension scheme, and

(b) make provision as to the times at which and circumstances in which a person is to be treated as becoming, or as ceasing to be, such a member or prospective member.

(7) In the application, for the purposes of this Order, of—

(a) section 24(1) of the Interpretation Act (Northern Ireland) 1954 (c. 33) (service of documents by post) omit the word "registering";

(b) section 39(2) of that Act (time beginning on a particular day), omit the word "not".

F1 mod. by SR 2005/55

PART II

THE PENSIONS REGULATOR

General provisions about functions

Regulator's functions

3.—(1) The Regulator has—

(a) the functions transferred to it from the Occupational Pensions Regulatory Authority by virtue of this Order, and

(b) any other functions conferred by, or by virtue of, this or any other statutory provision.

(2) Schedule 1 makes further provision about the Regulator.

(3) As regards the exercise of the Regulator's functions—

(a) the functions mentioned in the following provisions are exercisable only by the Determinations Panel—

(i) Article 7(1) (the power in certain circumstances to determine whether to exercise the functions listed in Schedule 2 and to exercise them), and

(ii) Article 94(10) (the functions concerning the compulsory review of certain determinations), and

(b) the exercise of other functions of the Regulator (except the non-executive functions which are exercised in accordance with section 4(2)(a) of the Pensions Act 2004 (c. 35) and functions which are delegated in accordance with section 4(2)(c) of that Act) may be delegated by the Regulator under paragraph 1 of Schedule 1.

(4) Paragraph (3) is subject to any regulations made by the Department under paragraph 2 of Schedule 1 (power to limit or permit delegation of functions).

Regulator's objectives

4.—(1) The main objectives of the Regulator in exercising its functions are—

(a) to protect the benefits under occupational pension schemes of, or in respect of, members of such schemes,

(b) to protect the benefits under personal pension schemes of, or in respect of, members of such schemes within paragraph (2),

(c) to reduce the risk of situations arising which may lead to compensation being payable from the Pension Protection Fund (see Part III), and

(d) to promote, and to improve understanding of, the good administration of work-based pension schemes.

(2) For the purposes of paragraph (1)(b) the members of personal pension schemes within this paragraph are—

(a) the members who are employees in respect of whom direct payment arrangements exist, and

(b) where the scheme is a stakeholder pension scheme, any other members.

(3) In this Article—

"stakeholder pension scheme" means a personal pension scheme which is or has been registered under Article 4 of the 1999 Order (register of stakeholder schemes);

"work-based pension scheme" means—

(a) an occupational pension scheme,

(b) a personal pension scheme where direct payment arrangements exist in respect of one or more members of the scheme who are employees, or

(c) a stakeholder pension scheme.

Supplementary powers

5. The Regulator may do anything (except borrow money) which—

(a) is calculated to facilitate the exercise of its functions, or

(b) is incidental or conducive to their exercise.

Transfer of OPRA's functions to the Regulator

6.—(1) Subject to the provisions of this Order, the functions of the Occupational Pensions Regulatory Authority ("OPRA") conferred by or by virtue of—

(a) the Pension Schemes Act,

(b) the 1995 Order, and

(c) the 1999 Order,

are hereby transferred to the Regulator.

(2) Accordingly—

(a) in section 176(1) of the Pension Schemes Act (which defines "the Regulatory Authority" to mean OPRA), for the definition of "the Regulatory Authority" substitute—

" "the Regulatory Authority" means the Pensions Regulator;",

(b) in Article 121(1) of the 1995 Order (which defines "the Authority", in Part II of that Order, to mean OPRA), for the definition of "the Authority" substitute—

" "the Authority" means the Pensions Regulator;",

(c) in Article 9(1) of the 1999 Order (which defines "the Authority", in Part II of that Order, to mean OPRA), for the definition of "the Authority" substitute—

" "the Authority" means the Pensions Regulator;", and

(d) in Article 30 of that Order (time for discharge of pension credit liability), in paragraph (5) for "the Occupational Pensions Regulatory Authority" substitute " the Pensions Regulator ".

The Determinations Panel

Functions exercisable by the Determinations Panel

7.—(1) The Determinations Panel is to exercise on behalf of the Regulator—

(a) the power to determine, in the circumstances described in paragraph (2), whether to exercise a reserved regulatory function, and

(b) where it so determines to exercise a reserved regulatory function, the power to exercise the function in question.

(2) Those circumstances are—

(a) where the Regulator considers that the exercise of the reserved regulatory function may be appropriate, or

(b) where an application is made under, or by virtue of, any of the provisions listed in paragraph (6) for the Regulator to exercise the reserved regulatory function.

(3) Where paragraph (1) applies, the powers mentioned in that paragraph are not otherwise exercisable by or on behalf of the Regulator.

(4) For the purposes of this Part, a function of the Regulator is a "reserved regulatory function" if it is a function listed in Schedule 2.

(5) Regulations may amend Schedule 2 by—

(a) adding any function of the Regulator conferred by, or by virtue of, this or any other statutory provision,

(b) omitting any such function, or

(c) altering the description of any such function contained in that Schedule.

(6) The provisions referred to in paragraph (2)(b) are—

(a) Article 16(10) (application to permit payments out of an account that is subject to a restraining order);

(b) Article 22(2) (application for order validating action taken in contravention of freezing order);

(c) Article 37(7) (application for the issue of a revised contribution notice under Article 37(9));

(d) Article 46(7) (application for the issue of a revised contribution notice under Article 46(9));

(e) Article 3(3) of the 1995 Order (application for revocation of prohibition order);

(f) Article 4(5) of that Order (application for revocation of a suspension order);

(g) Article 7(5A) of that Order (application for appointment of a trustee under Article 7(3)(a) or (c) of that Order);

(h) Article 29(5) of that Order (application for waiver of disqualification);

[[F2](ha) Article 58(7) of that Order (power of the Regulator in prescribed circumstances to extend or further extend the period referred to in Article 58(6) of that Order in relation to a schedule of contributions);

(hb) Article 60(7) of that Order (power of the Regulator in prescribed circumstances to extend or further extend the period applicable under Article 60(3) of that Order in relation to securing an increase in value);**]**

(i) Article 69(1) of that Order (application for order authorising modification or modifying a scheme);

(j) Article 71A(2) of that Order (application for modifying a scheme to secure winding up);

(k) section 95(4A) of the Pension Schemes Act (application for extension under section 95(4) of that Act of a period for compliance);

(l) section 97J(6)(a) of that Act (application for extension under section 97J(2) of that Act of a period for compliance).

(7) Regulations may amend paragraph (6) by—

(a) adding any provision of this or any other statutory provision to the list in that paragraph, or

(b) omitting or altering the description of any provision mentioned in that list.

(8) The Panel may be authorised under paragraph 1(3) or (5) of Schedule 1 to exercise further functions of the Regulator on behalf of the Regulator.

(9) The Panel may authorise any of its members or any of its sub-committees to exercise on its behalf—

(a) any of the functions of the Regulator which are exercisable by the Panel on behalf of the Regulator, or

(b) any of the functions of the Panel under Article 88(3) or 94(11) or paragraph 18(2) of Schedule 1 to the Pensions Act 2004 (c. 35) (procedure).

(10) This Article is subject to any regulations made by the Department under paragraph 2 of Schedule 1 (power to limit or permit delegation of functions).

F2 SR 2005/357

Provision of information, education and assistance

Provision of information, education and assistance

8.—(1) The Regulator may provide such information, education and assistance as it considers appropriate to those involved in—

(a) the administration of work-based pension schemes, or

(b) advising the trustees or managers in relation to such schemes as to their operation.

(2) To the extent that it is not authorised to do so under paragraph (1), the Regulator may also provide such information, education and assistance as it considers appropriate to—

(a) employers in relation to work-based pension schemes,

(b) persons involved in advising such employers as to the operation of such schemes, or

(c) persons upon whom duties are imposed by or by virtue of Article 215 (information and advice to employees).

(3) For the purposes of paragraph (2), "employers in relation to work-based pension schemes" means, in the case of stakeholder pension schemes, the persons upon whom duties are imposed by or by virtue of Article 5 of the 1999 Order (duty of employers to facilitate access to stakeholder pension schemes).

(4) In this Article—

"assistance" does not include financial assistance;

"stakeholder pension scheme" and "work-based pension scheme" have the same meaning as in Article 4 (Regulator's objectives).

New powers in respect of occupational and personal pension schemes

Improvement notices

9.—(1) If the Regulator is of the opinion that a person—

(a) is contravening one or more provisions of the pensions legislation, or

(b) has contravened one or more of those provisions in circumstances that make it likely that the contravention will continue or be repeated,

it may issue a notice (an "improvement notice") to that person directing him to take, or refrain from taking, such steps as are specified in the notice in order to remedy or prevent a recurrence of the contravention.

(2) An improvement notice must—

(a) state that the Regulator is of that opinion and specify the provision or provisions of the pensions legislation in question,

(b) contain a statement of the matters which it is asserted constitute the contravention and of the evidence on which that opinion is based, and

(c) in respect of each step specified in the notice, state the period (being a period of not less than 21 days beginning with the date of the notice) within which it must be complied with.

(3) Directions in an improvement notice—

(a) may be framed to any extent by reference to a code of practice issued by the Regulator under Article 85, and

(b) may be framed so as to afford the person to whom the notice is issued a choice between different ways of remedying or preventing the recurrence of the contravention.

(4) Directions in an improvement notice may be expressed to be conditional on compliance by a third party with a specified direction, or specified directions, contained in a notice under Article 10 (third party notices).

(5) An improvement notice may direct the person to whom it is issued to inform the Regulator, within such period as may be specified in the notice, of how he has complied, or is complying, with the notice.

(6) Where a contravention of a provision of the pensions legislation consists of a failure to take action within a time limit, for the purposes of this Article the contravention continues until such time as the action is taken.

(7 [F3] In this Article "pensions legislation" means any statutory provision contained in or made by virtue of—

(a) the Pension Schemes Act,

(b) Part II of the 1995 Order, other than Articles 62 to 66A of that Order (equal treatment),

(c) Part II or Article 30 of the 1999 Order, or

(d) this Order.

(8) If the trustees or managers of an occupational or personal pension scheme fail to comply with an improvement notice issued to them, Article 10 of the 1995 Order (civil penalties) applies to any trustee or manager who has failed to take all reasonable steps to secure compliance.

(9) That Article also applies to any other person who, without reasonable excuse, fails to comply with an improvement notice issued to him.

F3 mod. by SR 2005/570

Third party notices

10.—(1) Where the Regulator is of the opinion that—

(a) a person—

(i) is contravening one or more provisions of the pensions legislation, or

(ii) has contravened one or more of those provisions in circumstances that make it likely that the contravention will continue or be repeated,

(b) the contravention is or was, wholly or partly, a result of a failure of another person ("the third party") to do any thing, and

(c) that failure is not itself a contravention of the pensions legislation,

the Regulator may issue a notice (a "third party notice") directing the third party to take, or refrain from taking, such steps as are specified in the notice in order to remedy or prevent a recurrence of his failure.

(2) A third party notice must—

(a) state that the Regulator is of that opinion and specify the provision or provisions of the pensions legislation in question,

(b) contain a statement of—

(i) the matters which it is asserted constitute the contravention of the provision or provisions, and

(ii) the matters which it is asserted constitute the failure by the third party,

and the evidence on which that opinion is based, and

(c) in respect of each step specified in the notice, state the period (being a period of not less than 21 days beginning with the date of the notice) within which it must be complied with.

(3) Directions in a third party notice may be framed so as to afford the third party a choice between different ways of remedying or preventing the recurrence of his failure.

(4) A third party notice may direct the third party to inform the Regulator, within such period as may be specified in the notice, of how he has complied, or is complying, with the notice.

(5) Where a contravention of a provision of the pensions legislation consists of a failure to take action within a time limit, for the purposes of this Article the contravention continues until such time as the action is taken.

(6) Article 10 of the 1995 Order (civil penalties) applies to a person who, without reasonable excuse, fails to comply with a third party notice issued to him.

(7) Subject to Article 283 (protected items), no duty to which a person is subject is to be regarded as contravened merely because of anything required to be done in compliance with a third party notice.

(8) In this Article "pensions legislation" has the same meaning as in Article 9.

Injunctions

11. If, on the application of the Regulator, the High Court is satisfied that—

(a) there is a reasonable likelihood that a particular person will do any act which constitutes a misuse or misappropriation of any of the assets of an occupational or personal pension scheme, or

(b) a particular person has done any such act and there is a reasonable likelihood that he will continue or repeat the act in question or do a similar act,

the Court may grant an injunction restraining him from doing so.

Restitution

12.—(1) If, on the application of the Regulator, the High Court is satisfied that there has been a misuse or misappropriation of any of the assets of an occupational or personal pension scheme, it may order any person involved to take such steps as the Court may direct for restoring the parties to the position in which they were before the misuse or misappropriation occurred.

(2) For this purpose a person is "involved" if he appears to the High Court to have been knowingly concerned in the misuse or misappropriation of the assets.

Power of the Regulator to recover unpaid contributions

13.—(1) Where any employer contribution payable towards an occupational or personal pension scheme is not paid on or before its due date, the Regulator may, on behalf of the trustees or managers of the scheme, exercise such powers as the trustees or managers have to recover that contribution.

(2) For the purposes of paragraph (1), any employer contribution payable towards a personal pension scheme which is not paid on or before its due date is, if not a debt due from the employer to the trustees or managers apart from this paragraph, to be treated as if it were such a debt.

(3) In this Article—

"due date"

(a) in relation to employer contributions payable towards an occupational pension scheme in accordance with a schedule of contributions under Article 206, has the same meaning as in Article 207,

(b) in relation to employer contributions payable in accordance with a payment schedule under Article 85 of the 1995 Order (schedules of payments to money purchase schemes), has the meaning given in paragraph (2)(c) of that Article, and

(c) in relation to employer contributions payable towards a personal pension scheme, has the same meaning as in section 107A of the Pension Schemes Act (monitoring of employer payments to personal pension schemes);

"employer contribution"

(a) in relation to an occupational pension scheme, means any contribution payable by or on behalf of the employer towards the scheme in accordance with a schedule of contributions under Article 206 or a payment schedule under Article 85 of the 1995 Order (schedules of payments to money purchase schemes) whether—

(i) on the employer's own account (but in respect of one or more employees), or

(ii) on behalf of an employee out of deductions from the employee's earnings, and

(b) in relation to a personal pension scheme, means any contribution payable towards the scheme under direct payment arrangements.

Pension liberation: interpretation

14.—(1) In this Article and Articles 15 to 17—

(a) "pension scheme" means an occupational pension scheme or a personal pension scheme,

(b) "deposit-taker" has the meaning given by paragraphs (8A) and (8B) of Article 49 of the 1995 Order, except that, for the purposes of this definition, paragraph (8A)(c) of that Article has effect with the omission of the words from "or" to the end,

(c) references to money liberated from a pension scheme are to be read in accordance with paragraph (2),

(d) "liberated member", in relation to money liberated from a pension scheme, means the member of the pension scheme who is referred to in paragraph (2)(a), and

(e) "restraining order" means a restraining order under Article 16.

(2) Money is to be taken to have been liberated from a pension scheme if—

(a) the money directly or indirectly represents an amount that, in respect of accrued rights of a member of a pension scheme, has been transferred out of the scheme in pursuance of—

(i) a relevant statutory provision, or

(ii) a provision of the applicable rules, other than a relevant statutory provision,

(b) the trustees or managers of the scheme transferred the amount out of the scheme on the basis that a third party ("the liberator") would secure that the amount was used in an authorised way,

(c) the amount has not been used in an authorised way, and

(d) the liberator has not secured, and is not likely to secure, that the amount will be used in an authorised way.

(3) The following are "relevant statutory provisions" for the purposes of paragraph (2)—

(a) section 90(1)(a), (aa) or (b) of the Pension Schemes Act (right to cash equivalent under Chapter 4 of Part IV of that Act);

(b) section 97AB(1)(a) of that Act (right to cash transfer sum under Chapter 5 of Part IV of that Act);

(c) section 97F(1) of that Act (right to cash equivalent of pension credit benefit).

(4) In paragraph (2) "authorised way" means—

(a) where the amount concerned is transferred out of the scheme in pursuance of a provision mentioned in paragraph (3)(a), a way specified in subsection (2) or, as the case may be, subsection (3) of section 91 of the Pension Schemes Act;

(b) where that amount is transferred out in pursuance of the provision mentioned in paragraph (3)(b), a way specified in section 97AE(2) of that Act;

(c) where that amount is transferred out in pursuance of the provision mentioned in paragraph (3)(c), a way specified in subsection (2) or, as the case may be, subsection (3) of section 97F of that Act;

(d) where that amount is transferred out in pursuance of a provision of the kind mentioned in paragraph (2)(a)(ii), a way that is authorised by the applicable rules for amounts transferred out in pursuance of that provision.

(5) In this Article "the applicable rules" has the same meaning as, in the case of the pension scheme concerned, that expression has in section 90 of the Pension Schemes Act.

Commencement Information

I1 Art. 14 wholly in operation at 6.4.2006; art. 14 not in operation at date of making see art. 1(2); art. 14 (except (3)(b) and (4)(b)) in operation at 6.4.2005 by S.R. 2005/48, art. 2(7), Sch. Pt. 7; art. 14 in operation in so far as not already in operation at 6.4.2006 by S.R. 2006/95, **art. 2(c)**, Sch. Pt. 3

Pension liberation: Court's power to order restitution

15.—(1) This Article applies where money has been liberated from a pension scheme.

(2) In this Article "recoverable property" means (subject to paragraph (3))—

(a) the money or any of it, or

(b) property (of any kind and wherever situated) that, directly or indirectly, represents any of the money.

(3) Where a person acquires the beneficial interest in recoverable property in good faith, for value and without notice that the property is, or (as the case may be) represents, money liberated from a pension scheme—

(a) the property ceases to be recoverable property, and

(b) no property that subsequently represents it is recoverable property.

(4) The High Court, on the application of the Regulator, may make such order as the Court thinks just and convenient for the purpose of securing that recoverable property, or money representing its value or proceeds of its sale, is transferred—

(a) towards a pension scheme,

(b) towards an annuity or insurance policy, or

(c) to the liberated member.

(5) An order under paragraph (4) may (in particular) direct a person who holds recoverable property, or has any degree of control over recoverable property, to take steps for the purpose mentioned in that paragraph.

(6) Where the High Court makes an order under sub-paragraph (a) of paragraph (4), it may by order direct the trustees or managers of the scheme referred to in that sub-paragraph—

(a) to take steps for the purpose mentioned in that paragraph;

(b) to apply the property or money transferred, in such manner as the Court may direct, for the purpose of providing benefits under that scheme to or in respect of the liberated member.

(7) Regulations may modify any of the provisions of the Pension Schemes Act as it applies in relation to cases where an order is made under paragraph (6).

(8) The generality of the jurisdiction conferred by Article 12 is not to be taken to be prejudiced by this Article.

(9) The generality of the jurisdiction conferred by this Article is not to be taken to be prejudiced by Article 17.

Pension liberation: restraining orders

16.—(1) The Regulator may make a restraining order in relation to an account with a deposit-taker if—

(a) it is satisfied that the account contains money which has been liberated from a pension scheme,

(b) it is satisfied that the account is held by or on behalf of—

(i) the liberator, or

(ii) a person who has to, or in practice is likely to, ensure that the account is operated in accordance with the liberator's directions, and

(c) the order is made pending consideration being given to the making of one or more repatriation orders in relation to the account under Article 17.

(2) A restraining order is an order directing that no credit or debit of any amount may be made to the account concerned (“the restrained account”) during the period for which the order has effect.

(3) A restraining order must—

(a) specify the name of the deposit-taker in respect of which it is made,

(b) identify the account in respect of which it is made, and

(c) contain such other information as may be prescribed.

(4) A restraining order—

(a) takes effect when the deposit-taker concerned is notified by the Regulator of the making of the order, and

(b) (subject to paragraph (7)) ceases to have effect through expiry of time at the end of the six months beginning with the day when it is made.

(5) The Regulator may, at a time when a restraining order has effect, make an order extending (or further extending) the restraining order.

(6) An order under paragraph (5) (an "extension order") takes effect—

(a) when the deposit-taker concerned is notified by the Regulator of the making of the order, but

(b) only if notification under sub-paragraph (a) occurs at a time when the restraining order concerned has effect.

(7) Where an extension order takes effect—

(a) the restraining order concerned does not cease to have effect through expiry of time until the end of the six months beginning with the time when it would have ceased to have effect through expiry of time had it not been extended, but

(b) for so long as the extension order has effect, no further extension order can take effect before that time in relation to the restraining order.

(8) A restraining order does not prevent the crediting to the restrained account of an amount representing interest payable by the deposit-taker on any amount which is, or has been, in the account.

(9) Where a restraining order has effect, the deposit-taker must return to the payer any money credited to the restrained account in breach of the order.

(10) Where a restraining order has effect, the Regulator may, on an application made by or with the consent of the person by whom the restrained account is held, by order permit a payment specified in the order to be made out of the account if the Regulator is satisfied—

(a) that the payment will be made for the purpose of enabling—

(i) any individual to meet his reasonable living expenses, or

(ii) any person to carry on a trade, business, profession or occupation,

(b) that the beneficial interest in the money out of which the payment will be made belongs—

(i) to the individual, or person, concerned, or

(ii) to a person who consents to the making of the payment, and

(c) that the money out of which the payment will be made is not money liberated from a pension scheme.

(11) Article 10 of the 1995 Order (civil penalties) applies to a deposit-taker who, without reasonable excuse, fails to comply with any obligation imposed by a restraining order or by this Article.

Pension liberation: repatriation orders

17.—(1) Paragraphs (2) and (3) apply where—

(a) a restraining order has effect, and

(b) the Regulator is satisfied that the restrained account contains an amount of money liberated from a pension scheme.

(2) The Regulator may by order—

(a) direct the deposit-taker concerned to pay from the account a sum not exceeding that amount—

(i) towards a pension scheme,

(ii) towards an annuity or insurance policy, or

(iii) to the liberated member, and

(b) where it makes an order under sub-paragraph (a)(i), direct the trustees or managers of the scheme to apply the sum, in such manner as the Regulator may direct, for the purpose of providing benefits under the scheme to or in respect of the liberated member.

(3) If it appears to the Regulator, on taking an overall view of transactions taking place before the restraining order was made, that there are two or more individuals each of whom is a person who is or may be the liberated member in relation to some of the money, the Regulator may determine the sums to be paid from the restrained account under paragraph (2) on any basis that appears to the Regulator to be just and reasonable.

(4) Regulations may modify any of the provisions of the Pension Schemes Act as it applies in relation to cases where an order is made under paragraph (2)(b).

(5) Article 10 of the 1995 Order (civil penalties) applies to a deposit-taker who, without reasonable excuse, fails to comply with a direction given to him under paragraph (2)(a).

(6) If the trustees or managers of a pension scheme fail to comply with a direction given to them under paragraph (2)(b), that Article applies to any trustee or manager who has failed to take all reasonable steps to secure compliance.

(7) In this Article "the restrained account" has the meaning given by Article 16.

Powers in relation to winding up of occupational pension schemes

Powers to wind up occupational pension schemes

18. In Article 11 of the 1995 Order (powers to wind up occupational pension schemes)—

(a) omit paragraph (3),

(b) before paragraph (4) insert—

"(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. ,"

(c) at the end of paragraph (4) add—

"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).", and

(d) after paragraph (6) insert—

"(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)." .

Freezing orders

19.—(1) This Article applies to an occupational pension scheme which is not a money purchase scheme.

(2) The Regulator may make a freezing order in relation to such a scheme if and only if—

(a) the order is made pending consideration being given to the making of an order in relation to the scheme under Article 11(1)(c) of the 1995 Order (power to wind up schemes where necessary to protect the generality of members), and

(b) the Regulator is satisfied that—

(i) there is, or is likely to be if the order is not made, an immediate risk to the interests of members under the scheme or the assets of the scheme, and

(ii) it is necessary to make the freezing order to protect the interests of the generality of the members of the scheme.

But no freezing order may be made in relation to a scheme during an assessment period (within the meaning of Article 116) in relation to the scheme (see Article 119(11)).

(3) A freezing order is an order directing that during the period for which it has effect—

(a) no benefits are to accrue under the scheme rules to, or in respect of, members of the scheme, and

(b) winding up of the scheme may not begin.

(4) A freezing order may also contain one or more of the following directions which have effect during the period for which the order has effect—

(a) a direction that no new members, or no specified classes of new member, are to be admitted to the scheme;

(b) a direction that—

(i) no further contributions or payments, or

(ii) no further specified contributions or payments,

are to be paid towards the scheme by or on behalf of the employer, any members or any specified members of the scheme;

(c) a direction that any amount or any specified amount which—

(i) corresponds to any contribution which would be due to be paid towards the scheme on behalf of a member but for a direction under sub-paragraph (b), and

(ii) has been deducted from a payment of any earnings in respect of an employment,

is to be repaid to the member in question by the employer;

(d) a direction that no benefits, or no specified benefits, are to be paid to or in respect of any members or any specified members under the scheme rules;

(e) a direction that payments of all benefits or specified benefits under the scheme rules to or in respect of all the members or specified members may only be made from the scheme if they are reduced in a specified manner or by a specified amount;

(f) a direction that—

(i) no transfers or no specified transfers of, or no transfer payments or no specified transfer payments in respect of, any member's rights under the scheme rules are to be made from the scheme, or

(ii) no other steps or no specified other steps are to be taken to discharge any liability of the scheme to or in respect of a member of the scheme in respect of pensions or other benefits;

(g) a direction that no statements of entitlement are to be provided to members of the scheme under section 89A of the Pension Schemes Act (salary related schemes: right to statement of entitlement);

(h) a direction that—

(i) no refunds of, or no specified refunds of, or in respect of, contributions paid by or in respect of a member towards the scheme are to be made from the scheme, or

(ii) refunds or specified refunds of, or in respect of, contributions paid by or in respect of a member towards the scheme may only be made from the scheme if they are determined in a specified manner and satisfy such other conditions as may be specified.

(5) In paragraph (4)(b)—

(a) the references to contributions do not include contributions due to be paid before the order takes effect, and

(b) the references to payments towards a scheme include payments in respect of pension credits where the person entitled to the credit is a member of the scheme.

(6) A freezing order may not contain a direction under paragraph (4)(d) or (e) which reduces the benefits payable to or in respect of a member, for the period during which the order has effect, below the level to which the trustees or managers of the scheme would have power to reduce them if a winding up of the scheme had begun at the time when the freezing order took effect.

(7) A direction under paragraph (4)(f) may, in particular, provide that transfers or specified transfers of, or transfer payments or specified transfer payments in respect of, any member's rights under the scheme rules may not be made from the scheme unless the amounts paid out from the scheme in respect of the transfers or transfer payments are determined in a specified manner and the transfer or transfer payments satisfy such other conditions as may be specified.

(8) A freezing order may also require the trustees or managers of the scheme to obtain an actuarial valuation within a specified period.

(9) A freezing order containing such a requirement must specify—

(a) the date by reference to which the assets and liabilities are to be valued,

(b) the assets and liabilities which are to be taken into account,

(c) the manner in which the valuation must be prepared,

(d) the information and statements which it must contain, and

(e) any other requirements that the valuation must satisfy.

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

"an actuarial valuation" means a written valuation of the scheme's assets and liabilities prepared and signed by the actuary,

"the actuary" means—

(a) the actuary appointed under Article 47(1)(b) of the 1995 Order (professional advisers) in relation to the scheme, or

(b) if no such actuary has been appointed—

(i) a person with prescribed qualifications or experience, or

(ii) a person approved by the Department.

(11) In this Article "specified" means specified in the freezing order.

Consequences of freezing order

20.—(1) If a freezing order is made in relation to a scheme any action taken in contravention of the order is void except to the extent that the action is validated by an order under Article 22.

(2) A freezing order in relation to a scheme does not prevent any increase in a benefit which is an increase which would otherwise accrue in accordance with the scheme or any statutory provision during the period for which the order has effect, unless the order contains a direction to the contrary.

(3) A freezing order in relation to a scheme does not prevent the scheme being wound up in pursuance of an order under Article 11 of the 1995 Order (power to wind up occupational pension schemes).

(4) If a freezing order contains a direction under Article 19(4)(b) that no further contributions, or no further specified contributions, are to be paid towards a scheme during the period for which the order has effect—

(a) any contributions which are the subject of the direction and which would otherwise be due to be paid towards the scheme during that period are to be treated as if they do not fall due, and

(b) any obligation to pay those contributions (including any obligation under Article 49(8) of the 1995 Order to pay amounts deducted corresponding to such contributions) is to be treated as if it does not arise.

(5) If a freezing order contains a direction under Article 19(4)(f) (no transfers or discharge of member's rights) it does not prevent—

(a) giving effect to a pension sharing order or provision, or

(b) giving effect to a pension earmarking order in a case where—

(i) the order requires a payment to be made if a payment in respect of any benefits under the scheme becomes due to a person, and

(ii) a direction under Article 19(4)(d) or (e) does not prevent the payment becoming due.

(6) For the purposes of paragraph (5)—

"pension sharing order or provision" means an order or provision falling within Article 25(1) of the 1999 Order (activation of pension sharing);

"pension earmarking order" means—

(a) an order under Article 25 of the Matrimonial Causes (Northern Ireland) Order 1978 (NI 15) (financial provision orders in connection with divorce etc.) so far as it includes provision made by virtue of Article 27B or 27C of that Order (powers to include provision about pensions),

(aa) **[**[F4]an order under Part 1 (financial provision in connection with dissolution, nullity or separation) of Schedule 15 to the Civil Partnership Act 2004 (financial relief in the High Court or a county court etc.: Northern Ireland) so far as it includes provision made by virtue of paragraphs 20 and 21 of Part 5 of that Schedule (powers to include provisions about pensions),**]**

(b) an order under section 23 of the Matrimonial Causes Act 1973 (c. 18) so far as it includes provision made by virtue of section 25B or 25C of that Act (powers in England and Wales corresponding to those mentioned in paragraph (a)),[F4]. . .

(c) an order under section 12A(2) or (3) of the Family Law (Scotland) Act 1985 (c. 37) (powers in relation to pension lump sums when making a capital sum order)**[**[F4], or**]**.

(d) **[**[F4]an order under Part 1 (financial provision in connection with dissolution, nullity or separation) of Schedule 5 to the Civil Partnership Act 2004 (financial relief in the High

Court or a county court etc.) so far as it includes provision made by virtue of paragraphs 25 and 26 of Part 6 of that Schedule (powers to include provisions about pensions).**]**

(7) Regulations may modify any provisions of—

(a) Chapter 4 of Part IV of the Pension Schemes Act (protection for early leavers: transfer values), or

(b) Chapter 5 of that Part (protection for early leavers: cash transfer sums and contribution refunds),

in their application to an occupational pension scheme in relation to which a freezing order is made containing a direction under Article 19(4)(f), (g) or (h) (no transfers etc. in respect of, member's rights or refunds of contributions etc. from the scheme).

(8) Disregarding paragraph (1), if a freezing order made in relation to a scheme is not complied with, Article 10 of the 1995 Order (civil penalties) applies to any trustee or manager of the scheme who has failed to take all reasonable steps to secure compliance.

(9) Paragraph (8) does not apply in the case of non-compliance with a direction under Article 19(4)(c) (direction that certain deducted contributions are to be repaid by the employer).

(10) In such a case, Article 10 of the 1995 Order (civil penalties) applies to an employer who, without reasonable excuse, fails to repay an amount as required by the direction.

F4 SR 2005/434

Period of effect etc. of freezing order

21.—(1) A freezing order must specify the period for which it has effect.

(2) The period specified must not exceed three months.

(3) The Regulator may on one or more occasions by order extend the period for which the order has effect.

(4) But the total period for which the order has effect must not exceed six months.

(5) This Article is subject to Articles 23, 24 and 25 (effect of winding up and assessment period on freezing orders).

Validation of action in contravention of freezing order

22.—(1) If a freezing order is made in relation to a scheme, the Regulator may by order validate action taken in contravention of the order.

(2) Any of the following persons may apply to the Regulator for an order under this Article validating particular action—

(a) the trustees or managers of the scheme;

(b) any person directly affected by the action.

Effect of determination to wind up scheme on freezing order

23.—(1) This Article applies where—

(a) the Regulator determines to make an order under Article 11 of the 1995 Order (power to wind up occupational schemes) in relation to a scheme (“a winding up order”),

(b) that determination is made during the period for which a freezing order has effect in relation to the scheme,

(c) the case is not one to which the special procedure in Article 93 applies (immediate exercise of powers where immediate risk to assets etc.), and

(d) the winding up order accordingly cannot be made until the expiry of the period specified in Article 91(5) (no exercise of powers during period of referral to the Tribunal etc.).

(2) In such a case the freezing order is to continue to have effect until—

(a) where the winding up order is made, it ceases to have effect under Article 24 from the time when that order is made, or

(b) the determination to make the winding up order is revoked.

(3) Paragraph (2) is subject to the Regulator's power under Article 96 to revoke the freezing order at any time.

Effect of winding up order on freezing order

24.—(1) This Article applies where—

(a) an order is made under Article 11 of the 1995 Order (power to wind up occupational pension schemes) in relation to a scheme, and

(b) the order is made during the period for which a freezing order has effect in relation to the scheme.

(2) In such a case—

(a) the winding up of the scheme in pursuance of the order under Article 11 of the 1995 Order is to be taken as beginning at the time when the freezing order took effect, and

(b) the freezing order ceases to have effect from the time when the order under Article 11 of the 1995 Order is made.

(3) The Regulator may by order direct any specified person—

(a) to take such specified steps as it considers are necessary as a result of the winding up of the scheme being deemed under paragraph (2)(a) to have begun at the time when the freezing order took effect, and

(b) to take those steps within a specified period.

(4) If the trustees or managers of a scheme fail to comply with a direction to them contained in an order under this Article, Article 10 of the 1995 Order (civil penalties) applies to any trustee or manager who has failed to take all reasonable steps to secure compliance.

(5) That Article also applies to any other person who, without reasonable excuse, fails to comply with a direction to him contained in an order under this Article.

(6) In this Article “specified” means specified in an order under this Article.

Effect of assessment period under Part III on freezing order

25. Where an assessment period (within the meaning of Article 116) begins in relation to a scheme, any freezing order in relation to the scheme ceases to have effect when the assessment period begins.

Power to give a direction where freezing order ceases to have effect

26.—(1) This Article applies where—

(a) the Regulator revokes a freezing order in relation to a scheme or it otherwise ceases to have effect, and

(b) at the time when the freezing order ceases to have effect, the Regulator has not made an order under Article 11 of the 1995 Order in relation to the scheme.

(2) In such a case the Regulator may make an order under this Article in relation to the scheme containing a direction that, if specified conditions are met, specified benefits are to accrue under the scheme rules to, or in respect of, specified members of the scheme in respect of specified periods of service being service in employment which but for the freezing order would have qualified the member in question for those benefits under the scheme rules.

(3) The conditions mentioned in paragraph (2) may include—

(a) a requirement that specified benefits do not accrue to, or in respect of, a member or a specified member unless a contribution of a specified amount is paid by or on behalf of the member towards the scheme within a specified period;

(b) a requirement that a contribution of a specified amount must be paid by or on behalf of the employer within a specified period;

(c) a requirement that such contributions as are specified under sub-paragraph (a) or (b) are to be accepted for the period for which the freezing order had effect or any part of that period.

(4) Where the freezing order contained a direction under Article 19(4)(d) or (e) and any amount of any benefit under the scheme rules was not paid as a result of the direction—

(a) the direction does not affect any entitlement to that benefit, and

(b) any benefit to which a member, or a person in respect of a member, remains entitled at the end of the period for which the freezing order had effect is an amount which falls due to the member or, as the case may be, the person at the end of that period.

(5) If an order made under this Article in relation to a scheme is not complied with, Article 10 of the 1995 Order (civil penalties) applies to a trustee or a manager of the scheme who has failed to take all reasonable steps to secure compliance.

(6) Paragraph (7) applies if—

(a) an order is made under this Article in relation to a scheme,

(b) the order contains a requirement as described in paragraph (3)(b) that a contribution of a specified amount must be paid by or on behalf of the employer within a specified period, and

(c) the contribution is not paid within that period.

(7) In such a case—

(a) Article 10 of the 1995 Order applies to the employer if he has failed, without reasonable excuse, to secure compliance,

(b) the amount which for the time being remains unpaid after the end of the specified period is to be treated as a debt due from the employer to the trustees or managers of the scheme, and

(c) except in prescribed circumstances, the trustees or managers must, within a prescribed period, give notice of the failure to pay to the Regulator and to the member.

(8) If in any case paragraph (7)(c) is not complied with, Article 10 of the 1995 Order applies to any trustee or manager who has failed to take all reasonable steps to secure compliance.

(9) In this Article "specified" means specified in an order under this Article.

Notification of trustees, managers, employers and members

27.—(1) This Article applies where—

(a) a freezing order is made in relation to a scheme,

(b) an order is made under Article 22 validating action taken in contravention of a freezing order made in relation to a scheme,

(c) an order is made under Article 24 directing specified steps to be taken following the winding up of a scheme, or

(d) an order is made under Article 26 in relation to a scheme where a freezing order ceases to have effect.

(2) The Regulator must, as soon as reasonably practicable after the order has been made, notify—

(a) the trustees or managers of the scheme, and

(b) the employer in relation to the scheme,

of the fact that the order has been made and of its effect.

(3) The Regulator may by order direct the trustees or managers of the scheme to notify—

(a) all the members of the scheme, or

(b) the members of the scheme specified in the order,

of the fact that the order mentioned in paragraph (1) has been made and of its effect.

(4) Notification is to be within the period and in the manner specified in the order under paragraph (3).

(5) If the trustees or managers of a scheme fail to comply with a direction to them contained in an order made under paragraph (3), Article 10 of the 1995 Order (civil penalties) applies to any trustee or manager who has failed to take all reasonable steps to secure compliance.

Articles 19 to 27: supplementary

28.—(1) An order may be made in relation to a scheme under any of Articles 19, 21, 22, 24, 26 and 27—

(a) in spite of any statutory provision or rule of law, or any rule of the scheme, which would otherwise operate to prevent the order being made, and

(b) without regard to any such statutory provision, 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 order.

(2) Paragraph (1) does not have effect to authorise the Regulator to make an order as mentioned in that paragraph if its doing so would be unlawful as a result of section 6(1) of the Human Rights Act 1998 (c. 42) (unlawful for public authority to act in contravention of a Convention right).

Trustees of occupational pension schemes

Prohibition orders

29. For Article 3 of the 1995 Order (prohibition orders) substitute—

"**Prohbition 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.".

Suspension orders

30. In Article 4 of the 1995 Order (suspension orders)—

(a) after paragraph (1)(a) insert—

"(aa) pending consideration being given to the institution of proceedings against him for an offence involving dishonesty or deception, ,"

(b) in paragraph (2)—

(i) in sub-paragraph (a) after "sub-paragraph (a)" insert " or (aa) ",

(ii) after "have effect" insert " in relation to a trust scheme ", and

(iii) after "Article 3(1)" insert " in relation to that scheme ",

(c) after paragraph (5) insert—

"(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. , and"

(d) after paragraph (6) add—

"(7) In this Article "the Tribunal" means the Pensions Regulator Tribunal established under section 102 of the Pensions Act 2004." .

Appointment of trustees by the Regulator

31.—(1) In Article 7 of the 1995 Order (appointment of trustees)—

(a) omit paragraph (4), and

(b) after paragraph (5) insert—

"(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

(c) any member of the scheme,

for the appointment of a trustee of the scheme under paragraph (3)(a) or (c)." .

(2) In Article 8 of that Order (consequences of appointment of trustees under Article 7), for paragraphs (1) and (2) substitute—

"(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." .

Independent trustees

32.—(1) Part II of the 1995 Order (occupational pension schemes) is amended as follows.

(2) In Article 22 (circumstances in which provisions relating to independent trustees apply)—

(a) in paragraph (1)(b) omit "or" at the end of head (i) and after that head insert—

"(ia) the interim receiver of the property of a person who is the employer in relation to the scheme, or ,"

(b) in paragraph (2), after " a scheme " insert " by virtue of paragraph (1) ",

(c) after paragraph (2) insert—

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

(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.", and

(d) after paragraph (2A) (inserted by sub-paragraph (c)) insert—

"(2B) 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) 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) 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) 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) A notice under paragraph (2B), or under regulations under paragraph (2E), must be in writing and contain such information as may be prescribed. ."

(3) For Articles 23 and 24 (appointment of independent trustees) substitute—

"**Power to appoint independent trustees**

23.—(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.” .

(4) In Article 25 (appointment and powers of independent trustees: further provisions)—

(a) for paragraph (4)(a) substitute—

“(a) he must as soon as reasonably practicable give written notice of that fact to the Authority, and” ,

(b) after paragraph (5) insert—

“(5A) Article 10 applies to any person who, without reasonable excuse, fails to comply with paragraph (4)(a).” , and

(c) for paragraph (6) substitute—

“(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.” .

Disqualification

33. In Article 30 of the 1995 Order (consequences of disqualification under Article 29), for paragraph (1) substitute—

“(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.” .

Contribution notices where avoidance of employer debt

Contribution notices where avoidance of employer debt

34 [F5]**.**—(1) This Article applies in relation to an occupational pension scheme other than—

(a) a money purchase scheme, or

(b) a prescribed scheme or a scheme of a prescribed description.

(2) The Regulator may issue a notice to a person stating that the person is under a liability to pay the sum specified in the notice (a “contribution notice”)—

(a) to the trustees or managers of the scheme, or

(b) where the Board has assumed responsibility for the scheme in accordance with Chapter 3 of Part III (pension protection), to the Board.

(3) The Regulator may issue a contribution notice to a person only if—

(a) the Regulator is of the opinion that the person was a party to an act or a deliberate failure to act which falls within paragraph (5),

(b) the person was at any time in the relevant period—

(i) the employer in relation to the scheme, or

(ii) a person connected with, or an associate of, the employer,

(c) the Regulator is of the opinion that the person, in being a party to the act or failure, was not acting in accordance with his functions as an insolvency practitioner in relation to another person, and

(d) the Regulator is of the opinion that it is reasonable to impose liability on the person to pay the sum specified in the notice.

(4) But the Regulator may not issue a contribution notice, in such circumstances as may be prescribed, to a person of a prescribed description.

(5) An act or a failure to act falls within this paragraph if—

(a) the Regulator is of the opinion that the main purpose or one of the main purposes of the act or failure was—

(i) to prevent the recovery of the whole or any part of a debt which was, or might become, due from the employer in relation to the scheme under Article 75 of the 1995 Order (deficiencies in the scheme assets), or

(ii) otherwise than in good faith, to prevent such a debt becoming due, to compromise or otherwise settle such a debt, or to reduce the amount of such a debt which would otherwise become due,

(b) it is an act which occurred or a failure to act which first occurred—

(i) on or after 27th April 2004, and

(ii) before any assumption of responsibility for the scheme by the Board in accordance with Chapter 3 of Part III, and

(c) it is either—

(i) an act which occurred during the period of six years ending with the determination by the Regulator to exercise the power to issue the contribution notice in question, or

(ii) a failure which first occurred during, or continued for the whole or part of, that period.

(6) For the purposes of paragraph (3)—

(a) the parties to an act or a deliberate failure include those persons who knowingly assist in the act or failure, and

(b) "the relevant period" means the period which—

(i) begins with the time when the act falling within paragraph (5) occurs or the failure to act falling within that paragraph first occurs, and

(ii) ends with the determination by the Regulator to exercise the power to issue the contribution notice in question.

(7) The Regulator, when deciding for the purposes of paragraph (3)(d) whether it is reasonable to impose liability on a particular person to pay the sum specified in the notice, must have regard to such matters as the Regulator considers relevant including, where relevant, the following matters—

(a) the degree of involvement of the person in the act or failure to act which falls within paragraph (5),

(b) the relationship which the person has or has had with the employer (including, where the employer is a company within the meaning of paragraph (11) of Article 4 of the Insolvency Order, whether the person has or has had control of the employer within the meaning of paragraph (10) of that Article),

(c) any connection or involvement which the person has or has had with the scheme,

(d) if the act or failure to act was a notifiable event for the purposes of Article 64 (duty to notify the Regulator of certain events), any failure by the person to comply with any obligation imposed on the person by paragraph (1) of that Article to give the Regulator notice of the event,

(e) all the purposes of the act or failure to act (including whether a purpose of the act or failure was to prevent or limit loss of employment),

(f) the financial circumstances of the person, and

(g) such other matters as may be prescribed.

(8) For the purposes of this Article references to a debt due under Article 75 of the 1995 Order include a contingent debt under that Article.

(9) Accordingly, in the case of such a contingent debt, the reference in paragraph (5)(a)(ii) to preventing a debt becoming due is to be read as including a reference to preventing the occurrence of any of the events specified in Article 75(4C)(a) or (b) of that Order upon which the debt is contingent.

(10) For the purposes of this Article—

(a) Article 7 of the Insolvency Order (connected persons) applies as it applies for the purposes of any provision of Parts II to VII of that Order, and

(b) Article 4 of that Order (associated persons) applies as it applies for the purposes of that Order.

(11) For the purposes of this Article "insolvency practitioner", in relation to a person, means—

(a) a person acting as an insolvency practitioner, in relation to that person, in accordance with Article 3 of the Insolvency Order, or

(b) an insolvency practitioner within the meaning of Article 105(9)(b) (persons of a prescribed description).

F5 mod. by SR 2005/378

VALID FROM 15/12/2008

[F6Article 34 contribution notice: meaning of "material detriment test"

34A.—(1) For the purposes of Article 34 the material detriment test is met in relation to an act or failure if the Regulator is of the opinion that the act or failure has detrimentally affected in a material way the likelihood of accrued scheme benefits being received (whether the benefits are to be received as benefits under the scheme or otherwise).

(2) In this Article any reference to accrued scheme benefits being received is a reference to benefits the rights to which have accrued by the relevant time being received by, or in respect of, the persons who were members of the scheme before that time.

(3) In this Article "the relevant time" means—

(a) in the case of an act, the time of the act, or

(b) in the case of a failure—

(i) the time when the failure occurred, or

(ii) where the failure continued for a period of time, the time which the Regulator determines and which falls within that period;

and, in the case of acts or failures to act forming part of a series, any reference in this paragraph to an act or failure is a reference to the last of the acts or failures in that series.

(4) In deciding for the purposes of Article 34 whether the material detriment test is met in relation to an act or failure, the Regulator must have regard to such matters as it considers relevant, including (where relevant)—

(a) the value of the assets or liabilities of the scheme or of any relevant transferee scheme,

(b) the effect of the act or failure on the value of those assets or liabilities,

(c) the scheme obligations of any person,

(d) the effect of the act or failure on any of those obligations (including whether the act or failure causes the country or territory in which any of those obligations would fall to be enforced to be different),

(e) the extent to which any person is likely to be able to discharge any scheme obligation in any circumstances (including in the event of insolvency or bankruptcy),

(f) the extent to which the act or failure has affected, or might affect, the extent to which any person is likely to be able to do as mentioned in sub-paragraph (e), and

(g) such other matters as may be prescribed.

(5) In paragraph (4) "scheme obligation" means a liability or other obligation (including one that is contingent or otherwise might fall due) to make a payment, or transfer an asset, to—

(a) the scheme, or

(b) any relevant transferee scheme in respect of any persons who were members of the scheme before the relevant time.

(6) In this Article—

(a) "relevant transferee scheme" means any work-based pension scheme to which any accrued rights to benefits under the scheme are transferred;

(b) any reference to the assets or liabilities of any relevant transferee scheme is a reference to those assets or liabilities so far as relating to persons who were members of the scheme before the relevant time.

(7) For the purposes of paragraph (6)(a) the reference to the transfer of accrued rights of members of a pension scheme to another pension scheme includes a reference to the extinguishing of those accrued rights in consequence of the obligation to make a payment, or transfer an asset, to that other scheme.

(8) In this Article—

(a) "work-based pension scheme" has the meaning given by Article 4(3);

(b) any reference to rights which have accrued is to be read in accordance with Article 67A(6) and (7) of the 1995 Order (reading any reference in those paragraphs to a subsisting right as a reference to a right which has accrued).

(9) In deciding for the purposes of this Article whether an act or failure has detrimentally affected in a material way the likelihood of accrued scheme benefits being received, the following statutory provisions are to be disregarded—

(a) Chapter 3 of Part 3 (the Board of the Pension Protection Fund: pension protection), and

(b) section 286 of the Pensions Act 2004 (the financial assistance scheme for members of certain pension schemes).

(10) Regulations may amend any provision of paragraphs (4) to (8).

F6 Arts. 34A, 34B inserted (15.12.2008 for certain purposes, otherwise 29.6.2009) by Pensions (No. 2) Act (Northern Ireland) 2008 (c. 13), ss. 103, 118(1)(2)(h)(3)(a)(ii)(vi)(b), **Sch. 8 para. 2(2)** (with Sch. 8 para. 15(1)); S.R. 2009/249, **art. 2(a)(b)(ii)**

VALID FROM 15/12/2008

Article 34 contribution notice issued by reference to material detriment test: defence

34B.—(1) This Article applies where—

(a) a warning notice is given to any person ("P") in respect of a contribution notice under Article 34, and

(b) the contribution notice under consideration would be issued wholly or partly by reference to the Regulator's opinion that the material detriment test is met in relation to an act or deliberate failure to act to which P was a party.

(2) If the Regulator is satisfied that P has shown that—

(a) conditions A and C are met, and

(b) where applicable, condition B is met,

the Regulator must not issue the contribution notice by reference to its being of the opinion mentioned in paragraph (1)(b).

(3) Condition A is that, before becoming a party to the act or failure, P gave due consideration to the extent to which the act or failure might detrimentally affect in a material way the likelihood of accrued scheme benefits being received.

(4) Condition B is that, in any case where as a result of that consideration P considered that the act or failure might have such an effect, P took all reasonable steps to eliminate or minimise the potential detrimental effects that the act or failure might have on the likelihood of accrued scheme benefits being received.

(5) Condition C is that, having regard to all relevant circumstances prevailing at the relevant time, it was reasonable for P to conclude that the act or failure would not detrimentally affect in a material way the likelihood of accrued scheme benefits being received.

(6) P is to be regarded as giving the consideration mentioned in condition A only if P has made the enquiries, and done the other acts, that a reasonably diligent person would have made or done in the circumstances.

(7) For the purposes of condition C—

(a) "the relevant time" means the time at which the act occurred or the failure to act first occurred;

(b) the reference to the circumstances mentioned in that condition is a reference to those circumstances of which P was aware, or ought reasonably to have been aware, at that time (including acts or failures to act which have occurred before that time and P's expectation at that time of other acts or failures to act occurring).

(8) In the case of acts or failures to act forming part of a series, P is to be regarded as having shown the matters mentioned in paragraph (2) if P shows in the case of each of the acts or failures in the series that—

(a) conditions A and C are met, and (where applicable) condition B is met, in relation to the act or failure, or

(b) the act or failure was one of a number of acts or failures (a "group" of acts or failures) selected by P in relation to which the following matters are shown.

(9) The matters to be shown are that—

(a) before becoming a party to the first of the acts or failures in the group, condition A is met in relation to the effect of the acts or failures in the group taken together,

(b) condition B is (where applicable) met in relation to that effect, and

(c) condition C is then met in relation to each of the acts or failures in the group (determined at the time at which each act or failure concerned occurred or first occurred).

(10) If at any time P considers that condition C will not be met in relation to any particular act or failure in the group—

(a) the previous acts or failures in the group are to be regarded as a separate group for the purposes of paragraph (8), and

(b) P may then select another group consisting of the particular act or failure concerned, and any subsequent act or failure, in relation to which P shows the matters mentioned in paragraph (9).

Nothing in sub-paragraph (b) is to be read as preventing P from showing the matters mentioned in paragraph (8)(a).

(11) If—

(a) P is unable to show in the case of each of the acts or failures in the series that the matters set out in paragraph (8)(a) or (b) are met, but

(b) does show in the case of some of them that those matters are met,

the acts or failures within sub-paragraph (b) are not to count for the purposes of Article 34A as acts or failures to act in the series.

(12) In this Article—

(a) "a warning notice" means a notice given as mentioned in Article 91(2)(a);

(b) any reference to an act or failure to which a person is a party has the same meaning as in Article 34(6)(a);

(c) any reference to the accrued scheme benefits being received has the same meaning as in Article 34A;

and paragraph (9) of Article 34A applies for the purposes of conditions A to C as it applies for the purposes of that Article.

(13) Regulations may amend this Article.**]**

F6 Arts. 34A, 34B inserted (15.12.2008 for certain purposes, otherwise 29.6.2009) by Pensions (No. 2) Act (Northern Ireland) 2008 (c. 13), ss. 103, 118(1)(2)(h)(3)(a)(ii)(vi)(b), **Sch. 8 para. 2(2)** (with Sch. 8 para. 15(1)); S.R. 2009/249, **art. 2(a)(b)(ii)**

The sum specified in an Article 34 contribution notice

35 [F7]**.**—(1) The sum specified by the Regulator in a contribution notice under Article 34 may be either the whole or a specified part of the shortfall sum in relation to the scheme.

(2) Subject to paragraph (3), the shortfall sum in relation to a scheme is—

(a) in a case where, at the relevant time, a debt was due from the employer to the trustees or managers of the scheme under Article 75 of the 1995 Order (deficiencies in the scheme

assets), the amount which the Regulator estimates to be the amount of that debt at that time, and

(b) in a case where, at the relevant time, no such debt was due, the amount which the Regulator estimates to be the amount of the debt under Article 75 of the 1995 Order which would become due if—

(i) paragraph (2) of that Article applied, and

(ii) the time designated by the trustees or managers of the scheme for the purposes of that paragraph were the relevant time.

(3) Where the Regulator is satisfied that the act or failure to act falling within Article 34(5) resulted—

(a) in a case falling within sub-paragraph (a) of paragraph (2), in the amount of the debt which became due under Article 75 of the 1995 Order being less than it would otherwise have been, or

(b) in a case falling within sub-paragraph (b) of paragraph (2), in the amount of any such debt calculated for the purposes of that sub-paragraph being less than it would otherwise have been,

the Regulator may increase the amounts calculated under paragraph (2)(a) or (b) by such amount as the Regulator considers appropriate.

(4) For the purposes of this Article "the relevant time" means—

(a) in the case of an act falling within paragraph (5) of Article 34, the time of the act, or

(b) in the case of a failure to act falling within that paragraph—

(i) the time when the failure occurred, or

(ii) where the failure continued for a period of time, the time which the Regulator determines and which falls within that period.

(5) For the purposes of this Article—

(a) references to a debt due under Article 75 of the 1995 Order include a contingent debt under that Article, and

(b) references to the amount of such a debt include the amount of such a contingent debt.

F7 mod. by SR 2005/378

VALID FROM 15/12/2008

[F8 Article 34 contribution notice: transfer of members of the scheme

35A.—(1) This Article applies where—

(a) the Regulator is of the opinion that in relation to a scheme ("the initial scheme") in relation to which Article 34 applies—

(i) an act or failure to act falling within paragraph (5) of that Article has occurred (or first occurred) at any time, and

(ii) the other conditions in that Article for issuing a contribution notice are met in relation to the initial scheme (or, but for any transfer falling within sub-paragraph (b), would be met), and

(b) the accrued rights of at least two persons who were members of the initial scheme are transferred at that or any subsequent time to one or more work-based pension schemes (whether by virtue of the act or otherwise).

(2) The Regulator may issue a contribution notice under Article 34 in relation to any transferee scheme (and, accordingly, any reference in Article 36 or 37 to the scheme is to the transferee scheme).

(3) In the case of any contribution notice issued by virtue of paragraph (2) to any transferee scheme which is not within paragraph (5)(a) or (b), Article 35 has effect as if any reference in that Article to the scheme were a reference to whichever of—

(a) the initial scheme, and

(b) the transferee scheme,

the Regulator determines to be more appropriate in the circumstances.

(4) In any case where Article 35 has effect in relation to the transferee scheme by virtue of paragraph (3), any reference in that Article to a debt under Article 75 of the 1995 Order is a reference to so much of that debt as, in the Regulator's opinion, is attributable to those members of the transferee scheme who were members of the initial scheme.

(5) In the case of any contribution notice issued by virtue of paragraph (2) to any transferee scheme which is—

(a) a scheme to which Article 75 of the 1995 Order does not apply, or

(b) a scheme to which that Article does apply in a case where the liabilities of the scheme that would be taken into account for the purposes of that Article do not relate to the members of the initial scheme,

the sum specified by the Regulator in the notice is determined in accordance with regulations (and not in accordance with Article 35).

(6) The Regulator may also issue a direction to the trustees or managers of any transferee scheme requiring them to take specified steps to secure that the sum payable under the notice is applied for the benefit of the members of the transferee scheme who were members of the initial scheme.

(7) If the trustees or managers fail to comply with a direction issued to them under paragraph (6), Article 10 of the 1995 Order (civil penalties) applies to any trustee or manager who has failed to take all reasonable steps to secure compliance.

F8 Arts. 35A, 35B inserted (15.12.2008) by Pensions (No. 2) Act (Northern Ireland) 2008 (c. 13), ss. 103, 118(1)(2)(h)(3)(a)(v)(vi)(b), **Sch. 8 para. 9** (with Sch. 8 para. 15(3) and transitional provision in Sch. 8 para. 16(1) for art. 35B(8)(10)(a))

VALID FROM 15/12/2008

Article 35A: supplemental

35B.—(1) In Article 35A a "transferee scheme", in relation to any time, means any work-based pension scheme—

(a) to which the accrued rights of at least two persons who were members of the initial scheme have been transferred, and

(b) of which any of those persons are members at that time.

(2) For the purposes of Article 35A(1) and paragraph (1) it does not matter whether any rights are transferred to a work-based pension scheme directly from the initial scheme or following one or more other transfers to other work-based pension schemes.

(3) For the purposes of Article 35A and this Article references to the transfer of accrued rights of members of a pension scheme to another pension scheme include references to the extinguishing of those accrued rights in consequence of the obligation to make a payment, or transfer an asset, to that other scheme.

(4) In Article 35A and this Article—

(a) "work-based pension scheme" has the meaning given by Article 4(3);

(b) any reference to rights which have accrued is to be read in accordance with Article 67A(6) and (7) of the 1995 Order (reading any reference in those paragraphs to a subsisting right as a reference to a right which has accrued).

(5) Article 35A applies even if the initial scheme—

(a) is wound up as a result of any transfer falling within paragraph (1)(b) of that Article, or

(b) otherwise ceases to exist at the time of the transfer or at any subsequent time.

(6) Accordingly, in any such case, in paragraph (1) of that Article—

(a) the reference to a scheme to which Article 34 applies is a reference to a scheme which was such a scheme before the transfer;

(b) the reference to any conditions in Article 34 being met is a reference to any conditions in that Article that, but for the transfer, would have been met in relation to the scheme.

(7) Nothing in Article 35A or this Article is to be read as preventing the Regulator from issuing a contribution notice in relation to the initial scheme.

(8) Regulations may make provision applying, with or without modifications, any provision made by or under Article 35A or this Article in relation to any scheme or other arrangement in any case where the accrued rights of persons who were members of the initial scheme are transferred or extinguished directly or indirectly in consequence of or otherwise in connection with—

(a) the making of any payment at any time to or for the benefit of the scheme or other arrangement,

(b) the transfer of any asset at any time to or for the benefit of the scheme or other arrangement,

(c) the discharge (wholly or partly) at any time of any liability incurred by or on behalf of the scheme or other arrangement, or

(d) the incurring at any time of any obligation to do any act falling within sub-paragraphs (a) to (c).

(9) Any reference in paragraph (8)(a) to (d) to the doing of an act of any description at any time in relation to the scheme or other arrangement includes a reference to the doing of an act of that description at any previous time in relation to any other scheme or other arrangement.

(10) Regulations under paragraph (8) may—

(a) make provision having effect in relation to any case where rights are transferred or extinguished on or after the date on which the Department publishes a statement of the intention to make the regulations; and

(b) without prejudice to Article 287(3), make consequential provision applying with modifications any provision of this Order which relates to contribution notices under Article 34.**]**

F8 Arts. 35A, 35B inserted (15.12.2008) by Pensions (No. 2) Act (Northern Ireland) 2008 (c. 13), ss. 103, 118(1)(2)(h)(3)(a)(v)(vi)(b), **Sch. 8 para. 9** (with Sch. 8 para. 15(3) and transitional provision in Sch. 8 para. 16(1) for art. 35B(8)(10)(a))

Content and effect of an Article 34 contribution notice

36 [F9]**.**—(1) This Article applies where a contribution notice is issued to a person under Article 34.

(2) The contribution notice must—

(a) contain a statement of the matters which it is asserted constitute the act or failure to act which falls within paragraph (5) of Article 34,

(b) specify the sum which the person is stated to be under a liability to pay, and

(c) identify any other persons to whom contribution notices have been or are issued as a result of the act or failure to act in question and the sums specified in each of those notices.

(3) Where the contribution notice states that the person is under a liability to pay the sum specified in the notice to the trustees or managers of the scheme, the sum is to be treated as a debt due from the person to the trustees or managers of the scheme.

(4) In such a case, the Regulator may, on behalf of the trustees or managers of the scheme, exercise such powers as the trustees or managers have to recover the debt.

(5) But during any assessment period (within the meaning of Article 116) in relation to the scheme, the rights and powers of the trustees or managers of the scheme in relation to any debt due to them by virtue of a contribution notice are exercisable by the Board to the exclusion of the trustees or managers and the Regulator.

(6) Where, by virtue of paragraph (5), any amount is paid to the Board in respect of a debt due by virtue of a contribution notice, the Board must pay the amount to the trustees or managers of the scheme.

(7) Where the contribution notice states that the person is under a liability to pay the sum specified in the notice to the Board, the sum is to be treated as a debt due from the person to the Board.

(8) Where the contribution notice so specifies, the person to whom the notice is issued ("P") is to be treated as jointly and severally liable for the debt with any persons specified in the notice who are persons to whom corresponding contribution notices are issued.

(9) For the purposes of paragraph (8), a corresponding contribution notice is a notice which—

(a) is issued as a result of the same act or failure to act falling within paragraph (5) of Article 34 as the act or failure as a result of which P's contribution notice is issued,

(b) specifies the same sum as is specified in P's contribution notice, and

(c) specifies that the person to whom the contribution notice is issued is jointly and severally liable with P, or with P and other persons, for the debt in respect of that sum.

(10) A debt due by virtue of a contribution notice is not to be taken into account for the purposes of Article 75(2) and (4) of the 1995 Order (deficiencies in the scheme assets) when ascertaining the amount or value of the assets or liabilities of a scheme.

F9 mod. by SR 2005/378

Article 34 contribution notice: relationship with employer debt

37 [F10]**.**—(1) This Article applies where a contribution notice is issued to a person ("P") under Article 34 and condition A or B is met.

(2) Condition A is met if, at the time at which the contribution notice is issued, there is a debt due under Article 75 of the 1995 Order (deficiencies in the scheme assets) from the employer—

(a) to the trustees or managers of the scheme, or

(b) where the Board has assumed responsibility for the scheme in accordance with Chapter 3 of Part III (pension protection), to the Board.

(3) Condition B is met if, after the contribution notice is issued but before the whole of the debt due by virtue of the notice is recovered, a debt becomes due from the employer to the trustees or managers of the scheme under Article 75 of the 1995 Order.

(4) The Regulator may issue a direction to the trustees or managers of the scheme not to take any or any further steps to recover the debt due to them under Article 75 of the 1995 Order pending the recovery of all or a specified part of the debt due to them by virtue of the contribution notice.

(5) If the trustees or managers fail to comply with a direction issued to them under paragraph (4), Article 10 of the 1995 Order (civil penalties) applies to any trustee or manager who has failed to take all reasonable steps to secure compliance.

(6) Any sums paid—

(a) to the trustees or managers of the scheme in respect of any debt due to them by virtue of the contribution notice, or

(b) to the Board in respect of any debt due to it by virtue of the contribution notice,

are to be treated as reducing the amount of the debt due to the trustees or managers or, as the case may be, to the Board under Article 75 of the 1995 Order.

(7) Where a sum is paid to the trustees or managers of the scheme or, as the case may be, to the Board in respect of the debt due under Article 75 of the 1995 Order, P may make an application under this paragraph to the Regulator for a reduction in the amount of the sum specified in P's contribution notice.

(8) An application under paragraph (7) must be made as soon as reasonably practicable after the sum is paid to the trustees or managers or, as the case may be, to the Board in respect of the debt due under Article 75 of the 1995 Order.

(9) Where such an application is made to the Regulator, the Regulator may, if it is of the opinion that it is appropriate to do so—

(a) reduce the amount of the sum specified in P's contribution notice by an amount which it considers reasonable, and

(b) issue a revised contribution notice specifying the revised sum.

(10) For the purposes of paragraph (9), the Regulator must have regard to such matters as the Regulator considers relevant including, where relevant, the following matters—

(a) the amount paid in respect of the debt due under Article 75 of the 1995 Order since the contribution notice was issued,

(b) any amounts paid in respect of the debt due by virtue of that contribution notice,

(c) whether contribution notices have been issued to other persons as a result of the same act or failure to act falling within paragraph (5) of Article 34 as the act or failure as a result of which P's contribution notice was issued,

(d) where such contribution notices have been issued, the sums specified in each of those notices and any amounts paid in respect of the debt due by virtue of those notices,

(e) whether P's contribution notice specifies that P is jointly and severally liable for the debt with other persons, and

(f) such other matters as may be prescribed.

(11) Where—

(a) P's contribution notice specifies that P is jointly and severally liable for the debt with other persons, and

(b) a revised contribution notice is issued to P under paragraph (9) specifying a revised sum,

the Regulator must also issue revised contribution notices to those other persons specifying the revised sum and their joint and several liability with P for the debt in respect of that sum.

(12) For the purposes of this Article—

(a) references to a debt due under Article 75 of the 1995 Order include a contingent debt under that Article, and

(b) references to the amount of such a debt include the amount of such a contingent debt.

F10 mod. by SR 2005/378

Article 34 contribution notice: clearance statements

38 [F11]**.**—(1) An application may be made to the Regulator under this Article for the issue of a clearance statement within sub-paragraph (a), (b) or (c) of paragraph (2) in relation to circumstances described in the application.

(2) A clearance statement is a statement, made by the Regulator, that in its opinion in the circumstances described in the application—

(a) the applicant would not be, for the purposes of paragraph (3)(a) of Article 34, a party to an act or a deliberate failure to act falling within paragraph (5)(a) of that Article,

(b) it would not be reasonable to impose any liability on the applicant under a contribution notice issued under Article 34, or

(c) such requirements of that Article as may be prescribed would not be satisfied in relation to the applicant.

(3) Where an application is made under this Article, the Regulator—

(a) may request further information from the applicant;

(b) may invite the applicant to amend the application to modify the circumstances described.

(4) Where an application is made under this Article, the Regulator must as soon as reasonably practicable—

(a) determine whether to issue the clearance statement, and

(b) where it determines to do so, issue the statement.

(5) A clearance statement issued under this Article binds the Regulator in relation to the exercise of the power to issue a contribution notice under Article 34 to the applicant unless—

(a) the circumstances in relation to which the exercise of the power under that Article arises are not the same as the circumstances described in the application, and

(b) the difference in those circumstances is material to the exercise of the power.

F11 mod. by SR 2005/378

Financial support directions

Financial support directions

39 [F12]**.**—(1) This Article applies in relation to an occupational pension scheme other than—

(a) a money purchase scheme, or

(b) a prescribed scheme or a scheme of a prescribed description.

(2) The Regulator may issue a financial support direction under this Article in relation to such a scheme if the Regulator is of the opinion that the employer in relation to the scheme—

(a) is a service company, or

(b) is insufficiently resourced,

at a time determined by the Regulator which falls within paragraph (9) ("the relevant time").

(3) A financial support direction in relation to a scheme is a direction which requires the person or persons to whom it is issued to secure—

(a) that financial support for the scheme is put in place within the period specified in the direction,

(b) that thereafter that financial support or other financial support remains in place while the scheme is in existence, and

(c) that the Regulator is notified in writing of prescribed events in respect of the financial support as soon as reasonably practicable after the event occurs.

(4) A financial support direction in relation to a scheme may be issued to one or more persons.

(5) But the Regulator may issue such a direction to a person only if—

(a) the person is at the relevant time a person falling within paragraph (6), and

(b) the Regulator is of the opinion that it is reasonable to impose the requirements of the direction on that person.

(6) A person falls within this paragraph if the person is—

(a) the employer in relation to the scheme,

(b) an individual who—

(i) is an associate of an individual who is the employer, but

(ii) is not an associate of that individual by reason only of being employed by him, or

(c) a person, other than an individual, who is connected with or an associate of the employer.

(7) The Regulator, when deciding for the purposes of paragraph (5)(b) whether it is reasonable to impose the requirements of a financial support direction on a particular person, must have regard to such matters as the Regulator considers relevant including, where relevant, the following matters—

(a) the relationship which the person has or has had with the employer (including, where the employer is a company within the meaning of paragraph (11) of Article 4 of the Insolvency Order, whether the person has or has had control of the employer within the meaning of paragraph (10) of that Article),

(b) in the case of a person falling within paragraph (6)(b) or (c), the value of any benefits received directly or indirectly by that person from the employer,

(c) any connection or involvement which the person has or has had with the scheme,

(d) the financial circumstances of the person, and

(e) such other matters as may be prescribed.

(8) A financial support direction must identify all the persons to whom the direction is issued.

(9) A time falls within this paragraph if it is a time which falls within a prescribed period which ends with the determination by the Regulator to exercise the power to issue the financial support direction in question.

(10) For the purposes of paragraph (3), a scheme is in existence until it is wound up.

(11) Subject to Article 283 (protected items), no duty to which a person is subject is to be regarded as contravened merely because of any information or opinion contained in a notice given by virtue of paragraph (3)(c).

F12 mod. by SR 2005/378

VALID FROM 15/12/2008

[F13 Financial support directions: transfer of members of the scheme

39A.—(1) This Article applies where—

(a) the Regulator is of the opinion by reference to any time that the conditions in Article 39 for issuing a financial support direction are met in relation to a scheme ("the initial scheme") in relation to which that Article applies (or, but for any transfer falling within sub-paragraph (b), would be met), and

(b) the accrued rights of at least two persons who were members of the initial scheme are transferred at any subsequent time to one or more work-based pension schemes.

(2) The Regulator may issue a financial support direction under that Article in relation to any transferee scheme (and, accordingly, any reference in Article 41 or any of Articles 43 to 46 to the scheme is to the transferee scheme).

(3) The Regulator may also issue a direction to the trustees or managers of any transferee scheme requiring them to take specified steps to secure that the financial support is put in place for the benefit of the members of the transferee scheme who were members of the initial scheme.

(4) If the trustees or managers fail to comply with a direction issued to them under paragraph (3), Article 10 of the 1995 Order (civil penalties) applies to any trustee or manager who has failed to take all reasonable steps to secure compliance.

F13 Arts. 39A, 39B inserted (15.12.2008) by Pensions (No. 2) Act (Northern Ireland) 2008 (c. 13), ss. 103, 118(1)(2)(h)(3)(a)(v)(vi)(b), **Sch. 8 para. 10** (with Sch. 8 para. 15(3) and transitional provision in Sch. 8 para. 16(2) for art. 39B(8)(10)(a))

VALID FROM 15/12/2008

Article 39A: supplemental

39B.—(1) In Article 39A a "transferee scheme", in relation to any time, means any work-based pension scheme—

(a) to which the accrued rights of at least two persons who were members of the initial scheme have been transferred, and

(b) of which any of those persons are members at that time.

(2) For the purposes of Article 39A(1) and paragraph (1) it does not matter whether any rights are transferred to a work-based pension scheme directly from the initial scheme or following one or more other transfers to other work-based pension schemes.

(3) For the purposes of Article 39A and this Article references to the transfer of accrued rights of members of a pension scheme to another pension scheme include references to the extinguishing of those accrued rights in consequence of the obligation to make a payment, or transfer an asset, to that other scheme.

(4) In Article 39A and this Article—

(a) "work-based pension scheme" has the meaning given by Article 4(3);

(b) any reference to rights which have accrued is to be read in accordance with Article 67A(6) and (7) of the 1995 Order (reading any reference in those paragraphs to a subsisting right as a reference to a right which has accrued).

(5) Article 39A applies even if the initial scheme—

(a) is wound up as a result of any transfer falling within paragraph (1)(b) of that Article, or

(b) otherwise ceases to exist at the time of the transfer or at any subsequent time.

(6) Accordingly, in any such case, in paragraph (1) of that Article—

(a) the reference to a scheme to which Article 39 applies is a reference to a scheme which was such a scheme before the transfer;

(b) the reference to any conditions in Article 39 being met is a reference to any conditions in that Article that, but for the transfer, would have been met in relation to the scheme.

(7) Nothing in Article 39A or this Article is to be read as preventing the Regulator from issuing a financial support direction in relation to the initial scheme.

(8) Regulations may make provision applying, with or without modifications, any provision made by Article 39A or this Article in relation to any scheme or other arrangement in any case where the accrued rights of persons who were members of the initial scheme are transferred or extinguished directly or indirectly in consequence of or otherwise in connection with—

(a) the making of any payment at any time to or for the benefit of the scheme or other arrangement,

(b) the transfer of any asset at any time to or for the benefit of the scheme or other arrangement,

(c) the discharge (wholly or partly) at any time of any liability incurred by or on behalf of the scheme or other arrangement, or

(d) the incurring at any time of any obligation to do any act falling within sub-paragraphs (a) to (c).

(9) Any reference in paragraph (8)(a) to (d) to the doing of an act of any description at any time in relation to the scheme or other arrangement includes a reference to the doing of an act of that description at any previous time in relation to any other scheme or other arrangement.

(10) Regulations under paragraph (8) may—

(a) make provision having effect in relation to any case where rights are transferred or extinguished on or after the date on which the Department publishes a statement of the intention to make the regulations; and

(b) without prejudice to Article 287(3), make consequential provision applying with modifications any provision of this Order which relates to financial support directions under Article 39.**]**

F13 Arts. 39A, 39B inserted (15.12.2008) by Pensions (No. 2) Act (Northern Ireland) 2008 (c. 13), ss. 103, 118(1)(2)(h)(3)(a)(v)(vi)(b), **Sch. 8 para. 10** (with Sch. 8 para. 15(3) and transitional provision in Sch. 8 para. 16(2) for art. 39B(8)(10)(a))

Meaning of "service company" and "insufficiently resourced"

40 [F14]**.**—(1) This Article applies for the purposes of Article 39 (financial support directions).

(2) An employer ("E") is a service company at the relevant time if—

(a) E is a company within the meaning given by Article 3(1) of the Companies Order,

(b) E is a member of a group of companies, and

(c) E's turnover, as shown in the latest available accounts for E prepared in accordance with Article 234 of that Order, is solely or principally derived from amounts charged for the provision of the services of employees of E to other members of that group.

(3) The employer in relation to a scheme is insufficiently resourced at the relevant time if—

(a) at that time the value of the resources of the employer is less than the amount which is a prescribed percentage of the estimated Article 75 debt in relation to the scheme, and

(b) there is at that time a person who falls within paragraph (6)(b) or (c) of Article 39 and the value at that time of that person's resources is not less than the amount which is the difference between—

(i) the value of the resources of the employer, and

(ii) the amount which is the prescribed percentage of the estimated Article 75 debt.

(4) For the purposes of paragraph (3)—

(a) what constitutes the resources of a person is to be determined in accordance with regulations, and

(b) the value of a person's resources is to be determined, calculated and verified in a prescribed manner.

(5) In this Article the "estimated Article 75 debt", in relation to a scheme, means the amount which the Regulator estimates to be the amount of the debt which would become due from the employer to the trustees or managers of the scheme under Article 75 of the 1995 Order (deficiencies in the scheme assets) if—

(a) paragraph (2) of that Article applied, and

(b) the time designated by the trustees or managers of the scheme for the purposes of that paragraph were the relevant time.

(6) When calculating the estimated Article 75 debt in relation to a scheme under paragraph (5), the amount of any debt due at the relevant time from the employer under Article 75 of the 1995 Order is to be disregarded.

(7) In this Article "the relevant time" has the same meaning as in Article 39.

F14 mod. by SR 2005/378

Meaning of "financial support"

41 [F15]**.**—(1) For the purposes of Article 39 (financial support directions), "financial support" for a scheme means one or more of the arrangements falling within paragraph (2) the details of which are approved in a notice issued by the Regulator.

(2) The arrangements falling within this paragraph are—

(a) an arrangement whereby, at any time when the employer is a member of a group of companies, all the members of the group are jointly and severally liable for the whole or part of the employer's pension liabilities in relation to the scheme;

(b) an arrangement whereby, at any time when the employer is a member of a group of companies, a company (within the meaning given in Article 4 of the Companies Order) which meets prescribed requirements and is the holding company of the group is liable for the whole or part of the employer's pension liabilities in relation to the scheme;

(c) an arrangement which meets prescribed requirements and whereby additional financial resources are provided to the scheme;

(d) such other arrangements as may be prescribed.

(3) The Regulator may not issue a notice under paragraph (1) approving the details of one or more arrangements falling within paragraph (2) unless it is satisfied that the arrangement is, or the arrangements are, reasonable in the circumstances.

(4) In paragraph (2), "the employer's pension liabilities" in relation to a scheme means—

(a) the liabilities for any amounts payable by or on behalf of the employer towards the scheme (whether on his own account or otherwise) in accordance with a schedule of contributions under Article 206, and

(b) the liabilities for any debt which is or may become due to the trustees or managers of the scheme from the employer whether by virtue of Article 75 of the 1995 Order (deficiencies in the scheme assets) or otherwise.

F15 mod. by SR 2005/378

Financial support directions: clearance statements

42 [F16]**.**—(1) An application may be made to the Regulator under this Article for the issue of a clearance statement within sub-paragraph (a), (b) or (c) of paragraph (2) in relation to circumstances described in the application and relating to an occupational pension scheme.

(2) A clearance statement is a statement, made by the Regulator, that in its opinion in the circumstances described in the application—

(a) the employer in relation to the scheme would not be a service company for the purposes of Article 39,

(b) the employer in relation to the scheme would not be insufficiently resourced for the purposes of that Article, or

(c) it would not be reasonable to impose the requirements of a financial support direction, in relation to the scheme, on the applicant.

(3) Where an application is made under this Article, the Regulator—

(a) may request further information from the applicant;

(b) may invite the applicant to amend the application to modify the circumstances described.

(4) Where an application is made under this Article, the Regulator must as soon as reasonably practicable—

(a) determine whether to issue the clearance statement, and

(b) where it determines to do so, issue the statement.

(5) A clearance statement issued under this Article binds the Regulator in relation to the exercise of the power to issue a financial support direction under Article 39 in relation to the scheme to the applicant unless—

(a) the circumstances in relation to which the exercise of the power under that Article arises are not the same as the circumstances described in the application, and

(b) the difference in those circumstances is material to the exercise of the power.

F16 mod. by SR 2005/378

Contribution notices where non-compliance with financial support direction

43 [F17]**.**—(1) This Article applies where there is non-compliance with a financial support direction issued in relation to a scheme under Article 39.

(2) The Regulator may issue a notice to any one or more of the persons to whom the direction was issued stating that the person is under a liability to pay to the trustees or managers of the scheme the sum specified in the notice (a "contribution notice").

(3) The Regulator may issue a contribution notice to a person only if the Regulator is of the opinion that it is reasonable to impose liability on the person to pay the sum specified in the notice.

(4) The Regulator, when deciding for the purposes of paragraph (3) whether it is reasonable to impose liability on a particular person to pay the sum specified in the notice, must have regard to such matters as the Regulator considers relevant including, where relevant, the following matters—

(a) whether the person has taken reasonable steps to secure compliance with the financial support direction,

(b) the relationship which the person has or has had with the employer (including, where the employer is a company within the meaning of paragraph (11) of Article 4 of the Insolvency Order, whether the person has or has had control of the employer within the meaning of paragraph (10) of that Article),

(c) in the case of a person to whom the financial support direction was issued as a person falling within Article 39(6)(b) or (c), the value of any benefits received directly or indirectly by that person from the employer,

(d) the relationship which the person has or has had with the parties to any arrangements put in place in accordance with the direction (including, where any of those parties is a company within the meaning of paragraph (11) of Article 4 of the Insolvency Order, whether the person has or has had control of that company within the meaning of paragraph (10) of that Article),

(e) any connection or involvement which the person has or has had with the scheme,

(f) the financial circumstances of the person, and

(g) such other matters as may be prescribed.

(5) A contribution notice may not be issued under this Article in respect of non-compliance with a financial support direction in relation to a scheme where the Board has assumed responsibility for the scheme in accordance with Chapter 3 of Part III (pension protection).

F17 mod. by SR 2005/378

The sum specified in an Article 43 contribution notice

44 [F18]**.**—(1) The sum specified by the Regulator in a contribution notice under Article 43 may be either the whole or a specified part of the shortfall sum in relation to the scheme.

(2) The shortfall sum in relation to a scheme is—

(a) in a case where, at the time of non-compliance, a debt was due from the employer to the trustees or managers of the scheme under Article 75 of the 1995 Order (deficiencies in the scheme assets), the amount which the Regulator estimates to be the amount of that debt at that time, and

(b) in a case where, at the time of non-compliance, no such debt was due, the amount which the Regulator estimates to be the amount of the debt under Article 75 of the 1995 Order which would become due if—

(i) paragraph (2) of that Article applied, and

(ii) the time designated by the trustees or managers of the scheme for the purposes of that paragraph were the time of non-compliance.

(3) For the purposes of this Article "the time of non-compliance" means—

(a) in the case of non-compliance with sub-paragraph (a) of paragraph (3) of Article 39 (financial support directions), the time immediately after the expiry of the period specified in the financial support direction for putting in place the financial support,

(b) in the case of non-compliance with sub-paragraph (b) of that paragraph, the time when financial support for the scheme ceased to be in place,

(c) in the case of non-compliance with sub-paragraph (c) of that paragraph, the time when the prescribed event occurred in relation to which there was the failure to notify the Regulator, or

(d) where more than one of sub-paragraphs (a) to (c) apply, whichever of the times specified in the applicable sub-paragraphs the Regulator determines.

F18 mod. by SR 2005/378

Content and effect of an Article 43 contribution notice

45 [F19]**.**—(1) This Article applies where a contribution notice is issued to a person under Article 43.

(2) The contribution notice must—

(a) contain a statement of the matters which it is asserted constitute the non-compliance with the financial support direction in respect of which the notice is issued, and

(b) specify the sum which the person is stated to be under a liability to pay.

(3) The sum specified in the notice is to be treated as a debt due from the person to the trustees or managers of the scheme.

(4) The Regulator may, on behalf of the trustees or managers of the scheme, exercise such powers as the trustees or managers have to recover the debt.

(5) But during any assessment period (within the meaning of Article 116) in relation to the scheme, the rights and powers of the trustees or managers of the scheme in relation to any debt due to them by virtue of a contribution notice, are exercisable by the Board to the exclusion of the trustees or managers and the Regulator.

(6) Where, by virtue of paragraph (5), any amount is paid to the Board in respect of a debt due by virtue of a contribution notice, the Board must pay the amount to the trustees or managers of the scheme.

(7) The contribution notice must identify any other persons to whom contribution notices have been or are issued in respect of the non-compliance in question and the sums specified in each of those notices.

(8) Where the contribution notice so specifies, the person to whom the notice is issued ("P") is to be treated as jointly and severally liable for the debt with any persons specified in the notice who are persons to whom corresponding contribution notices are issued.

(9) For the purposes of paragraph (8), a corresponding contribution notice is a notice which—

(a) is issued in respect of the same non-compliance with the financial support direction as the non-compliance in respect of which P's contribution notice is issued,

(b) specifies the same sum as is specified in P's contribution notice, and

(c) specifies that the person to whom the contribution notice is issued is jointly and severally liable with P, or with P and other persons, for the debt in respect of that sum.

(10) A debt due by virtue of a contribution notice is not to be taken into account for the purposes of Article 75(2) and (4) of the 1995 Order (deficiencies in the scheme assets) when ascertaining the amount or value of the assets or liabilities of a scheme.

F19 mod. by SR 2005/378

Article 43 contribution notice: relationship with employer debt

46 [F20]**.**—(1) This Article applies where a contribution notice is issued to a person ("P") under Article 43 and condition A or B is met.

(2) Condition A is met if, at the time at which the contribution notice is issued, there is a debt due from the employer to the trustees or managers of the scheme under Article 75 of the 1995 Order (deficiencies in the scheme assets).

(3) Condition B is met if, after the contribution notice is issued but before the whole of the debt due by virtue of the notice is recovered, a debt becomes due from the employer to the trustees or managers of the scheme under Article 75 of the 1995 Order.

(4) The Regulator may issue a direction to the trustees or managers of the scheme not to take any or any further steps to recover the debt due to them under Article 75 of the 1995 Order pending the recovery of all or a specified part of the debt due to them by virtue of the contribution notice.

(5) If the trustees or managers fail to comply with a direction issued to them under paragraph (4), Article 10 of the 1995 Order (civil penalties) applies to any trustee or manager who has failed to take all reasonable steps to secure compliance.

(6) Any sums paid—

(a) to the trustees or managers of the scheme in respect of any debt due to them by virtue of the contribution notice, or

(b) to the Board in respect of any debt due to it by virtue of the contribution notice (where it has assumed responsibility for the scheme in accordance with Chapter 3 of Part III (pension protection)),

are to be treated as reducing the amount of the debt due to the trustees or managers or, as the case may be, to the Board under Article 75 of the 1995 Order.

(7) Where a sum is paid to the trustees or managers of the scheme or, as the case may be, to the Board in respect of the debt due under Article 75 of the 1995 Order, P may make an application under this paragraph to the Regulator for a reduction in the amount of the sum specified in P's contribution notice.

(8) An application under paragraph (7) must be made as soon as reasonably practicable after the sum is paid to the trustees or managers or, as the case may be, to the Board in respect of the debt due under Article 75 of the 1995 Order.

(9) Where such an application is made to the Regulator, the Regulator may, if it is of the opinion that it is appropriate to do so—

(a) reduce the amount of the sum specified in P's contribution notice by an amount which it considers reasonable, and

(b) issue a revised contribution notice specifying the revised sum.

(10) For the purposes of paragraph (9), the Regulator must have regard to such matters as the Regulator considers relevant including, where relevant, the following matters—

(a) the amount paid in respect of the debt due under Article 75 of the 1995 Order since the contribution notice was issued,

(b) any amounts paid in respect of the debt due by virtue of that contribution notice,

(c) whether contribution notices have been issued to other persons in respect of the same non-compliance with the financial support direction in question as the non-compliance in respect of which P's contribution notice was issued,

(d) where such contribution notices have been issued, the sums specified in each of those notices and any amounts paid in respect of the debt due by virtue of those notices,

(e) whether P's contribution notice specifies that P is jointly and severally liable for the debt with other persons, and

(f) such other matters as may be prescribed.

(11) Where—

(a) P's contribution notice specifies that P is jointly and severally liable for the debt with other persons, and

(b) a revised contribution notice is issued to P under paragraph (9) specifying a revised sum,

the Regulator must also issue revised contribution notices to those other persons specifying the revised sum and their joint and several liability with P for the debt in respect of that sum.

F20 mod. by SR 2005/378

Articles 39 to 46: interpretation

47 [F21]**.**—(1) In Articles 39 to 46—

"group of companies" means a holding company and its subsidiaries within the meaning given by Article 4(1) of the Companies Order, and "member" in relation to such a group is to be construed accordingly;

"holding company" has the meaning given by Article 4(1) of that Order.

(2) For the purposes of Articles 39 to 46—

(a) references to a debt due under Article 75 of the 1995 Order include a contingent debt under that Article, and

(b) references to the amount of such a debt include the amount of such a contingent debt.

(3) For the purposes of Articles 39 to 46—

(a) Article 7 of the Insolvency Order (connected persons) applies as it applies for the purposes of any provision of Parts II to VII of that Order, and

(b) Article 4 of that Order (associated persons) applies as it applies for the purposes of that Order.

F21 mod. by SR 2005/378

Transactions at an undervalue

Restoration orders where transactions at an undervalue

48 [F22]**.**—(1) This Article applies in relation to an occupational pension scheme other than—

(a) a money purchase scheme, or

(b) a prescribed scheme or a scheme of a prescribed description.

(2) The Regulator may make a restoration order in respect of a transaction involving assets of the scheme if—

(a) a relevant event has occurred in relation to the employer in relation to the scheme, and

(b) the transaction is a transaction at an undervalue entered into with a person at a time which—

(i) is on or after 27th April 2004, but

(ii) is not more than two years before the occurrence of the relevant event in relation to the employer.

(3) A restoration order in respect of a transaction involving assets of a scheme is such an order as the Regulator thinks fit for restoring the position to what it would have been if the transaction had not been entered into.

(4) For the purposes of this Article a relevant event occurs in relation to the employer in relation to a scheme if and when on or after the appointed day—

(a) an insolvency event occurs in relation to the employer, or

(b) the trustees or managers of the scheme make an application under paragraph (1) of Article 113 or receive a notice from the Board under paragraph (5)(a) of that Article (applications and notifications prior to the Board assuming responsibility for a scheme).

(5) For the purposes of paragraph (4)—

(a) the "appointed day" means the day appointed under Article 110(2) (no pension protection under Chapter 3 of Part III if the scheme begins winding up before the day appointed by the Department),

(b) Article 105 (meaning of "insolvency event") applies for the purposes of determining if and when an insolvency event has occurred in relation to the employer, and

(c) the reference to an insolvency event in relation to the employer does not include an insolvency event which occurred in relation to him before he became the employer in relation to the scheme.

(6) For the purposes of this Article and Article 49, a transaction involving assets of a scheme is a transaction at an undervalue entered into with a person ("P") if the trustees or managers of the scheme or appropriate persons in relation to the scheme—

(a) make a gift to P or otherwise enter into a transaction with P on terms that provide for no consideration to be provided towards the scheme, or

(b) enter into a transaction with P for a consideration the value of which, in money or money's worth, is significantly less than the value, in money or money's worth, of the consideration provided by or on behalf of the trustees or managers of the scheme.

(7) In paragraph (6) "appropriate persons" in relation to a scheme means a person who, or several persons each of whom is a person who, at the time at which the transaction in question is entered into, is—

(a) a person of a prescribed description, and

(b) entitled to exercise powers in relation to the scheme.

(8) For the purposes of this Article and Article 49—

"assets" includes future assets;

"transaction" includes a gift, agreement or arrangement and references to entering into a transaction are to be construed accordingly.

(9) The provisions of this Article apply without prejudice to the availability of any other remedy, even in relation to a transaction where the trustees or managers of the scheme or appropriate persons in question had no power to enter into the transaction.

F22 mod. by SR 2005/378

Restoration orders: supplementary

49 [F23]**.**—(1) This Article applies in relation to a restoration order under Article 48 in respect of a transaction involving assets of a scheme ("the transaction").

(2) The restoration order may in particular—

(a) require any assets of the scheme (whether money or other property) which were transferred as part of the transaction to be transferred back—

(i) to the trustees or managers of the scheme, or

(ii) where the Board has assumed responsibility for the scheme, to the Board;

(b) require any property to be transferred to the trustees or managers of the scheme or, where the Board has assumed responsibility for the scheme, to the Board if it represents in any person's hands—

(i) any of the assets of the scheme which were transferred as part of the transaction, or

(ii) property derived from any such assets so transferred;

(c) require such property as the Regulator may specify in the order, in respect of any consideration for the transaction received by the trustees or managers of the scheme, to be transferred—

(i) by the trustees or managers of the scheme, or

(ii) where the Board has assumed responsibility for the scheme, by the Board,

to such persons as the Regulator may specify in the order;

(d) require any person to pay, in respect of benefits received by him as a result of the transaction, such sums (not exceeding the value of the benefits received by him) as the Regulator may specify in the order—

(i) to the trustees or managers of the scheme, or

(ii) where the Board has assumed responsibility for the scheme, to the Board.

(3) A restoration order is of no effect to the extent that it prejudices any interest in property which was acquired in good faith and for value or any interest deriving from such an interest.

(4) Nothing in paragraph (3) prevents a restoration order requiring a person to pay a sum of money if the person received a benefit as a result of the transaction otherwise than in good faith and for value.

(5) Where a person has acquired an interest in property from a person or has received a benefit as a result of the transaction and—

(a) he is one of the trustees or managers or appropriate persons who entered into the transaction as mentioned in paragraph (6) of Article 48, or

(b) at the time of the acquisition or receipt—

(i) he has notice of the fact that the transaction was a transaction at an undervalue,

(ii) he is a trustee or manager, or the employer, in relation to the scheme, or

(iii) he is connected with, or an associate of, any of the persons mentioned in sub-paragraph (a) or (b)(ii),

then, unless the contrary is shown, it is to be presumed for the purposes of paragraphs (3) and (4) that the interest was acquired or the benefit was received otherwise than in good faith.

(6) For the purposes of this Article—

(a) Article 7 of the Insolvency Order (connected persons) applies as it applies for the purposes of any provision of Parts II to VII of that Order, and

(b) Article 4 of that Order (associated persons) applies as it applies for the purposes of that Order.

(7) For the purposes of this Article "property" includes—

(a) money, goods, things in action, land and every description of property wherever situated, and

(b) obligations and every description of interest, whether present or future or vested or contingent, arising out of, or incidental to, property.

(8) References in this Article to where the Board has assumed responsibility for a scheme are to where the Board has assumed responsibility for the scheme in accordance with Chapter 3 of Part III (pension protection).

F23 mod. by SR 2005/378

Content and effect of a restoration order

50 [F24]**.**—(1) This Article applies where a restoration order is made under Article 48 in respect of a transaction involving assets of a scheme.

(2) Where the restoration order imposes an obligation on a person to do something, the order must specify the period within which the obligation must be complied with.

(3) Where the restoration order imposes an obligation on a person ("A") to transfer or pay a sum of money to a person specified in the order ("B"), the sum is to be treated as a debt due from A to B.

(4) Where the trustees or managers of the scheme are the persons to whom the debt is due, the Regulator may on their behalf, exercise such powers as the trustees or managers have to recover the debt.

(5) But during any assessment period (within the meaning of Article 116) in relation to the scheme, the rights and powers of the trustees or managers of the scheme in relation to any debt due to them by virtue of a restoration order are exercisable by the Board to the exclusion of the trustees or managers and the Regulator.

(6) Where, by virtue of paragraph (5), any amount is transferred or paid to the Board in respect of a debt due by virtue of a restoration order, the Board must pay the amount to the trustees or managers of the scheme.

F24 mod. by SR 2005/378

Contribution notice where failure to comply with a restoration order

51 [F25]**.**—(1) This Article applies where—

(a) a restoration order is made under Article 48 in respect of a transaction involving assets of a scheme ("the transaction"), and

(b) a person fails to comply with an obligation imposed on him by the order which is not an obligation to transfer or pay a sum of money.

(2) The Regulator may issue a notice to the person stating that the person is under a liability to pay the sum specified in the notice (a "contribution notice")—

(a) to the trustees or managers of the scheme, or

(b) where the Board has assumed responsibility for the scheme in accordance with Chapter 3 of Part III (pension protection), to the Board.

(3) The sum specified by the Regulator in a contribution notice may be either the whole or a specified part of the shortfall sum in relation to the scheme.

(4) The shortfall sum in relation to the scheme is the amount which the Regulator estimates to be the amount of the decrease in the value of the assets of the scheme as a result of the transaction having been entered into.

F25 mod. by SR 2005/378

Content and effect of an Article 51 contribution notice

52 [F26]**.**—(1) This Article applies where a contribution notice is issued to a person under Article 51.

(2) The contribution notice must—

(a) contain a statement of the matters which it is asserted constitute the failure to comply with the restoration order under Article 48 in respect of which the notice is issued, and

(b) specify the sum which the person is stated to be under a liability to pay.

(3) Where the contribution notice states that the person is under a liability to pay the sum specified in the notice to the trustees or managers of the scheme, the sum is to be treated as a debt due from the person to the trustees or managers of the scheme.

(4) In such a case, the Regulator may, on behalf of the trustees or managers of the scheme, exercise such powers as the trustees or managers have to recover the debt.

(5) But during any assessment period (within the meaning of Article 116) in relation to the scheme, the rights and powers of the trustees or managers of the scheme in relation to any debt due to them by virtue of a contribution notice, are exercisable by the Board to the exclusion of the trustees or managers and the Regulator.

(6) Where, by virtue of paragraph (5), any amount is paid to the Board in respect of a debt due by virtue of a contribution notice, the Board must pay the amount to the trustees or managers of the scheme.

(7) Where the contribution notice states that the person is under a liability to pay the sum specified in the notice to the Board, the sum is to be treated as a debt due from the person to the Board.

F26 mod. by SR 2005/378

Articles 34 to 52: partnerships and limited liability partnerships

Articles 34 to 52: partnerships and limited liability partnerships

53.—(1) For the purposes of any of Articles 34 to 52, regulations may modify any of the definitions mentioned in paragraph (2) (as applied by any of those Articles) in relation to—

(a) a partnership or a partner in a partnership;

(b) a limited liability partnership or a member of such a partnership.

(2) The definitions mentioned in paragraph (1) are—

(a) Article 7 of the Insolvency Order (connected persons),

(b) Article 4 of that Order (associated persons), and

(c) Article 4 of the Companies Order (meaning of "subsidiary" and "holding company" etc.).

(3) Regulations may also provide that any provision of Articles 34 to 52 applies with such modifications as may be prescribed in relation to—

(a) any case where a partnership is or was—

(i) the employer in relation to an occupational pension scheme, or

(ii) for the purposes of any of those Articles, connected with or an associate of the employer;

(b) any case where a limited liability partnership is—

(i) the employer in relation to an occupational pension scheme, or

(ii) for the purposes of any of those Articles, connected with or an associate of the employer.

(4) Regulations may also provide that any provision of Articles 48 to 52 applies with such modifications as may be prescribed in relation to a partnership or a limited liability partnership.

(5) For the purposes of this Article—

(a) "partnership" includes a firm or entity of a similar character formed under the law of a country or territory outside the United Kingdom, and

(b) references to a partner are to be construed accordingly.

(6) For the purposes of this Article, "limited liability partnership" means—

(a) a limited liability partnership formed under the Limited Liability Partnerships Act (Northern Ireland) 2002 (c. 12) or the Limited Liability Partnerships Act 2000 (c. 12), or

(b) an entity which is of a similar character to such a limited liability partnership and which is formed under the law of a country or territory outside the United Kingdom,

and references to a member of a limited liability partnership are to be construed accordingly.

(7) This Article is without prejudice to—

(a) Article 2(5) (power to extend the meaning of "employer"), and

(b) Article 280 (power to modify this Order in relation to certain categories of schemes).

Applications under the Insolvency Order

Regulator's right to apply under Article 367 of the Insolvency Order

54.—(1) In this Article "Article 367" means Article 367 of the Insolvency Order (transactions defrauding creditors).

(2) The Regulator may apply for an order under Article 367 in relation to a debtor if—

(a) the debtor is the employer in relation to an occupational pension scheme, and

(b) condition A or condition B is met in relation to the scheme.

(3) Condition A is that an actuarial valuation under Article 127 obtained by the Board in respect of the scheme indicates that the value of the assets of the scheme at the relevant time, as defined by that Article, was less than the amount of the protected liabilities, as defined by Article 115, at that time.

(4) Condition B is that an actuarial valuation, as defined by Article 203(2), obtained by the trustees or managers of the scheme indicates that the statutory funding objective in Article 201 is not met.

(5) In a case where the debtor—

(a) has been adjudged bankrupt,

(b) is a body corporate which is being wound up or is in administration, or

(c) is a partnership which is being wound up or is in administration,

paragraph (2) does not enable an application to be made under Article 367 except with the permission of the court.

(6) An application made under this Article is to be treated as made on behalf of every victim of the transaction who is—

(a) a trustee or member of the scheme, or

(b) the Board.

(7) This Article does not apply where the valuation mentioned in paragraph (3) or (4) is made by reference to a date that falls before the coming into operation of this Article.

(8) Expressions which are defined by Article 367 for the purposes of that Article have the same meaning when used in this Article.

Register of schemes

Registrable information

55.—(1) For the purposes of this Article and Articles 56 to 60 "registrable information", in relation to an occupational or personal pension scheme, means information within paragraph (2).

(2) That information is—

(a) the name of the scheme;

(b) the address of the scheme;

(c) the full names and addresses of each of the trustees or managers of the scheme;

(d) the status of the scheme with respect to the following matters—

(i) whether new members may be admitted to the scheme;

(ii) whether further benefits may accrue to, or in respect of, members under the scheme;

(iii) whether further contributions may be paid towards the scheme;

(iv) whether any members of the scheme are active members;

(e) the categories of benefits under the scheme;

(f) in the case of an occupational pension scheme—

(i) the name and address of each relevant employer, and

(ii) any other name by which any relevant employer has been known at any time on or after the relevant date;

(g) in the case of an occupational pension scheme, the number of members of the scheme on the later of—

(i) the last day of the scheme year which ended most recently, and

(ii) the day on which the scheme became a registrable scheme; and

(h) such other information as may be prescribed.

(3) Regulations may make provision about the interpretation of any of the descriptions in paragraph (2).

(4) For the purposes of paragraph (2)(f)—

"relevant employer" means any person—

(a) who is, or

(b) who, at any time on or after 6th April 1975, has been,

the employer in relation to the scheme;

"relevant date", in relation to a relevant employer, means—

(a) 6th April 1975, or

(b) if later, the date on which the relevant employer first became the employer in relation to the scheme.

(5) In this Article and Articles 57 to 60 "registrable scheme" means an occupational pension scheme, or a personal pension scheme, of a prescribed description.

The register: inspection, provision of information and reports etc.

56.—(1) Regulations may provide—

(a) for—

(i) information recorded in the register,

(ii) extracts from the register, or

(iii) copies of the register or of extracts from it,

to be provided to prescribed persons in prescribed circumstances, and

(b) for the inspection of—

(i) the register,

(ii) extracts from the register, or

(iii) copies of the register or of extracts from it,

by prescribed persons in prescribed circumstances.

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

(a) confer functions on—

(i) the Department, or

(ii) a person authorised by the Department for the purposes of the regulations;

(b) make provision with respect to the disclosure of information obtained by virtue of the regulations.

(3) Regulations which contain any provision made by virtue of paragraph (2)(b) may, in particular, modify Article 77 (restricted information).

(4) The Department may direct the Regulator to submit to it statistical and other reports concerning—

(a) information recorded in the register, and

(b) the operation of the Regulator's functions in relation to the register.

(5) A direction under paragraph (4) may specify—

(a) the form in which, and

(b) the times at which,

reports required by the direction are to be submitted.

(6) The Department may publish any report submitted to it by virtue of a direction under paragraph (4) in such manner as it considers appropriate.

(7) In this Article "the register" means the register of occupational and personal pension schemes compiled and maintained under section 59 of the Pensions Act 2004 (c. 35).

The register: duties of trustees or managers

57.—(1) Paragraph (2) applies where—

(a) a registrable scheme is established, or

(b) an occupational or personal pension scheme otherwise becomes a registrable scheme.

(2) The trustees or managers of the scheme must, before the end of the initial notification period—

(a) notify the Regulator that the scheme is a registrable scheme, and

(b) provide to the Regulator all the registrable information with respect to the scheme.

(3) In paragraph (2), the "initial notification period" means the period of three months beginning with—

(a) the date on which the scheme is established, or

(b) if later, the date on which it becomes a registrable scheme.

(4) Where there is a change in any registrable information in respect of a registrable scheme, the trustees or managers of the scheme must as soon as reasonably practicable, notify the Regulator—

(a) of that fact, and

(b) of the new registrable information.

(5) Where a registrable scheme—

(a) ceases to be a registrable scheme, or

(b) is wound up (otherwise than under Article 145(2) (effect of Board assuming responsibility for scheme)),

the trustees or managers of the scheme must as soon as reasonably practicable, notify the Regulator of that fact.

(6) If paragraph (2), (4) or (5) is not complied with, Article 10 of the 1995 Order (civil penalties) applies to any trustee or manager who has failed to take all reasonable steps to secure compliance.

Duty of the Regulator to issue scheme return notices

58.—(1) The Regulator must issue scheme return notices in accordance with this Article requiring scheme returns to be provided in respect of registrable schemes.

(2) In respect of each registrable scheme, the Regulator—

(a) must issue the first scheme return notice in accordance with paragraph (3), and

(b) must issue subsequent scheme return notices in accordance with paragraph (4).

(3) The return date specified in a scheme return notice issued in respect of a scheme under paragraph (2)(a)—

(a) must fall within the period of three years beginning with—

(i) the date on which the Regulator receives a notice under Article 57(2)(a) in respect of the scheme, or

(ii) if earlier, the date on which the Regulator first becomes aware that the scheme is a registrable scheme, and

(b) if the trustees or managers have complied with sub-paragraph (b) of Article 57(2), must fall after the end of the period of one year beginning with the date on which they provided the information required by that sub-paragraph to the Regulator.

(4) The return date specified in a scheme return notice issued in respect of a scheme under paragraph (2)(b) must fall—

(a) within the period of three years, but

(b) after the end of the period of one year,

beginning with the return date specified in the previous scheme return notice issued in respect of the scheme.

Duty of trustees or managers to provide scheme return

59.—(1) The trustees or managers of a registrable scheme in respect of which a scheme return notice is issued must, on or before the return date, provide a scheme return to the Regulator.

(2) If a scheme return in respect of a scheme is not provided in compliance with paragraph (1), Article 10 of the 1995 Order (civil penalties) applies to any trustee or manager of the scheme who has failed to take all reasonable steps to secure compliance.

Scheme returns: supplementary

60.—(1) This Article has effect for the purposes of Articles 58 and 59.

(2) In those Articles and this Article, in relation to a scheme return notice—

"return date" means the date specified under paragraph (3)(b) in the scheme return notice;

"scheme return" means a document in the form (if any) specified in the scheme return notice, containing the information required by the notice.

(3) A scheme return notice must specify—

(a) the descriptions of information required by it, and

(b) the return date,

and may specify the form in which that information is to be provided.

(4) A scheme return notice in respect of a registrable scheme—

(a) must require all registrable information in relation to the scheme, and

(b) may require other information which the Regulator reasonably requires for the purposes of the exercise of its functions in relation to the scheme.

(5) The return date specified in a scheme return notice must fall after the end of the period of 28 days beginning with the date on which the notice is issued.

(6) A scheme return notice must be in writing and is treated as issued in respect of a registrable scheme when it is sent to the trustees or managers of the scheme.

Register of prohibited trustees

Register of prohibited trustees

61.—(1) The Regulator must keep in such manner as it thinks fit a register of all persons who are prohibited under Article 3 of the 1995 Order ("the prohibition register").

(2) Arrangements made by the Regulator for the prohibition register must secure that the contents of the register are not disclosed or otherwise made available to members of the public except in accordance with Article 62.

(3) Nothing in paragraph (2) requires the Regulator to exclude any matter from a report published under Article 84 (reports of Regulator's consideration of cases).

Accessibility of register of prohibited trustees

62.—(1) The Regulator must make arrangements to secure that the prohibition register is open, during its normal working hours, for inspection in person and without notice at—

(a) the principal office used by it for the carrying out of its functions, and

(b) such other offices (if any) of the Regulator or of the Department as the Regulator considers to be places where it would be reasonable for a copy of the register to be kept open for inspection.

(2) If a request is made to the Regulator—

(a) to state whether a particular person identified in the request is a person appearing in the prohibition register as prohibited in respect of an occupational trust scheme specified in the request,

(b) to state whether a particular person so identified is a person appearing in that register as prohibited in respect of a particular description of occupational trust schemes so specified, or

(c) to state whether a particular person so identified is a person appearing in that register as prohibited in respect of all occupational trust schemes,

the Regulator must promptly comply with the request in such manner as it considers reasonable.

(3) The Regulator may, in such manner as it considers appropriate, publish a summary of the prohibition register if (subject to paragraphs (6) to (8)) the summary—

(a) contains all the information described in paragraph (4),

(b) arranges that information in the manner described in paragraph (5),

(c) does not (except by identifying a person as prohibited in respect of all occupational trust schemes, in respect of a particular description of such schemes or in respect of a particular such scheme) identify any of the schemes in respect of which persons named in the summary are prohibited, and

(d) does not disclose any other information contained in the register.

(4) That information is—

(a) the full names and titles, so far as the Regulator has a record of them, of all the persons appearing in the register as persons who are prohibited,

(b) the dates of birth of such of those persons as are persons whose dates of birth are matters of which the Regulator has a record, and

(c) in the case of each person whose name is included in the published summary, whether that person appears in the register—

(i) as prohibited in respect of only one occupational trust scheme,

(ii) as prohibited in respect of one or more particular descriptions of such schemes, but not in respect of all such schemes, or

(iii) as prohibited in respect of all such schemes.

(5) For the purposes of sub-paragraph (c) of paragraph (4), the information in the published register must be arranged in three separate lists, one for each of the descriptions of prohibition specified in the heads of that sub-paragraph.

(6) The Regulator must ensure, in the case of any published summary, that a person is not identified in the summary as a prohibited person if it appears to the Regulator that the determination by virtue of which that person appears in the register—

(a) is the subject of any pending reference, review, appeal or legal proceedings which could result in that person's removal from the register, or

(b) is a determination which might still become the subject of any such reference, review, appeal or proceedings.

(7) The Regulator must ensure, in the case of any published summary, that the particulars relating to a person do not appear in a particular list mentioned in paragraph (5) if it appears to the Regulator that a determination by virtue of which that person's particulars would appear in that list—

(a) is the subject of any pending reference, review, appeal or legal proceedings which could result in such a revocation or other overturning of a prohibition of that person as would require his particulars to appear in a different list, or

(b) is a determination which might still become the subject of any such reference, review, appeal or proceedings.

(8) Where paragraph (7) prevents a person's particulars from being included in a particular list in the published summary, they must be included, instead, in the list (if any) in which they would have been included if the prohibition to which the reference, review, appeal or proceedings relate or might relate had already been revoked or otherwise overturned.

(9) For the purposes of this Article a determination is one which might still become the subject of a reference, review, appeal or proceedings if, and only if, in the case of that determination—

(a) the time for the making of an application for a review or reference, or for the bringing of an appeal or other proceedings, has not expired, and

(b) there is a reasonable likelihood that such an application might yet be made, or that such an appeal or such proceedings might yet be brought.

(10) In this Article—

"name", in relation to a person any of whose names is recorded by the Regulator as an initial, means that initial;

"occupational trust scheme" means an occupational pension scheme established under a trust.

Collecting information relevant to the Board

Information relevant to the Board

63. The Regulator may collect any information which appears to it to be relevant to the exercise of the functions of the Board.

Duty to notify the Regulator of certain events

64.—(1) Except where the Regulator otherwise directs, the appropriate person must give notice of any notifiable event to the Regulator.

(2) In paragraph (1) "notifiable event" means—

(a) a prescribed event in respect of an eligible scheme, or

(b) a prescribed event in respect of the employer in relation to an eligible scheme.

(3) For the purposes of paragraph (1)—

(a) in the case of an event within paragraph (2)(a), each of the following is "the appropriate person"

(i) the trustees or managers of the scheme,

(ii) a person of a prescribed description, and

(b) in relation to an event within paragraph (2)(b), each of the following is "the appropriate person"

(i) the employer in relation to the scheme,

(ii) a person of a prescribed description.

(4) A notice under paragraph (1)—

(a) must be in writing, and

(b) subject to paragraph (5), must be given as soon as reasonably practicable after the person giving it becomes aware of the notifiable event.

(5) Regulations may require a notice under paragraph (1) to be given before the beginning of the prescribed period ending with the notifiable event in question.

(6) Subject to Article 283 (protected items), no duty to which a person is subject is to be regarded as contravened merely because of any information or opinion contained in a notice under this Article.

(7) Where the trustees or managers of a scheme fail to comply with an obligation imposed on them by paragraph (1), Article 10 of the 1995 Order (civil penalties) applies in relation to any trustee or manager who has failed to take all reasonable steps to secure compliance with that paragraph.

(8) That Article also applies to any other person who, without reasonable excuse, fails to comply with an obligation imposed on him by paragraph (1).

(9) In this Article—

"eligible scheme" has the meaning given by Article 110,

"event" includes a failure to act.

Reporting breaches of the law

Duty to report breaches of the law

65.—(1) Paragraph (2) imposes a reporting requirement on the following persons—

(a) a trustee or manager of an occupational or personal pension scheme;

(b) a person who is otherwise involved in the administration of such a scheme;

(c) the employer in relation to an occupational pension scheme;

(d) a professional adviser in relation to such a scheme;

(e) a person who is otherwise involved in advising the trustees or managers of an occupational or personal pension scheme in relation to the scheme.

(2) Where the person has reasonable cause to believe that—

(a) a duty which is relevant to the administration of the scheme in question, and is imposed by or by virtue of a statutory provision or rule of law, has not been or is not being complied with, and

(b) the failure to comply is likely to be of material significance to the Regulator in the exercise of any of its functions,

he must give a written report of the matter to the Regulator as soon as reasonably practicable.

(3) Subject to Article 283 (protected items), no duty to which a person is subject is to be regarded as contravened merely because of any information or opinion contained in a written report under this Article.

(4) Article 10 of the 1995 Order (civil penalties) applies to any person who, without reasonable excuse, fails to comply with an obligation imposed on him by this Article.

Reports by skilled persons

Reports by skilled persons

66.—(1) The Regulator may issue a notice (a "report notice") to—

(a) the trustees or managers of a work-based pension scheme,

(b) any employer in relation to such a scheme, or

(c) any person who is otherwise involved in the administration of such a scheme,

requiring them or, as the case may be, him to provide the Regulator with a report on one or more specified matters which are relevant to the exercise of any of the Regulator's functions.

(2) A report notice must require the person appointed to make the report to be a person—

(a) nominated or approved by the Regulator, and

(b) appearing to the Regulator to have the skills necessary to make a report on the matter or matters concerned.

(3) A report notice may require the report to be provided to the Regulator—

(a) in a specified form;

(b) before a specified date.

(4) The costs of providing a report in accordance with a report notice must be met by the person to whom the notice is issued ("the notified person").

(5) But a report notice may require a specified person (other than the Regulator) to reimburse to the notified person the whole or any part of the costs of providing the report.

(6) Where, by virtue of paragraph (5), an amount is required to be reimbursed by a specified person to the notified person, that amount is to be treated as a debt due from the specified person to the notified person.

(7) If the trustees or managers of a work-based pension scheme fail to comply with a report notice issued to them, Article 10 of the 1995 Order (civil penalties) applies to any trustee or manager who has failed to take all reasonable steps to secure compliance.

(8) That Article also applies to any other person who, without reasonable excuse, fails to comply with a report notice issued to him.

(9) Where a report notice is issued, any person who is providing (or who at any time has provided) services to the notified person in relation to a matter on which the report is required must give the person appointed to make the report such assistance as he may reasonably require.

(10) The duty imposed by paragraph (9) is enforceable, on the application of the Regulator, by an injunction.

(11) In this Article—

"specified", in relation to a report notice, means specified in the notice;

"work-based pension scheme" has the same meaning as in Article 4 (Regulator's objectives).

Gathering information

Provision of information

67.—(1) The Regulator may, by notice in writing, require any person to whom paragraph (2) applies to produce any document, or provide any other information, which is—

(a) of a description specified in the notice, and

(b) relevant to the exercise of the Regulator's functions.

(2) This paragraph applies to—

(a) a trustee or manager of an occupational or personal pension scheme,

(b) a professional adviser in relation to an occupational pension scheme,

(c) the employer in relation to—

(i) an occupational pension scheme, or

(ii) a personal pension scheme where direct payment arrangements exist in respect of one or more members of the scheme who are employees, and

(d) any other person appearing to the Regulator to be a person who holds, or is likely to hold, information relevant to the exercise of the Regulator's functions.

(3) Where the production of a document, or the provision of information, is required by a notice given under paragraph (1), the document must be produced, or information must be provided, in such a manner, at such a place and within such a period as may be specified in the notice.

Inspection of premises

68.—(1) An inspector may, for the purposes of investigating whether, in the case of any occupational pension scheme, the occupational scheme provisions are being, or have been, complied with, at any reasonable time enter premises liable to inspection.

(2) In paragraph (1), the "occupational scheme provisions" means provisions contained in or made by virtue of—

(a) any of the following provisions of this Order—

Part I (introductory);

this Part;

Part IV (scheme funding);

Articles 218 to 220 (member-nominated trustees and directors);

Articles 224 to 226 (requirement for knowledge and understanding);

Article 229 (UK-based scheme to be trust with effective rules);

Article 230 (non-European scheme to be trust with UK resident trustee);

Article 232 (activities of occupational pension schemes);

Article 233 (no indemnification for fines or civil penalties);

Articles 236 and 238 (consultation by employers);

Part VII (cross-border activities within European Union);

Part IX (miscellaneous and supplementary);

(b) either of the following provisions of the 1999 Order—

Article 30 (time for discharge of pension credit liability);

Article 42 (information);

(c) any of the provisions of Part II of the 1995 Order (occupational pension schemes), other than—

(i) Articles 51 to 54 (indexation), and

(ii) Articles 62 to 65 (equal treatment);

(d) any of the following provisions of the Pension Schemes Act—

Chapter 4 of Part IV (transfer values);

Chapter 5 of Part IV (early leavers: cash transfer sums and contribution refunds);

Chapter 2 of Part IVA (pension credit transfer values);

section 109 (information);

section 170 (levy);

(e) any provisions in force in Great Britain corresponding to any provisions within sub-paragraphs (a) to (d).

(3) An inspector may, for the purposes of investigating whether, in the case of a stakeholder scheme—

(a) Articles 3 and 4(4) of the 1999 Order (stakeholder pension schemes: registration etc.), or

(b) any corresponding provisions in force in Great Britain,

are being, or have been, complied with, at any reasonable time enter premises liable to inspection.

(4) An inspector may, for the purposes of investigating whether, in the case of any trust-based personal stakeholder scheme, the trust-based scheme provisions are being, or have been, complied with, at any reasonable time enter premises liable to inspection.

(5) In paragraph (4)—

"trust-based personal stakeholder scheme" means a personal pension scheme which—

(a) is a stakeholder scheme, and

(b) is established under a trust;

the "trust-based scheme provisions" means any provisions contained in or made by virtue of—

(a) any provision which applies in relation to trust-based personal stakeholder schemes by virtue of paragraph 1 of Schedule 1 to the 1999 Order, as the provision applies by virtue of that paragraph, or

(b) any corresponding provision in force in Great Britain.

(6) Premises are liable to inspection for the purposes of this Article if the inspector has reasonable grounds to believe that—

(a) members of the scheme are employed there,

(b) documents relevant to the administration of the scheme are being kept there, or

(c) the administration of the scheme, or work connected with that administration, is being carried out there.

(7) In this Article, "stakeholder scheme" means an occupational pension scheme or a personal pension scheme which is or has been registered under—

(a) Article 4 of the 1999 Order (register of stakeholder schemes), or

(b) any corresponding provision in force in Great Britain.

Inspection of premises in respect of employers' obligations

69.—(1) An inspector may, for the purposes of investigating whether an employer is complying, or has complied, with the requirements under—

(a) Article 5 of the 1999 Order (duty of employers to facilitate access to stakeholder pension schemes), or

(b) any corresponding provision in force in Great Britain,

at any reasonable time enter premises liable to inspection.

(2) Premises are liable to inspection for the purposes of paragraph (1) if the inspector has reasonable grounds to believe that—

(a) employees of the employer are employed there,

(b) documents relevant to the administration of the employer's business are being kept there, or

(c) the administration of the employer's business, or work connected with that administration, is being carried out there.

(3) In paragraphs (1) and (2), "employer" has the meaning given in Article 5(9) of the 1999 Order (or, where paragraph (1)(b) applies, in any corresponding provision in force in Great Britain).

(4) An inspector may, for the purposes of investigating whether, in the case of any direct payment arrangements relating to a personal pension scheme, any of the following provisions—

(a) regulations made by virtue of Articles 237 and 238 (consultation by employers),

(b) section 107A of the Pension Schemes Act (monitoring of employers' payments to personal pension schemes), or

(c) any corresponding provision in force in Great Britain,

is being, or has been, complied with, at any reasonable time enter premises liable to inspection.

(5) Premises are liable to inspection for the purposes of paragraph (4) if the inspector has reasonable grounds to believe that—

(a) employees of the employer are employed there,

(b) documents relevant to the administration of—

(i) the employer's business,

(ii) the direct payment arrangements, or

(iii) the scheme to which those arrangements relate,

are being kept there, or

(c) either of the following is being carried out there—

(i) the administration of the employer's business, the arrangements or the scheme;

(ii) work connected with that administration.

(6) In the application of paragraphs (4) and (5) in relation to any provision mentioned in paragraph (4)(c) (a "corresponding Great Britain provision"), references in those paragraphs to—

direct payment arrangements,

a personal pension scheme,

the employer, or

employees of the employer,

are to be read as having the meanings that they have for the purposes of the corresponding Great Britain provision.

Inspection of premises: powers of inspectors

70.—(1) Paragraph (2) applies where, for a purpose mentioned in paragraph (1), (3) or (4) of Article 68 or paragraph (1) or (4) of Article 69, an inspector enters premises which are liable to inspection for the purposes of that provision.

(2) While there, the inspector—

(a) may make such examination and inquiry as may be necessary for the purpose for which he entered the premises,

(b) may require any person on the premises to produce, or secure the production of, any document relevant to compliance with the regulatory provisions for his inspection,

(c) may take copies of any such document,

(d) may take possession of any document appearing to be a document relevant to compliance with the regulatory provisions or take in relation to any such document any other steps which appear necessary for preserving it or preventing interference with it,

(e) may, in the case of any such document which consists of information which is stored in electronic form and is on, or accessible from, the premises, require the information to be produced in a form—

(i) in which it can be taken away, and

(ii) in which it is legible or from which it can readily be produced in a legible form, and

(f) may, as to any matter relevant to compliance with the regulatory provisions, examine, or require to be examined, either alone or in the presence of another person, any person on the premises whom he has reasonable cause to believe to be able to give information relevant to that matter.

Inspection of premises: supplementary

71.—(1) This Article applies for the purposes of Articles 68 to 70.

(2) Premises which are a private dwelling-house not used by, or by permission of, the occupier for the purposes of a trade or business are not liable to inspection.

(3) Any question whether—

(a) anything is being or has been done or omitted which might by virtue of any of the regulatory provisions give rise to a liability for a civil penalty under or by virtue of Article 10 of the 1995 Order or section 164(4) of the Pension Schemes Act (or under or by virtue of any provision in force in Great Britain corresponding to either of them), or

(b) an offence is being or has been committed under any of the regulatory provisions,

is to be treated as a question whether the regulatory provision is being, or has been, complied with.

(4) An inspector applying for admission to any premises for the purposes of Article 68 or 69 must, if so required, produce his certificate of appointment.

(5) When exercising a power under Article 68, 69 or 70 an inspector may be accompanied by such persons as he considers appropriate.

(6) Any document of which possession is taken under Article 70 may be retained—

(a) if the document is relevant to proceedings against any person for any offence which are commenced before the end of the retention period, until the conclusion of those proceedings, and

(b) otherwise, until the end of the retention period.

(7) In paragraph (6), "the retention period" means the period comprising—

(a) the period of 12 months beginning with the date on which possession was taken of the document, and

(b) any extension of that period under paragraph (8).

(8) The Regulator may, by a direction made before the end of the retention period (including any extension of it under this paragraph), extend it by such period not exceeding 12 months as the Regulator considers appropriate.

(9) "The regulatory provisions", in relation to an inspection under paragraph (1), (3) or (4) of Article 68 or paragraph (1) or (4) of Article 69, means any provision referred to in that paragraph.

Penalties relating to Articles 67 to 70

72.—(1) A person who, without reasonable excuse, neglects or refuses to provide information or produce a document when required to do so under Article 67 is guilty of an offence.

(2) A person who without reasonable excuse—

(a) intentionally delays or obstructs an inspector exercising any power under Article 68, 69 or 70,

(b) neglects or refuses to produce, or secure the production of, any document when required to do so under Article 70, or

(c) neglects or refuses to answer a question or to provide information when so required,

is guilty of an offence.

(3) A person guilty of an offence under paragraph (1) or (2) is liable on summary conviction to a fine not exceeding level 5 on the standard scale.

(4) An offence under paragraph (1) or (2)(b) or (c) 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 by reference to any period of time following the preceding conviction of the offence.

(5) Any person who intentionally and without reasonable excuse alters, suppresses, conceals or destroys any document which he is or is liable to be required to produce under Article 67 or 70 is guilty of an offence.

(6) Any person guilty of an offence under paragraph (5) is liable—

(a) on summary conviction, to a fine not exceeding the statutory maximum;

(b) on conviction on indictment, to a fine or imprisonment for a term not exceeding two years, or both.

Warrants

73.—(1) A justice of the peace may issue a warrant under this Article if satisfied on complaint on oath given by or on behalf of the Regulator that there are reasonable grounds for believing—

(a) that there is on, or accessible from, any premises any document—

(i) whose production has been required under Article 67 or 70, or any corresponding provision in force in Great Britain, and

(ii) which has not been produced in compliance with that requirement,

(b) that there is on, or accessible from, any premises any document whose production could be so required and, if its production were so required, the document—

(i) would not be produced, but

(ii) would be removed, or made inaccessible, from the premises, hidden, tampered with or destroyed, or

(c) that—

(i) an offence has been committed,

(ii) a person will do any act which constitutes a misuse or misappropriation of the assets of an occupational pension scheme or a personal pension scheme,

(iii) a person is liable to pay a penalty under or by virtue of Article 10 of the 1995 Order (civil penalties) or section 164(4) of the Pension Schemes Act (civil penalties for breach of regulations), or under or by virtue of any provision in force in Great Britain corresponding to either of them, or

(iv) a person is liable to be prohibited from being a trustee of an occupational or personal pension scheme under Article 3 of the 1995 Order (prohibition orders), including that Article as it applies by virtue of paragraph 1 of Schedule 1 to the 1999 Order (stakeholder schemes), or under or by virtue of any corresponding provisions in force in Great Britain,

and that there is on, or accessible from, any premises any document which relates to whether the offence has been committed, whether the act will be done or whether the person is so liable, and whose production could be required under Article 67 or 70 or any corresponding provision in force in Great Britain.

(2) A warrant under this Article shall authorise an inspector—

(a) to enter the premises specified in the complaint, using such force as is reasonably necessary for the purpose,

(b) to search the premises and—

(i) take possession of any document appearing to be such a document as is mentioned in paragraph (1), or

(ii) take in relation to such a document any other steps which appear necessary for preserving it or preventing interference with it,

(c) to take copies of any such document,

(d) to require any person named in the warrant to provide an explanation of any such document or to state where it may be found or how access to it may be obtained, and

(e) in the case of any such document which consists of information which is stored in electronic form and is on, or accessible from, the premises, to require the information to be produced in a form—

(i) in which it can be taken away, and

(ii) in which it is legible or from which it can readily be produced in a legible form.

(3) In paragraph (1), any reference in sub-paragraph (a) or (b) to a document does not include any document which is relevant to whether a person has complied with—

(a) paragraph (3) of Article 215 (information and advice to employees) or regulations under paragraph (4) of that Article, or

(b) any provision in force in Great Britain which corresponds to that paragraph (3) or is made under provision corresponding to that paragraph (4),

and is not relevant to the exercise of the Regulator's functions for any other reason.

(4) For the purposes of paragraph (1)(c)(iii), any liability to pay a penalty under—

(a) Article 10 of the 1995 Order, or

(b) any corresponding provision in force in Great Britain,

which might arise out of a failure to comply with any provision within paragraph (3)(a) or (b) is to be disregarded.

(5) References in paragraph (2) to such a document as is mentioned in paragraph (1) are to be read in accordance with paragraphs (3) and (4).

(6) When executing a warrant under this Article, an inspector may be accompanied by such persons as he considers appropriate.

(7) A warrant under this Article continues in force until the end of the period of one month beginning with the day on which it is issued.

(8) Any document of which possession is taken under this Article may be retained—

(a) if the document is relevant to proceedings against any person for any offence which are commenced before the end of the retention period, until the conclusion of those proceedings, and

(b) otherwise, until the end of the retention period.

(9) In paragraph (8), "the retention period" means the period comprising—

(a) the period of 12 months beginning with the date on which possession was taken of the document, and

(b) any extension of that period under paragraph (10).

(10) The Regulator may, by a direction made before the end of the retention period (including any extension of it under this paragraph), extend it by such period not exceeding 12 months as the Regulator considers appropriate.

Articles 67 to 73: interpretation

74.—(1) This Article applies for the purposes of Articles 67 to 73.

(2) "Document" includes information recorded in any form, and any reference to production of a document, in relation to information recorded otherwise than in a legible form, is to producing a copy of the information—

(a) in a legible form, or

(b) in a form from which it can readily be produced in a legible form.

(3) "Inspector" means a person appointed by the Regulator as an inspector.

Provision of false or misleading information

Offences of providing false or misleading information

75.—(1) Any person who knowingly or recklessly provides the Regulator with information which is false or misleading in a material particular is guilty of an offence if the information—

(a) is provided in purported compliance with a requirement under—

(i) Article 57 (the register: duties of trustees or managers),

(ii) Article 59 (duty of trustees or managers to provide scheme return),

(iii) Article 67 (provision of information), or

(iv) Article 70 (inspection of premises: powers of inspectors),

(b) is provided in applying for registration of a pension scheme under Article 4 of the 1999 Order (register of stakeholder pension schemes), or

(c) is provided otherwise than as mentioned in sub-paragraph (a) or (b) but in circumstances in which the person providing the information intends, or could reasonably be expected to know, that it would be used by the Regulator for the purpose of exercising its functions under this Order or the 1995 Order.

(2) Any person guilty of an offence under paragraph (1) is liable—

(a) on summary conviction, to a fine not exceeding the statutory maximum;

(b) on conviction on indictment, to a fine or imprisonment for a term not exceeding two years, or both.

Use of information

Use of information

76. Information—

(a) contained in the register referred to in Article 56(7), or

(b) otherwise held by the Regulator in the exercise of any of its functions,

may be used by the Regulator for the purposes of, or for any purpose connected with or incidental to, the exercise of its functions.

Disclosure of information

Restricted information

77.—(1) Restricted information must not be disclosed—

(a) by the Regulator, or

(b) by any person who receives the information directly or indirectly from the Regulator.

(2) Paragraph (1) is subject to—

(a) paragraph (3), and

(b) Articles 66(9) and 78 to 83 and section 235 of the Pensions Act 2004 (c. 35).

(3) Subject to Article 83(4), restricted information may be disclosed with the consent of the person to whom it relates and (if different) the person from whom the Regulator obtained it.

(4) For the purposes of this Article and Articles 78 to 82, "restricted information" means any information obtained by the Regulator in the exercise of its functions which relates to the business or other affairs of any person, except for information—

(a) which at the time of the disclosure is or has already been made available to the public from other sources, or

(b) which is in the form of a summary or collection of information so framed as not to enable information relating to any particular person to be ascertained from it.

(5) Any person who discloses information in contravention of this Article is guilty of an offence and liable—

(a) on summary conviction, to a fine not exceeding the statutory maximum;

(b) on conviction on indictment, to a fine or imprisonment for a term not exceeding two years, or both.

Modifications etc. (not altering text)

C1 Art. 77(2) applied (with modifications) by S.R. 2005/93, reg. 5A(2) (as inserted (4.7.2007) by Register of Occupational and Personal Pension Schemes (Amendment) Regulations (Northern Ireland) 2007 (S.R. 2007/297), **reg. 2**)

Information supplied to the Regulator by corresponding overseas authorities

78.—(1) Subject to paragraph (2), for the purposes of Article 77, "restricted information" includes information which has been supplied to the Regulator, for the purposes of its functions, by an authority which exercises functions corresponding to the functions of the Regulator in a country or territory outside the United Kingdom.

(2) Articles 79 to 82 do not apply to such information as is mentioned in paragraph (1), and such information must not be disclosed except—

(a) as provided in Article 77(3),

(b) for the purpose of enabling or assisting the Regulator to discharge its functions, or

(c) by or on behalf of—

(i) the Regulator, or

(ii) any public authority (within the meaning of section 6 of the Human Rights Act 1998 (c. 42)) which receives the information directly or indirectly from the Regulator,

for any of the purposes specified in section 17(2)(a) to (d) of the Anti-terrorism, Crime and Security Act 2001 (c. 24) (criminal proceedings and investigations).

(3) Section 18 of the Anti-terrorism, Crime and Security Act 2001 (restriction on disclosure of information for overseas purposes) has effect in relation to a disclosure authorised by paragraph (2) as it has effect in relation to a disclosure authorised by any of the provisions to which section 17 of that Act applies.

Disclosure for facilitating exercise of functions by the Regulator

79.—(1) Article 77 does not preclude the disclosure of restricted information in any case in which disclosure is for the purpose of enabling or assisting the Regulator to exercise its functions.

(2) Paragraph (3) applies where, in order to enable or assist the Regulator properly to exercise any of its functions, the Regulator considers it necessary to seek advice from any qualified person on any matter of law, accountancy, valuation or other matter requiring the exercise of professional skill.

(3) Article 77 does not preclude the disclosure by the Regulator to a person qualified to provide that advice of such information as appears to the Regulator to be necessary to ensure that he is properly informed with respect to the matters on which his advice is sought.

Disclosure for facilitating exercise of functions by the Board

80. Article 77 does not preclude the disclosure of restricted information in any case in which disclosure is for the purpose of enabling or assisting the Board to exercise its functions.

Disclosure for facilitating exercise of functions by other supervisory authorities

81.—(1) Article 77 does not preclude the disclosure by the Regulator of restricted information to any person specified in the first column of Schedule 3 if the Regulator considers that the disclosure would enable or assist that person to exercise the functions specified in relation to him in the second column of that Schedule.

(2) The Department may after consultation with the Regulator—

(a) by order amend Schedule 3 by—

(i) adding any person exercising regulatory functions and specifying functions in relation to that person,

(ii) removing any person for the time being specified in the Schedule, or

(iii) altering the functions for the time being specified in the Schedule in relation to any person, or

(b) by order restrict the circumstances in which, or impose conditions subject to which, disclosure may be made to any person for the time being specified in the Schedule.

Commencement Information

I2 Art. 81 wholly in operation at 6.4.2006; art. 81 not in operation at date of making see art. 1(2); art. 81 (except (2)) in operation at 6.4.2005 by S.R. 2005/48, art. 2(7), Sch. Pt. 7; art. 81 in operation in so far as not already in operation at 6.4.2006 by S.R. 2006/95, **art. 2(c)**, Sch. Pt. 3

Other permitted disclosures

82.—(1) Article 77 does not preclude the disclosure by the Regulator of restricted information to—

(a) the Department,

(b) the Commissioners of Inland Revenue or their officers, or

(c) the Secretary of State,

if the disclosure appears to the Regulator to be desirable or expedient in the interest of members of occupational pension schemes or personal pension schemes or in the public interest.

(2) Article 77 does not preclude the disclosure of restricted information—

(a) by or on behalf of—

(i) the Regulator, or

(ii) any public authority (within the meaning of section 6 of the Human Rights Act 1998 (c. 42)) which receives the information directly or indirectly from the Regulator,

for any of the purposes specified in section 17(2)(a) to (d) of the Anti-terrorism, Crime and Security Act 2001 (c. 24) (criminal proceedings and investigations),

(b) in connection with any proceedings arising out of—

(i) this Order,

(ii) the 1999 Order,

(iii) the 1995 Order, or

(iv) the Pension Schemes Act,

or any corresponding enactment in force in Great Britain, or any proceedings for breach of trust in relation to an occupational pension scheme,

(c) with a view to the institution of, or otherwise for the purposes of, proceedings under—

(i) Article 10 or 11 of the Company Directors Disqualification (Northern Ireland) Order 2002 (NI 4), or

(ii) section 7 or 8 of the Company Directors Disqualification Act 1986 (c. 46),

(d) in connection with any proceedings under—

(i) the Insolvency Order, or

(ii) the Insolvency Act 1986 (c. 45),

which the Regulator has instituted or in which it has a right to be heard,

(e) with a view to the institution of, or otherwise for the purposes of, any disciplinary proceedings relating to the exercise of his professional duties by a solicitor, an actuary, an accountant or an insolvency practitioner,

(f) with a view to the institution of, or otherwise for the purposes of, any disciplinary proceedings relating to the exercise by a public servant of his functions,

(g) for the purpose of enabling or assisting an authority in a country outside the United Kingdom to exercise functions corresponding to those of the Regulator under this Order, the 1999 Order, the 1995 Order or the Pension Schemes Act, or

(h) in pursuance of a Community obligation (within the meaning of Schedule 1 to the European Communities Act 1972 (c. 68)).

(3) In paragraph (2)(f), "public servant" means an officer or servant of the Crown or of any prescribed authority.

(4) Article 77 does not preclude the disclosure by the Regulator of restricted information to—

(a) the Director of Public Prosecutions for Northern Ireland,

(b) the Director of Public Prosecutions,

(c) the Lord Advocate,

(d) a procurator fiscal, or

(e) a constable.

(5) Article 77 does not preclude the disclosure of restricted information in any case where the disclosure is required by or by virtue of a statutory provision.

(6) Article 77 does not preclude the disclosure of restricted information in any case where the disclosure is to a Regulator-appointed trustee of an occupational pension scheme for the purpose of enabling or assisting him to exercise his functions in relation to the scheme.

(7) In paragraph (6), "Regulator-appointed trustee" means a trustee appointed by the Regulator under Article 7 or 23(1) of the 1995 Order or any corresponding provision in force in Great Britain.

(8) Article 77 does not preclude the disclosure by any person mentioned in paragraph (1) or (4) of restricted information obtained by the person by virtue of that paragraph, if the disclosure is made with the consent of the Regulator.

(9) Article 77 does not preclude the disclosure by any person specified in the first column of Schedule 3 of restricted information obtained by the person by virtue of Article 81(1), if the disclosure is made—

(a) with the consent of the Regulator, and

(b) for the purpose of enabling or assisting the person to exercise any functions specified in relation to him in the second column of the Schedule.

(10) Before deciding whether to give its consent to such a disclosure as is mentioned in paragraph (8) or (9), the Regulator must take account of any representations made to it, by the person seeking to make the disclosure, as to the desirability of the disclosure or the necessity for it.

(11) Section 18 of the Anti-terrorism, Crime and Security Act 2001 (c. 24) (restriction on disclosure of information for overseas purposes) has effect in relation to a disclosure authorised by paragraph (2) as it has effect in relation to a disclosure authorised by any of the provisions to which section 17 of that Act applies.

Tax information

83.—(1) This Article applies to information held by any person in the exercise of tax functions about any matter which is relevant, for the purposes of those functions, to tax or duty in the case of an identifiable person (in this Article referred to as "tax information").

(2) No obligation as to secrecy imposed by section 182 of the Finance Act 1989 (c. 26) or otherwise shall prevent the disclosure of tax information to the Regulator for the purpose of enabling or assisting the Regulator to discharge its functions.

(3) Where tax information is disclosed to the Regulator by virtue of paragraph (2) or section 19 of the Anti-terrorism, Crime and Security Act 2001 (c. 24) (disclosure of information held by revenue departments), it must, subject to paragraph (4), be treated for the purposes of Article 77 as restricted information.

(4) Articles 77(3) and 78 to 82 and section 235 of the Pensions Act 2004 (c. 35) do not apply to tax information which is disclosed to the Regulator as mentioned in paragraph (3), and such information may not be disclosed by the Regulator or any person who receives the information directly or indirectly from the Regulator except—

(a) to, or in accordance with authority given by, the Commissioners of Inland Revenue or the Commissioners of Customs and Excise, or

(b) with a view to the institution of, or otherwise for the purposes of, any criminal proceedings.

(5) In this Article "tax functions" has the same meaning as in section 182 of the Finance Act 1989.

Reports

Publishing reports etc.

84.—(1) The Regulator may, if it considers it appropriate to do so in any particular case, publish a report of the consideration given by it to the exercise of its functions in relation to that case and the results of that consideration.

(2) The publication of a report under paragraph (1) may be in such form and manner as the Regulator considers appropriate.

(3) For the purposes of the law of defamation, the publication of any matter by the Regulator is privileged unless the publication is shown to be made with malice.

Codes of practice

Codes of practice

85.—(1) The Regulator may issue codes of practice—

(a) containing practical guidance in relation to the exercise of functions under the pensions legislation, and

(b) regarding the standards of conduct and practice expected from those who exercise such functions.

(2) The Regulator must issue one or more such codes of practice relating to the following matters—

(a) what constitutes a "reasonable" period for the purposes of any provision of the pensions legislation (other than any statutory provision contained in or made by virtue of Part III) which requires any action to be taken within such a period;

(b) the discharge of the duty imposed by Article 64 (duty to notify Regulator of certain events);

(c) the discharge of the duty imposed by Article 65 (duty to report breaches of the law);

(d) the discharge of duties imposed on trustees or managers of occupational pension schemes by, or by virtue of, Part IV (scheme funding);

(e) the discharge of the duties imposed by Articles 218 and 219 (member-nominated trustees and directors);

(f) the obligations imposed by Articles 224 and 225 (requirements for knowledge and understanding: individual and corporate trustees);

(g) the discharge of the duty imposed by Article 49(9)(b) of the 1995 Order (duty of trustees or managers of occupational pension schemes to report material failures by employers to pay contributions deducted from employee's earnings timeously);

(h) the discharge of the duties imposed by Articles 67 to 67I of that Order (the subsisting rights provisions);

(i) the discharge of the duty imposed by Article 86(1) of that Order (duty of trustees or managers of money purchase schemes to report failures to pay employer contributions etc. timeously);

(j) the discharge of the duty imposed by section 107A(7A) of the Pension Schemes Act (duty of trustees or managers of personal pension schemes to report material failures to pay employer contributions timeously);

(k) such other matters as are prescribed for the purposes of this Article.

(3) The Regulator may from time to time revise the whole or any part of a code of practice issued under this Article and issue that revised code.

(4) Subject to Article 9(3)(a) and (8) (power for improvement notice to direct that person complies with code of practice and civil penalties for failure to comply), a failure on the part of any person to observe any provision of a code of practice does not of itself render that person liable to any legal proceedings.

(5) A code of practice issued under this Article is admissible in evidence in any legal proceedings and, if any provision of such a code appears to the court or tribunal concerned to be relevant to any question arising in the proceedings, it must be taken into account in determining that question.

(6 [F27] In this Article—

"legal proceedings" includes proceedings of the Pensions Ombudsman, proceedings of the PPF Ombudsman and proceedings of the Board under Article 189 or 190; and

"the pensions legislation" means any statutory provision contained in or made by virtue of—

(a) the Pension Schemes Act,

(b) Part II of the 1995 Order, other than Articles 62 to 66A of that Order (equal treatment),

(c) Part II or Article 30 of the 1999 Order, or

(d) this Order.

(7) Articles 86 and 87 make provision about the procedure to be followed when a code of practice is issued or revoked.

F27 mod. by SR 2005/570

Procedure for issue and publication of codes of practice

86.—(1) Where the Regulator proposes to issue a code of practice it must prepare and publish a draft of the code.

(2) Where the Regulator publishes a draft under paragraph (1), it must consult—

(a) such persons as it considers appropriate, and

(b) any other persons the Department requires it to consult.

(3) Having considered any representations made on the draft, the Regulator must make such modifications to it as it considers appropriate.

(4) Paragraphs (2) and (3) do not apply—

(a) to a code made for the purpose only of consolidating other codes issued under Article 85, or

(b) to a code if the Department considers consultation inexpedient by reason of urgency.

(5) If the Regulator determines to proceed with a draft, it must send it to the Department which—

(a) if it approves of the draft, must lay it before the Assembly, and

(b) if it does not approve of the draft, must publish details of its reasons for withholding approval.

(6) If, within the statutory period beginning with the day on which the draft code of practice is laid before the Assembly, the Assembly so resolves, no further proceedings may be taken on the draft, but without prejudice to the laying before the Assembly of a new draft.

(7) If no such resolution is passed as is referred to in paragraph (6), the Regulator must issue the code of practice in the form of the draft and the code shall come into operation on such day as the Department may by order appoint.

(8) Without prejudice to Article 287, an order under paragraph (7) may contain such transitional provisions or savings as appear to the Department to be necessary or expedient in connection with the code of practice brought into operation.

(9) The Regulator must arrange for any code issued by it under Article 85 to be published in the way appearing to it to be appropriate.

(10) The Regulator may charge a reasonable fee for providing a person with a copy of a code published under this Article.

(11) This Article applies to a revised code as it applies to the first issue of a code.

Subordinate Legislation Made

P2 Art. 86(7) power partly exercised: 15.2.2006 appointed by S.R. 2006/45, **art. 2(1)**;
30.5.2006 by S.R. 2006/231, **art. 2**;
22.11.2006 by S.R. 2006/460, **art. 2**;
24.1.2007 by S.R. 2007/26, **art. 2**;
28.7.2008 by S.R. 2008/305, **art. 2**;
26.11.2009 by S.R. 2009/374, **art. 2**;
29.6.2009 by S.R. 2009/250, **art. 2**

Revocation of codes of practice

87.—(1) A code of practice may be revoked by the Department by order.

(2) An order under this Article may be made only with the consent of the Regulator.

(3) Without prejudice to Article 287, an order under this Article may contain such savings as appear to the Department to be necessary or expedient in connection with the revocation of the code.

Exercise of regulatory functions

The Regulator's procedure in relation to its regulatory functions

88.—(1) The Regulator must determine the procedure that it proposes to follow in relation to the exercise of its regulatory functions.

(2) For the purposes of this Part the "regulatory functions" of the Regulator are—

(a) the power to issue an improvement notice under Article 9,

(b) the power to issue a third party notice under Article 10,

(c) the reserved regulatory functions (see Schedule 2),

(d) the power to issue a clearance statement under Article 38,

(e) the power to issue a notice under Article 41(1) approving the details of arrangements,

(f) the power to issue a clearance statement under Article 42,

(g) the power to vary or revoke under Article 96 (to the extent that it does not fall within sub-paragraph (c)),

(h) the power to make an order under Article 138(8),

(i) the power to make an order under Article 198(4),

(j) the power to grant or revoke authorisation under Article 264,

(k) the power to grant or revoke approval under Article 265,

(l) the power to issue a notice under Article 269(5),

(m) the power by direction under Article 4(3)(a) of the 1999 Order to refuse to register a scheme under Article 4 of that Order,

(n) the power to make an order under Article 7 of the 1995 Order appointing a trustee (to the extent that it does not fall within sub-paragraph (c)),

(o) the power to make an order under Article 23 of that Order appointing an independent trustee,

(p) the power to give directions under Article 72B of that Order (directions facilitating winding up), and

(q) such other functions of the Regulator as may be prescribed.

(3) The Determinations Panel must determine the procedure to be followed by it in relation to any exercise by it on behalf of the Regulator of—

(a) the power to determine whether to exercise a regulatory function, and

(b) where the Panel so determines to exercise a regulatory function, the power to exercise the function in question.

(4) The procedure determined under this Article—

(a) must provide for the procedure required under—

(i) Article 91 (standard procedure), and

(ii) Article 93 (special procedure), and

(b) may include such other procedural requirements as the Regulator or, as the case may be, the Panel considers appropriate.

(5) This Article is subject to—

(a) Articles 94 to 98 (the remaining provisions concerning the procedure in relation to the regulatory functions), and

(b) any regulations made by the Secretary of State under paragraph 19 of Schedule 1 to the Pensions Act 2004 (c. 35).

Publication of procedure in relation to regulatory functions

89.—(1) The Regulator must issue a statement of the procedure determined under Article 88.

(2) The Regulator must arrange for the statement to be published in the way appearing to it to be appropriate.

(3) The Regulator may charge a reasonable fee for providing a person with a copy of the statement.

(4) If the procedure determined under Article 88 is changed in a material way, the Regulator must publish a revised statement.

(5) The Regulator must, without delay, give the Department a copy of any statement which it issues under this Article.

Application of standard and special procedure

90.—(1) The Regulator must comply with the standard procedure (see Article 91) or, where Article 92 applies, the special procedure (see Article 93) in a case where—

(a) the Regulator considers that the exercise of one or more of the regulatory functions may be appropriate, or

(b) an application is made under or by virtue of—

(i) any of the provisions listed in Article 7(6), or

(ii) any prescribed provision of this or any other statutory provision,

for the Regulator to exercise a regulatory function.

(2) For the purposes of Article 91, references to the regulatory action under consideration in a particular case are—

(a) in a case falling within paragraph (1)(a), references to the exercise of the one or more regulatory functions which the Regulator considers that it may be appropriate to exercise, and

(b) in a case falling within paragraph (1)(b), references to the exercise of the regulatory function which is the subject-matter of the application.

(3) Neither Article 91 (standard procedure) nor Article 93 (special procedure) applies in relation to a determination whether to exercise a regulatory function on a review under Article 94 (compulsory review of regulatory action).

Standard procedure

91.—(1) The procedure determined under Article 88 must make provision for the standard procedure.

(2) The "standard procedure" is a procedure which provides for—

(a) the giving of notice to such persons as it appears to the Regulator would be directly affected by the regulatory action under consideration (a "warning notice"),

(b) those persons to have an opportunity to make representations,

(c) the consideration of any such representations and the determination whether to take the regulatory action under consideration,

(d) the giving of notice of the determination to such persons as appear to the Regulator to be directly affected by it (a "determination notice"),

(e) the determination notice to contain details of the right of referral to the Tribunal under paragraph (3),s

(f) the form and further content of warning notices and determination notices and the manner in which they are to be given, and

(g) the time limits to be applied at any stage of the procedure.

(3) Where the standard procedure applies, the determination which is the subject-matter of the determination notice may be referred to the Tribunal by—

(a) any person to whom the determination notice is given as required under paragraph (2)(d), and

(b) any other person who appears to the Tribunal to be directly affected by the determination.

(4) Paragraph (3) does not apply where the determination which is the subject-matter of the determination notice is a determination to issue a clearance statement under Article 38 or 42.

(5) Where the determination which is the subject-matter of the determination notice is a determination to exercise a regulatory function and paragraph (3) applies, the Regulator must not exercise the function—

(a) during the period within which the determination may be referred to the Tribunal (see Article 97(1)), 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) Paragraph (5) does not apply where the determination is a determination to exercise any of the following functions—

(a) the power to make a direction under Article 71(8) extending the retention period for documents taken into possession under Article 70;

(b) the power to make a direction under Article 73(10) extending the retention period for documents taken into possession under that Article;

(c) the power to make an order under Article 138(8);

(d) the power to make an order under Article 198(4);

(e) the power to grant or revoke authorisation under Article 264;

(f) the power to grant or revoke approval under Article 265;

(g) the power to issue a notice under Article 269(5);

(h) the power to make an order under Article 3(1) of the 1995 Order prohibiting a person from being a trustee;

(i) the power to make an order under Article 3(3) of that Order revoking such an order;

(j) the power to make an order under Article 4(1) of that Order suspending a trustee;

(k) the power to make an order under Article 4(2) of that Order extending the period for which an order under Article 4(1) of that Order has effect;

(l) the power to make an order under Article 4(5) of that Order revoking an order under Article 4(1) of that Order suspending a trustee;

(m) the power to make an order under Article 7 of that Order appointing a trustee;

(n) the power under Article 9 of that Order to exercise by order the same jurisdiction and powers as the High Court for vesting property in, or transferring property to, trustees in consequence of the appointment or removal of a trustee;

(o) the power to make an order under Article 23 of that Order appointing an independent trustee;

(p) the power under Article 29(5) of that Order to give a notice waiving a disqualification under Article 29 of that Order;

(q) the power under Article 30(2) of that Order to exercise by order the same jurisdiction and powers as the High Court for vesting property in, or transferring property to, the trustees where a trustee becomes disqualified under Article 29 of that Order;

(r) the power to give directions under Article 72B of that Order facilitating a winding up;

(s) the power by direction under section 95(4) of the Pension Schemes Act to grant an extension of the period within which the trustees or managers of a scheme are to carry out certain duties;

(t) the power by direction under section 97J(2) of that Act to extend the period for compliance with a transfer notice;

(u) such other regulatory functions as may be prescribed;

(v) the power under Article 96(1)(b) to vary or revoke in relation to the exercise of any of the regulatory functions mentioned in sub-paragraphs (a) to (u) other than that mentioned in sub-paragraph (i) or (l).

Special procedure: applicable cases

92.—(1) The special procedure in Article 93 (and not the standard procedure) applies to—

(a) a case falling within paragraph (2),

(b) a case falling within paragraph (3), and

(c) a case falling within paragraph (4).

(2) A case falls within this paragraph if—

(a) the Regulator considers that it may be necessary to exercise a regulatory function listed in paragraph (5) immediately because there is, or the Regulator considers it likely that if a warning notice were to be given there would be, an immediate risk to—

(i) the interests of members under an occupational or personal pension scheme, or

(ii) the assets of such a scheme,

(b) the Regulator accordingly dispenses with the giving of a warning notice and an opportunity to make representations as described in Article 91(2)(a) and (b), and

(c) the Regulator determines to exercise the function immediately on the basis that it is necessary to do so because there is, or the Regulator considers it likely that if the function were not exercised immediately there would be, an immediate risk to—

(i) the interests of members under an occupational or personal pension scheme, or

(ii) the assets of such a scheme.

(3) A case falls within this paragraph if—

(a) the Regulator gives a warning notice as described in Article 91(2)(a) in relation to a determination whether to exercise a regulatory function listed in paragraph (5), and

(b) before it has considered the representations of those persons to whom the warning notice is given, the Regulator determines to exercise the function immediately on the basis that it is necessary to do so because there is, or the Regulator considers it likely that if the function were not exercised immediately there would be, an immediate risk to—

(i) the interests of members under an occupational or personal pension scheme, or

(ii) the assets of such a scheme.

(4) A case falls within this paragraph if the Regulator—

(a) gives a warning notice as described in Article 91(2)(a) in relation to a determination whether to exercise a regulatory function which—

(i) is listed in paragraph (5), and

(ii) is not a function listed in Article 91(6) (functions which may be exercised immediately under the standard procedure),

(b) considers the representations of those persons to whom the warning notice is given, and

(c) determines to exercise the function immediately on the basis that it is necessary to do so because there is, or the Regulator considers it likely that if the function were not exercised immediately there would be, an immediate risk to—

(i) the interests of members under an occupational or personal pension scheme, or

(ii) the assets of such a scheme.

(5) The regulatory functions referred to in paragraphs (2), (3) and (4) are—

(a) the power to make or extend a restraining order under Article 16;

(b) the power to make a freezing order under Article 19;

(c) the power to make an order under Article 21(3) extending the period for which a freezing order has effect;

(d) the power to make an order under Article 22 validating action taken in contravention of a freezing order;

(e) the power to make an order under Article 24 directing that specified steps are taken;

(f) the power to make an order under Article 26 giving a direction where a freezing order ceases to have effect;

(g) the power to make an order under Article 27(3) directing the notification of members;

(h) the power to make an order under Article 210 modifying a scheme, giving directions or imposing a schedule of contributions;

(i) the power to make an order under Article 3(1) of the 1995 Order prohibiting a person from being a trustee;

(j) the power to make an order under Article 3(3) of that Order revoking such an order;

(k) the power to make an order under Article 4(1) of that Order suspending a trustee;

(l) the power to make an order under Article 4(5) of that Order revoking such an order;

(m) the power to make an order under Article 7 of that Order appointing a trustee;

(n) the power under Article 9 of that Order to exercise by order the same jurisdiction and powers as the High Court for vesting property in, or transferring property to, trustees in consequence of the appointment or removal of a trustee;

(o) the power to make an order under Article 11 of that Order directing or authorising an occupational pension scheme to be wound up;

(p) the power to make an order under Article 23 of that Order appointing an independent trustee;

(q) the power under Article 29(5) of that Order to give a notice waiving a disqualification under Article 29 of that Order;

(r) the power under Article 30(2) of that Order to exercise by order the same jurisdiction and powers as the High Court for vesting property in, or transferring property to, the trustees where a trustee becomes disqualified under Article 29 of that Order;

(s) the power to make an order under Article 67G(2) of that Order by virtue of which any modification of, or grant of rights under, an occupational pension scheme is void to any extent;

(t) the power to make an order under Article 67H(2) of that Order prohibiting, or specifying steps to be taken in relation to, the exercise of a power to modify an occupational pension scheme;

(u) such other regulatory functions as may be prescribed;

(v) the power under Article 96(1)(b) to vary or revoke in relation to the exercise of any of the regulatory functions mentioned in sub-paragraphs (a) to (u) other than that mentioned in sub-paragraph (j) or (l).

Special procedure

93.—(1) The procedure determined under Article 88 must make provision for the special procedure.

(2) The "special procedure" is a procedure which provides for—

(a) the giving of notice of the determination to exercise the regulatory function to such persons as appear to the Regulator to be directly affected by it (a "determination notice"),

(b) the determination notice to contain details of the requirement for the Regulator to review the determination under Article 94(1) and of any subsequent right of referral to the Tribunal under Article 94(7),

(c) the persons to whom the determination notice was given (as required under sub-paragraph (a)) to have an opportunity to make representations in relation to the determination before it is reviewed under Article 94(1),

(d) the consideration of any such representations before the determination on the review,

(e) the giving of a notice in accordance with Article 94(4) of the determination on the review (a "final notice"),

(f) the final notice to contain details of the right of referral to the Tribunal under Article 94(7),

(g) the form and further content of determination notices and final notices and the manner in which they are to be given, and

(h) the time limits to be applied at any stage of the procedure.

Compulsory review

94.—(1) In a case where the special procedure applies, the Regulator must review the determination to exercise the regulatory function.

(2) The review must be determined as soon as reasonably practicable.

(3) The Regulator's powers on a review under this Article include power to—

(a) confirm, vary or revoke the determination,

(b) confirm, vary or revoke any order, notice or direction made, issued or given as a result of the determination,

(c) substitute a different determination, order, notice or direction,

(d) deal with the matters arising on the review as if they had arisen on the original determination, and

(e) make savings and transitional provision.

(4) When the Regulator has completed a review under this Article a notice of its determination on the review must be given to such persons as appear to it to be directly affected by its determination on the review.

(5) If the final notice contains a determination to exercise a different regulatory function to the function which was the subject-matter of the determination notice, then the final notice may not be given unless—

(a) such persons as appear to the Regulator to be directly affected by the exercise of the regulatory function have been given an opportunity to make representations, and

(b) the Regulator has considered any such representations before it makes its determination on the review.

(6) Paragraph (5) does not apply if the regulatory function is listed in Article 92(5) and the Regulator determines to exercise it immediately on the basis that it is necessary to do so because there is, or the Regulator considers it likely that if the function were not exercised immediately there would be, an immediate risk to—

(a) the interests of members under an occupational or personal pension scheme, or

(b) the assets of such a scheme.

(7) The determination which is the subject-matter of a final notice may be referred to the Tribunal by—

(a) any person to whom the final notice is given as required under paragraph (4), and

(b) any other person who appears to the Tribunal to be directly affected by the determination.

(8) Where that determination is a determination to exercise a different regulatory function to the function which was the subject-matter of the determination notice, the Regulator must not exercise the regulatory function—

(a) during the period within which the determination may be referred to the Tribunal (see Article 97(1)), and

(b) if the determination is so referred, until the reference, and any appeal against the Tribunal's determination, has been finally disposed of.

(9) Paragraph (8) does not apply where—

(a) the regulatory function in question is a function listed in Article 91(6) (functions which may be exercised immediately under the standard procedure), or

(b) the regulatory function in question is a function listed in Article 92(5) (functions which may be exercised immediately under the special procedure) and the Regulator determines to exercise it immediately on the basis described in paragraph (6).

(10) The functions of the Regulator under this Article are exercisable on behalf of the Regulator by the Determinations Panel (and are not otherwise exercisable by or on behalf of the Regulator).

(11) The Panel must determine the procedure that it proposes to follow in relation to the exercise of those functions.

(12) Article 89 (publication of Regulator's procedure) applies in relation to the procedure determined under paragraph (11) as it applies to the procedure determined under Article 88 (procedure in relation to the regulatory functions).

Duty to have regard to the interests of members etc.

95.—(1) The Regulator must have regard to the matters mentioned in paragraph (2)—

(a) when determining whether to exercise a regulatory function—

(i) in a case where the requirements of the standard or special procedure apply, or

(ii) on a review under Article 94, and

(b) when exercising the regulatory function in question.

(2) Those matters are—

(a) the interests of the generality of the members of the scheme to which the exercise of the function relates, and

(b) the interests of such persons as appear to the Regulator to be directly affected by the exercise.

Powers to vary or revoke orders, notices or directions etc.

96.—(1) The Regulator may vary or revoke—

(a) any determination by the Regulator whether to exercise a regulatory function, or

(b) any order, notice or direction made, issued or given by the Regulator in the exercise of a regulatory function.

(2) Paragraph (1)(b) does not apply to—

(a) an order under Article 3(3) of the 1995 Order revoking a prohibition order under that Article,

(b) an order under Article 4(5) of that Order revoking a suspension order under that Article,

(c) a direction under Article 4(3) of the 1999 Order refusing to register a scheme under that Article or removing a scheme from the register of stakeholder pension schemes, or

(d) such other orders, notices or directions made, issued or given by the Regulator, in the exercise of a regulatory function, as may be prescribed.

(3) A variation or revocation of an order, a notice or a direction must be made by an order, notice or direction (as the case may be).

(4) A variation or revocation made under this Article must take effect from a specified time which must not be a time earlier than the time when the variation or revocation is made.

(5) The power to vary or revoke under this Article—

(a) is not to be treated for the purposes of paragraph (1) as a regulatory function, and

(b) is in addition to any such power which is conferred on the Regulator by, or by virtue of, this or any other statutory provision.

The Pensions Regulator Tribunal

VALID FROM 06/04/2010

[[F28] Offences

96A.—(1) This Article applies in respect of proceedings before a tribunal in relation to a decision of the Regulator.

(2) A person is guilty of an offence if that person, without reasonable excuse, refuses or fails—

(a) to attend following the issue of a summons by the tribunal, or

(b) to give evidence.

(3) A person guilty of an offence under paragraph (2) is liable on summary conviction to a fine not exceeding level 5 on the standard scale.

(4) A person is guilty of an offence if that person, without reasonable excuse—

(a) alters, suppresses, conceals or destroys a document which that person is or is liable to be required to produce for the purposes of proceedings before the tribunal, or

(b) refuses to produce a document when so required.

(5) A person guilty of an offence under paragraph (4) is liable—

(a) on summary conviction, to a fine not exceeding the statutory maximum;

(b) on conviction on indictment, to imprisonment for a term not exceeding two years or a fine or both.

(6) In this Article "document" includes information recorded in any form and, in relation to information recorded otherwise than in a legible form, references to its production include references to producing a copy of the information in a legible form, or in a form from which it can readily be produced in a legible form.**]**

F28 Art. 96A inserted (6.4.2010) by Pensions Regulator Tribunal (Transfer of Functions) Act (Northern Ireland) 2010 (c. 4), ss. 3(1), 5(2), **Sch. 1 para. 17** (with transitional and saving in Sch. 2); S.R. 2010/101, **art. 2**

References to the Tribunal

97.—(1) A reference to the Tribunal under this Order must be made—

(a) in the case of a reference under Article 91(3) (referral following determination under standard procedure), during the period of 28 days beginning with the day on which the determination notice in question is given,

(b) in the case of a reference under Article 94(7) (referral following determination under special procedure), during the period of 28 days beginning with the day on which the final notice in question is given, or

(c) in either case, during such other period as may be specified in rules made under section 102 of the Pensions Act 2004 (c. 35).

(2) Subject to rules made under section 102 of the Pensions Act 2004, the Tribunal may allow a reference to be made after the end of the relevant period specified in or under paragraph (1).

(3) On a reference, the Tribunal may consider any evidence relating to the subject-matter of the reference, whether or not it was available to the Regulator at the material time.

(4) On a reference, the Tribunal must determine what (if any) is the appropriate action for the Regulator to take in relation to the matter referred to the Tribunal.

(5) On determining a reference, the Tribunal must remit the matter to the Regulator with such directions (if any) as the Tribunal considers appropriate for giving effect to its determination.

(6) Those directions may include directions to the Regulator—

(a) confirming the Regulator's determination and any order, notice or direction made, issued or given as a result of it;

(b) to vary or revoke the Regulator's determination, and any order, notice or direction made, issued or given as a result of it;

(c) to substitute a different determination, order, notice or direction;

(d) to make such savings and transitional provision as the Tribunal considers appropriate.

(7) The Regulator must act in accordance with the determination of, and any direction given by, the Tribunal (and accordingly Articles 91 to 94 (standard and special procedure) do not apply).

(8) The Tribunal may, on determining a reference, make recommendations as to the procedure followed by the Regulator or the Determinations Panel.

(9) An order of the Tribunal may be enforced as if it were an order of a county court.

Appeal on a point of law

98.—(1) A party to a reference to the Tribunal may with permission appeal to the Court of Appeal on a point of law arising from a decision of the Tribunal disposing of the reference.

(2) "Permission" means permission given by—

(a) the Tribunal, or

(b) if it is refused by the Tribunal, by the Court of Appeal.

(3) If, on an appeal under paragraph (1), the Court considers that the decision of the Tribunal was wrong in law, it may—

(a) remit the matter to the Tribunal for rehearing and determination by it under Article 97, or

(b) itself make a determination.

(4) An appeal may not be brought from a decision of the Court of Appeal under paragraph (3) except with the leave of—

(a) the Court of Appeal, or

(b) the House of Lords.

(5) Rules made under section 102 of the Pensions Act 2004 (c. 35) may make provision for regulating or prescribing any matters incidental to or consequential on an appeal under this Article.

Redetermination etc. by the Tribunal

99.—(1) This Article applies where an application is made to the Tribunal for permission under Article 98(2)(a) to appeal from a decision of the Tribunal disposing of a reference.

(2) If the person who constitutes, or is the chairman of, the Tribunal for the purposes of dealing with that application considers that the decision of the Tribunal disposing of the reference was wrong in law, he may set aside the decision and refer the matter—

(a) for rehearing and redetermination by the Tribunal under Article 97, or

(b) for rehearing and determination under that Article by a differently constituted Tribunal.

Disclosure of information

100. In Article 442(1) of the Companies Order (exceptions from restrictions on publication and disclosure) after sub-paragraph (m) insert—

"(n) for the purposes of proceedings before the Pensions Regulator Tribunal." .

PART III

THE BOARD OF THE PENSION PROTECTION FUND

Modifications etc. (not altering text)

C2 Pt. III (arts. 101-199) applied by S.R. 2005/55, reg. 2A (as inserted (8.3.2010) by Pension Protection Fund and Occupational Pension Schemes (Miscellaneous Amendments) Regulations (Northern Ireland) 2010 (S.R. 2010/32), **reg. 2(4)**)

CHAPTER 1

THE BOARD

General provision about functions

Board's functions and supplementary powers etc.

101.—(1) Articles 158 and 171 make provision for contributions to the Pension Protection Fund and the Fraud Compensation Fund to be levied by the Board.

(2) The Board may do anything which—

(a) is calculated to facilitate the exercise of its functions, or

(b) is incidental or conducive to their exercise.

(3) Schedule 4 makes further provision about the Board.

Commencement Information

I3 Art. 101 partly in operation; art. 101 not in operation at date of making see art. 1(2); art. 101(2) in operation at 25.2.2005 and art. 101(3) in operation for certain purposes at 25.2.2005 by S.R. 2005/48, art. 2(1), Sch. Pt. 1; art. 101(3) in operation for certain purposes at 6.4.2005 by S.R. 2005/48, art. 2(7), Sch. Pt. 7; art. 101(3) in operation for certain purposes at 1.9.2005 by S.R. 2005/411, art. 2(4), Sch. Pt. 1; art. 101(1) in operation at 9.12.05 by S.R. 2005/543, art. 2(2), Sch. Pt. 2; art. 101(3) in operation for certain purposes at 6.4.2006 by S.R. 2006/95, **art. 2(c)**, Sch. Pt. 3

Financial matters

Grants

102. The Department may pay the Board such sums as the Department may determine towards any of the Board's expenses, other than expenditure which by virtue of section 173(3) or 188(3) of the Pensions Act 2004 (c. 35) is payable out of—

(a) the Pension Protection Fund, or

(b) the Fraud Compensation Fund.

Administration levy

103.—(1) Regulations may provide for the imposition of a levy ("administration levy") in respect of eligible schemes (see Article 110) for the purpose of meeting—

(a) expenditure relating to the establishment of the Board;

(b) any expenditure of the Department under Article 102 or of the Secretary of State under section 116 of the Pensions Act 2004 (c. 35).

(2) An administration levy is payable to the Department by or on behalf of—

(a) the trustees or managers of an eligible scheme, or

(b) any other prescribed person.

(3) An administration levy is payable at the prescribed rate and at prescribed times.

(4) Before prescribing a rate under paragraph (3), the Department must consult the Board.

(5) An amount payable by a person on account of an administration levy is a debt due from him to the Department.

(6) An amount so payable is recoverable by the Department or, if the Department so determines, by the Regulator on its behalf.

(7) Without prejudice to the generality of paragraphs (1), (5) and (6), regulations under this Article may include provision relating to—

(a) the collection and recovery of amounts payable by way of levy under this Article;

(b) the circumstances in which any such amount may be waived.

Commencement Information

I4 Art. 103 partly in operation; art. 103 not in operation at date of making see art. 1(2); Art. 103(4) in operation at 25.2.2005 by S.R. 2005/48, art. 2(1), Sch. Pt. 1; art. 103(1)(3)(7)(a) in operation for certain purposes at 25.2.2005 and wholly in operation at 1.4.2005 by S.R. 2005/48, art. 2(3), Sch. Pt. 3; art. 103(2)(a)(5)(6) in operation at 1.4.2005 by S.R. 2005/48, art. 2(6), Sch. Pt. 6; art. 103(7) in operation for certain purposes at 1.1.2007 and wholly in operation at 1.3.2007 in so far as not already in operation by S.R. 2006/352, **art. 2(4)**

PROSPECTIVE

[[F29]Administration levy: interest for late payment

103A.—(1) Regulations may make provision for interest to be charged at the prescribed rate in the case of late payment of an administration levy.

(2) Interest is payable by or on behalf of the person or persons by or on behalf of whom the levy is payable.

(3) Interest payable by a person by virtue of this Article is a debt due from the person to the Department.

(4) Interest is recoverable by the Department or, if the Department so determines, by the Regulator on the Department's behalf.

(5) Without prejudice to the generality of paragraph (1), regulations under this Article may include provision relating to—

(a) the collection and recovery of interest;

(b) the circumstances in which interest may be waived.**]**

F29 Art. 103A inserted (prosp.) by Pensions (No. 2) Act (Northern Ireland) 2008 (c. 13), ss. 104, 118(1), **Sch. 9 para. 3**

CHAPTER 2

INFORMATION RELATING TO EMPLOYER'S INSOLVENCY ETC.

Insolvency events

Duty to notify insolvency events in respect of employers

104.—(1 [F30] This Article applies where, in the case of an occupational pension scheme, an insolvency event occurs in relation to the employer.

(2) The insolvency practitioner in relation to the employer must give a notice to that effect within the notification period to—

(a) the Board,

(b) the Regulator, and

(c) the trustees or managers of the scheme.

[F30](3) For the purposes of paragraph (2) the "notification period" is the prescribed period beginning with the later of—

(a) the insolvency date, and

(b) the date the insolvency practitioner becomes aware of the existence of the scheme.

[F30](4) A notice under this Article must be in such form and contain such information as may be prescribed.

F30 mod. by SR 2005/91

Insolvency event, insolvency date and insolvency practitioner

105.—(1) In this Part each of the following expressions has the meaning given to it by this Article—

"insolvency event",

"insolvency date",

"insolvency practitioner".

(2) An insolvency event occurs in relation to an individual where—

(a) he is adjudged bankrupt;

(b) the nominee in relation to a proposal for a voluntary arrangement under Chapter 2 of Part VIII of the Insolvency Order submits a report to the Court under Article 230(1) or 230A(3) of that Order which states that in his opinion a meeting of the individual's creditors should be summoned to consider the debtor's proposal;

(c) a deed of arrangement made by, for, or in respect of the affairs of the individual is registered under Chapter 1 of Part VIII of that Order;

(d) he executes a trust deed for his creditors or enters into a composition contract;

(e) he has died and an insolvency administration order is made in respect of his estate in accordance with an order under Article 365 of that Order.

(3) An insolvency event occurs in relation to a company where—

(a) the nominee in relation to a proposal for a voluntary arrangement under Part II of the Insolvency Order submits a report to the Court under Article 15 of that Order (procedure

where nominee is not the liquidator or administrator) which states that in his opinion meetings of the company and its creditors should be summoned to consider the proposal;

(b) the directors of the company file with the Court documents and statements in accordance with paragraph 18(1) of Schedule A1 to that Order (moratorium where directors propose voluntary arrangement);

(c) an administrative receiver within the meaning of Article 5 of that Order is appointed in relation to the company;

(d) the company enters administration within the meaning of paragraph 2(2)(b) of Schedule B1 to that Order;

(e) a resolution is passed for a voluntary winding up of the company without a declaration of solvency under Article 75 of that Order;

(f) a meeting of creditors is held in relation to the company 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);

(g) an order for the winding up of the company is made by the Court under Part V or VI of that Order.

(4) An insolvency event occurs in relation to a partnership where—

(a) an order for the winding up of the partnership is made by the Court under any provision of the Insolvency Order (as applied by an order under Article 364 of that Order (insolvent partnerships));

(b) the nominee in relation to a proposal for a voluntary arrangement under Part II of that Order (as applied by an order under Article 364 of that Order) submits a report to the Court under Article 15 of that Order (procedure where nominee is not the liquidator or administrator) which states that in his opinion meetings of the members of the partnership and the partnership's creditors should be summoned to consider the proposal;

(c) the members of the partnership file with the Court documents and statements in accordance with paragraph 18(1) of Schedule A1 to that Order (moratorium where directors propose voluntary arrangement) (as applied by an order under Article 364 of that Order);

(d) an administration order under Part III of that Order (as applied by Article 364 of that Order) is made in relation to the partnership.

(5) An insolvency event also occurs in relation to a person where an event occurs which is a prescribed event in relation to such a person.

(6) Except as provided by paragraphs (2) to (5), for the purposes of this Part an event is not to be regarded as an insolvency event in relation to a person.

(7) The Department may by order amend paragraph (4)(d) to make provision consequential upon any order under Article 364 of the Insolvency Order (insolvent partnerships) applying the provisions of Part III of that Order (administration) as amended by the Insolvency (Northern Ireland) Order 2005.

(8) "Insolvency date", in relation to an insolvency event, means the date on which the event occurs.

(9) "Insolvency practitioner", in relation to a person, means—

(a) a person acting as an insolvency practitioner, in relation to that person, in accordance with Article 3 of the Insolvency Order,

(b) in such circumstances as may be prescribed, a person of a prescribed description.

(10) In this Article—

"company" means a company within the meaning given by Article 3(1) of the Companies Order or a company which may be wound up under Part VI of the Insolvency Order (unregistered companies);

"person acting as an insolvency practitioner", in relation to a person, includes the official receiver acting as receiver or manager of any property of that person.

(11) In applying Article 3 of the Insolvency Order under paragraph (9), Article 3(5) of that Order (which includes provision that nothing in the Article applies to anything done by the official receiver) must be ignored.

(12) In relation to any time before the coming into operation of Article 3 of the Insolvency (Northern Ireland) Order 2005, paragraph (3) shall have effect as if for sub-paragraph (d) there were substituted—

"(d) an administration order is made by the Court under Article 21 of that Order;" .

Status of scheme

Insolvency practitioner's duty to issue notices confirming status of scheme

106.—(1 [F31] This Article applies where an insolvency event has occurred in relation to the employer in relation to an occupational pension scheme.

(2 [F31] An insolvency practitioner in relation to the employer must—

(a [F31] if he is able to confirm that a scheme rescue is not possible, issue a notice to that effect (a "scheme failure notice"), or

(b [F31] if he is able to confirm that a scheme rescue has occurred, issue a notice to that effect (a "withdrawal notice").

[F31](3) Paragraph (4) applies where—

(a [F31] in prescribed circumstances, insolvency proceedings in relation to the employer are stayed or come to an end, or

(b) a prescribed event occurs.

(4 [F31] If a person who was acting as an insolvency practitioner in relation to the employer immediately before this paragraph applies has not been able to confirm in relation to the scheme—

(a [F31] that a scheme rescue is not possible, or

(b [F31] that a scheme rescue has occurred,

he must issue a notice to that effect.

(5) For the purposes of this Article—

(a [F31] a person is able to confirm that a scheme rescue has occurred in relation to an occupational pension scheme if, and only if, he is able to confirm such matters as are prescribed for the purposes of this sub-paragraph, and

(b [F31] a person is able to confirm that a scheme rescue is not possible, in relation to such a scheme if, and only if, he is able to confirm such matters as are prescribed for the purposes of this sub-paragraph.

(6 [F31] Where an insolvency practitioner or former insolvency practitioner in relation to the employer issues a notice under this Article, he must give a copy of that notice to—

(a) the Board,

(b) the Regulator, and

(c) the trustees or managers of the scheme.

[F31](7) A person must comply with an obligation imposed on him by paragraph (2), (4) or (6) as soon as reasonably practicable.

(8) Regulations may require notices issued under this Article—

(a) to be in a prescribed form;

(b) to contain prescribed information.

F31 mod. by SR 2005/91

Approval of notices issued under Article 106

107.—(1 [F32] This Article applies where the Board receives a notice under Article 106(6) ("the Article 106 notice").

(2 [F32] The Board must determine whether to approve the Article 106 notice.

(3) The Board must approve the Article 106 notice if, and only if, it is satisfied—

(a) that the insolvency practitioner or former insolvency practitioner who issued the notice was required to issue it under that Article, and

(b) that the notice complies with any requirements imposed by virtue of paragraph (8) of that Article.

(4) Where the Board makes a determination for the purposes of paragraph (2), it must issue a determination notice and give a copy of that notice to—

(a) the Regulator,

(b) the trustees or managers of the scheme,

(c) the insolvency practitioner or the former insolvency practitioner who issued the Article 106 notice,

(d [F32] any insolvency practitioner in relation to the employer (who does not fall within sub-paragraph (c)), and

(e [F32] if there is no insolvency practitioner in relation to the employer, the employer.

[F32](5) In paragraph (4) "determination notice" means a notice which is in the prescribed form and contains such information about the determination as may be prescribed.

F32 mod. by SR 2005/91

Board's duties

Board's duty where there is a failure to comply with Article 106

108.—(1 [F33] This Article applies where, in relation to an occupational pension scheme—

(a [F33] the Board determines under Article 107 not to approve a notice issued under Article 106 by an insolvency practitioner or former insolvency practitioner in relation to the employer, or

(b [F33] an insolvency practitioner or former insolvency practitioner in relation to the employer fails to issue a notice under Article 106 and the Board is satisfied that such a notice ought to have been issued under that Article.

(2) The obligations on the insolvency practitioner or former insolvency practitioner imposed by paragraphs (2) and (4) of Article 106 are to be treated as obligations imposed on the Board and the Board must accordingly issue a notice as required under that Article.

(3) Subject to paragraphs (4) and (5), where a notice is issued under Article 106 by the Board by virtue of this Article, it has effect as if it were a notice issued under Article 106 by an insolvency practitioner or, as the case may be, former insolvency practitioner in relation to the employer.

(4) Where a notice is issued under Article 106 by virtue of this Article, Article 106(6) does not apply and the Board must, as soon as reasonably practicable, give a copy of the notice to—

(a) the Regulator,

(b) the trustees or managers of the scheme,

(c) the insolvency practitioner or former insolvency practitioner mentioned in paragraph (1),

(d [F33] any insolvency practitioner in relation to the employer (who does not fall within sub-paragraph (c)), and

(e [F33] if there is no insolvency practitioner in relation to the employer, the employer.

[F33](5) Where the Board—

(a) is required to issue a notice under Article 106 by virtue of this Article, and

(b) is satisfied that the notice ought to have been issued at an earlier time,

it must specify that time in the notice and the notice is to have effect as if it had been issued at that time.

F33 mod. by SR 2005/91

Binding notices confirming status of scheme

109.—(1) Subject to paragraph (2), for the purposes of this Part, a notice issued under Article 106 is not binding until—

(a) the Board issues a determination notice under Article 107 approving the notice,

(b) the period within which the issue of the determination notice under that Article may be reviewed by virtue of Chapter 6 has expired, and

(c) if the issue of the determination notice is so reviewed—

(i) the review and any reconsideration,

(ii) any reference to the PPF Ombudsman in respect of the issue of the notice, and

(iii) any appeal against his determination or directions,

has been finally disposed of and the determination notice has not been revoked, varied or substituted.

(2) Where a notice is issued under Article 106 by the Board by virtue of Article 108, the notice is not binding until—

(a) the period within which the issue of the notice may be reviewed by virtue of Chapter 6 has expired, and

(b) if the issue of the notice is so reviewed—

(i) the review and any reconsideration,

(ii) any reference to the PPF Ombudsman in respect of the issue of the notice, and

(iii) any appeal against his determination or directions,

has been finally disposed of and the notice has not been revoked, varied or substituted.

(3) Where a notice issued under Article 106 becomes binding, the Board must as soon as reasonably practicable give a notice to that effect together with a copy of the binding notice to—

(a) the Regulator,

(b) the trustees or managers of the scheme,

(c) the insolvency practitioner or former insolvency practitioner who issued the notice under Article 106 or, where that notice was issued by the Board by virtue of Article 108, the insolvency practitioner or former insolvency practitioner mentioned in paragraph (1) of that Article,

(d [F34] any insolvency practitioner in relation to the employer (who does not fall within sub-paragraph (c)), and

(e [F34] if there is no insolvency practitioner in relation to the employer, the employer.

[F34](4) A notice under paragraph (3)—

(a) must be in the prescribed form and contain such information as may be prescribed, and

(b [F34] where it is given in relation to a withdrawal notice issued under Article 106(2)(b) which has become binding, must state the time from which the Board ceases to be involved with the scheme (see Article 133).

F34 mod. by SR 2005/91

CHAPTER 3

PENSION PROTECTION

Eligible schemes

Eligible schemes

110.—(1 [F35] Subject to the following provisions of this Article, in this Part references to an "eligible scheme" are to an occupational pension scheme which—

(a) is not a money purchase scheme, and

(b) is not a prescribed scheme or a scheme of a prescribed description.

(2) A scheme is not an eligible scheme if it is being wound up immediately before the day appointed[F36] by the Department by order for the purposes of this paragraph.

(3) Regulations may provide that where—

(a) an assessment period begins in relation to an eligible scheme (see Article 116), and

(b) after the beginning of that period, the scheme ceases to be an eligible scheme,

the scheme is, in such circumstances as may be prescribed, to be treated as remaining an eligible scheme for the purposes of such of the provisions mentioned in paragraph (4) as may be prescribed.

(4) Those provisions are—

(a) any provision of this Part, and

(b) any other provision of this Order in which "eligible scheme" has the meaning given by this Article.

(5) Regulations may also provide that a scheme which would be an eligible scheme in the absence of this paragraph is not an eligible scheme in such circumstances as may be prescribed.

F35 mod. by SR 2005/91
F36 fully exercised (in relation to scheme only) by SR 2005/83

Circumstances in which Board assumes responsibility for eligible schemes

Duty to assume responsibility for schemes following insolvency event

111.—(1 [F37] This Article applies where a qualifying insolvency event has occurred in relation to the employer in relation to an eligible scheme.

(2 [F38] The Board must assume responsibility for the scheme in accordance with this Chapter if—

(a [F38] [F37]the value of the assets of the scheme at the relevant time was less than the amount of the protected liabilities at that time (see Articles 115 and 127),

(b) after the relevant time a scheme failure notice is issued under Article 106(2)(a) in relation to the scheme and that notice becomes binding, and

(c) a withdrawal event has not occurred in relation to the scheme in respect of a withdrawal notice which has been issued during the period—

(i) beginning with the occurrence of the qualifying insolvency event, and

(ii) ending immediately before the issuing of the scheme failure notice under Article 106(2)(a),

and the occurrence of such a withdrawal event in respect of a withdrawal notice issued during that period is not a possibility (see Article 133).

(3 [F37] For the purposes of this Article, in relation to an eligible scheme an insolvency event ("the current event") in relation to the employer is a qualifying insolvency event if—

(a) it occurs on or after the day appointed under Article 110(2), and

(b) it—

(i) is the first insolvency event to occur in relation to the employer on or after that day, or

(ii) does not occur within an assessment period (see Article 116) in relation to the scheme which began before the occurrence of the current event.

(4) For the purposes of this Article—

(a [F38] the reference in paragraph (2)(a) to the assets of the scheme is a reference to those assets excluding any assets representing the value of any rights in respect of money purchase benefits under the scheme rules, and

(b) "the relevant time" means the time immediately before the qualifying insolvency event occurs.

(5) This Article is subject to Articles 130 and 131 (cases where Board must refuse to assume responsibility for a scheme).

F37 mod. by SR 2005/91
F38 mod. by SR 2005/55

Duty to assume responsibility for schemes following application or notification

112.—(1 [F39] This Article applies where, in relation to an eligible scheme, the trustees or managers of the scheme—

(a) make an application under paragraph (1) of Article 113 (an "Article 113 application"), or

(b) receive a notice from the Board under paragraph (5)(a) of that Article (an "Article 113 notification").

(2 [F40] The Board must assume responsibility for the scheme in accordance with this Chapter if—

(a [F40] [F39]the value of the assets of the scheme at the relevant time was less than the amount of the protected liabilities at that time (see Articles 115 and 127),

(b) after the relevant time the Board issues a scheme failure notice under Article 114(2) in relation to the scheme and that notice becomes binding, and

(c) a withdrawal event has not occurred in relation to the scheme in respect of a withdrawal notice which has been issued during the period—

(i) beginning with the making of the Article 113 application or, as the case may be, the receipt of the Article 113 notification, and

(ii) ending immediately before the issuing of the scheme failure notice under Article 114(2),

and the occurrence of such a withdrawal event in respect of a withdrawal notice issued during that period is not a possibility (see Article 133).

(3) In paragraph (2)—

(a [F40] the reference in sub-paragraph (a) to the assets of the scheme is a reference to those assets excluding any assets representing the value of any rights in respect of money purchase benefits under the scheme rules, and

(b) "the relevant time" means the time immediately before the Article 113 application was made or, as the case may be, the Article 113 notification was received.

(4) An application under Article 113(1) or notification under Article 113(5)(a) is to be disregarded for the purposes of paragraph (1) if it is made or given during an assessment period (see Article 116) in relation to the scheme which began before the application was made or notification was given.

(5) This Article is subject to Articles 130 and 131 (cases where Board must refuse to assume responsibility for a scheme).

F39 mod. by SR 2005/91
F40 mod. by SR 2005/55

Applications and notifications for the purposes of Article 112

113.—(1 [F41] [F42]Where the trustees or managers of an eligible scheme become aware that—

(a) the employer in relation to the scheme is unlikely to continue as a going concern, and

(b) the prescribed requirements are met in relation to the employer,

they must make an application to the Board for it to assume responsibility for the scheme under Article 112.

[F42F42](2) Where the Board receives an application under paragraph (1), it must give a copy of the application to—

(a) the Regulator, and

(b) the employer.

(3) An application under paragraph (1) must—

(a) be in the prescribed form and contain the prescribed information, and

(b) be made within the prescribed period.

(4) Where the Regulator becomes aware that—

(a [F42] the employer in relation to an eligible scheme is unlikely to continue as a going concern, and

(b [F42] the requirements mentioned in paragraph (1)(b) are met in relation to the employer,

it must give the Board a notice to that effect.

(5) Where the Board receives a notice under paragraph (4), it must—

(a) give the trustees or managers of the scheme a notice to that effect, and

(b) give the employer a copy of that notice.

[F42](6) The duty imposed by paragraph (1) does not apply where the trustees or managers of an eligible scheme become aware as mentioned in that paragraph by reason of a notice given to them under paragraph (5).

(7) The duty imposed by paragraph (4) does not apply where the Regulator becomes aware as mentioned in that paragraph by reason of a copy of an application made by the trustees or managers of the eligible scheme in question given to the Regulator under paragraph (2).

(8) Regulations may require notices under this Article to be in the prescribed form and to contain the prescribed information.

F41 mod. by SR 2005/55
F42 mod. by SR 2005/91

Board's duty where application or notification received under Article 113

114.—(1) This Article applies where the Board—

(a) receives an application under paragraph (1) of Article 113 and is satisfied that sub-paragraphs (a) and (b) of that paragraph are satisfied in relation to the application, or

(b) is notified by the Regulator under Article 113(4).

(2 [F43] If the Board is able to confirm that a scheme rescue is not possible, it must as soon as reasonably practicable issue a notice to that effect (a "scheme failure notice").

(3 [F43] If the Board is able to confirm that a scheme rescue has occurred, it must as soon as reasonably practicable issue a notice to that effect (a "withdrawal notice").

(4) The Board must, as soon as reasonably practicable, give a copy of any notice issued under paragraph (2) or (3) to—

(a) the Regulator,

(b) the trustees or managers of the scheme, and

(c) the employer.

[F43](5) For the purposes of this Article—

(a [F43] the Board is able to confirm that a scheme rescue has occurred in relation to an occupational pension scheme if, and only if, it is able to confirm such matters as are prescribed for the purposes of this sub-paragraph, and

(b [F43] the Board is able to confirm that a scheme rescue is not possible in relation to such a scheme if, and only if, it is able to confirm such matters as are prescribed for the purposes of this sub-paragraph.

(6) For the purposes of this Part a notice issued under paragraph (2) or (3) is not binding until—

(a) the period within which the issue of the notice may be reviewed by virtue of Chapter 6 has expired, and

(b) if the issue of the notice is so reviewed—

(i) the review and any reconsideration,

(ii) any reference to the PPF Ombudsman in respect of the issue of the notice, and

(iii) any appeal against his determination or directions,

has been finally disposed of and the notice has not been revoked, varied or substituted.

(7) Where a notice issued under paragraph (2) or (3) becomes binding, the Board must as soon as reasonably practicable give a notice to that effect together with a copy of the binding notice to—

(a) the Regulator,

(b) the trustees or managers of the scheme, and

(c) the employer.

[F43](8) Notices under this Article must be in the prescribed form and contain such information as may be prescribed.

(9) A notice given under paragraph (7) in relation to a withdrawal notice under paragraph (3) which has become binding must state the time from which the Board ceases to be involved with the scheme (see Article 133).

F43 mod. by SR 2005/91

Protected liabilities

115.—(1 [F44] [F45]For the purposes of this Chapter the protected liabilities, in relation to an eligible scheme, at a particular time ("the relevant time") are—

(a) the cost of securing benefits for and in respect of members of the scheme which correspond to the compensation which would be payable, in relation to the scheme, in accordance with the pension compensation provisions (see Article 146) if the Board assumed responsibility for the scheme in accordance with this Chapter,

(b) liabilities of the scheme which are not liabilities to, or in respect of, its members, and

(c) the estimated cost of winding up the scheme.

(2) For the purposes of determining the cost of securing benefits within paragraph (1)(a), references in Articles 124 to 126 and Schedule 6 (pension compensation provisions) to the assessment date are to be read as references to the date on which the time immediately after the relevant time falls.

F44 mod. by SR 2005/55
F45 mod. by SR 2005/91

Restrictions on schemes during the assessment period

Assessment periods

116.—(1) In this Part references to an assessment period are to be construed in accordance with this Article.

(2 [F46] Where, in relation to an eligible scheme, a qualifying insolvency event occurs in relation to the employer, an assessment period—

(a) begins with the occurrence of that event, and

(b) ends when—

(i) the Board ceases to be involved with the scheme (see Article 133),

(ii) the trustees or managers of the scheme receive a transfer notice under Article 144, or

(iii) the conditions in Article 138(2) (no scheme rescue but sufficient assets to meet protected liabilities etc.) are satisfied in relation to the scheme,

whichever first occurs.

(3) In paragraph (2) "qualifying insolvency event" has the meaning given by Article 111(3).

(4 [F46] Where, in relation to an eligible scheme, an application is made under Article 113(1) or a notification is received under Article 113(5)(a), an assessment period—

(a) begins when the application is made or the notification is received, and

(b) ends when—

(i) the Board ceases to be involved with the scheme (see Article 133),

(ii) the trustees or managers of the scheme receive a transfer notice under Article 144, or

(iii) the conditions in Article 138(2) (no scheme rescue but sufficient assets to meet protected liabilities etc.) are satisfied in relation to the scheme,

whichever first occurs.

(5) For the purposes of paragraph (4) an application under Article 113(1) or notification under Article 113(5)(a) is to be disregarded if it is made or given during an assessment period in relation to the scheme which began before the application was made or notification was given.

(6) This Article is subject to Article 143 (which provides for further assessment periods to begin in certain circumstances where schemes are required to wind up or continue winding up under Article 138).

F46 mod. by SR 2005/91

Commencement Information

I5 Art. 116 wholly in operation at 6.4.2007; art. 116 not in operation at date of making see art. 1(2); art. 116 (except (6)) in operation at 6.4.2005 by S.R. 2005/48, art. 2(7), Sch. Pt. 7; art. 116 in operation at 6.4.2007 in so far as it is not already in operation by S.R. 2006/352, **art. 2(5)**, Sch. Pt. 2

Admission of new members, payment of contributions etc.

117.—(1) This Article applies where there is an assessment period in relation to an eligible scheme.

(2) No new members of any class may be admitted to the scheme during the assessment period.

(3) Except in prescribed circumstances and subject to prescribed conditions, no further contributions (other than those due to be paid before the beginning of the assessment period) may be paid towards the scheme during the assessment period.

(4) Any obligation to pay contributions towards the scheme during the assessment period (including any obligation under Article 49(8) of the 1995 Order to pay amounts deducted corresponding to such contributions) is to be read subject to paragraph (3) and Article 134 (obligation to pay contributions when assessment period ends).

(5) No benefits may accrue under the scheme rules to, or in respect of, members of the scheme during the assessment period.

(6) Paragraph (5) does not prevent any increase, in a benefit, which would otherwise accrue in accordance with the scheme or any statutory provision.
This paragraph is subject to Article 122 (which limits the scheme benefits payable during an assessment period).

(7) Paragraph (5) 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.

(8) Where a person is entitled to a pension credit derived from another person's shareable rights under the scheme, nothing in this Article prevents the trustees or managers of the scheme discharging their liability in respect of the credit under Chapter 1 of Part V of the 1999 Order (sharing of rights under pension arrangements) by conferring appropriate rights under the scheme on that person.

(9) In paragraph (8)—

"appropriate rights" has the same meaning as in paragraph 5 of Schedule 5 to that Order (pension credits: mode of discharge);

"shareable rights" has the same meaning as in Chapter 1 of Part V of that Order (sharing of rights under pension arrangements).

(10) Any action taken in contravention of this Article is void.

(11) Disregarding paragraph (10), Article 10 of the 1995 Order (civil penalties) applies to any trustee or manager of a scheme who fails to take all reasonable steps to secure compliance with this Article.

Directions

118.—(1) This Article applies where there is an assessment period in relation to an eligible scheme.

(2 [F47] [F48]With a view to ensuring that the scheme's protected liabilities do not exceed its assets or, if they do exceed its assets, that the excess is kept to a minimum, the Board may give a relevant person in relation to the scheme directions regarding the exercise during that period of his powers in respect of—

(a [F48] the investment of the scheme's assets,

(b) the incurring of expenditure,

(c) the instigation or conduct of legal proceedings, and

(d) such other matters as may be prescribed.

[F49](3) In paragraph (2)—

(a) "relevant person" in relation to a scheme means—

(i [F48] the trustees or managers of the scheme,

(ii) the employer in relation to the scheme, or

(iii) such other persons as may be prescribed, and

(b) the reference to the assets of the scheme is a reference to those assets excluding any assets representing the value of any rights in respect of money purchase benefits under the scheme rules.

(4) The Board may revoke or vary any direction under this Article.

(5) Where a direction under this Article given to the trustees or managers of a scheme is not complied with, Article 10 of the 1995 Order (civil penalties) applies to any such trustee or manager who has failed to take all reasonable steps to secure compliance with the direction.

(6) That Article also applies to any other person who, without reasonable excuse, fails to comply with a direction given to him under this Article.

F47 mod. by SR 2005/55
F48 mod. by SR 2005/91

F49 mod. by SR 2005/84

Commencement Information

I6 Art. 118 wholly in operation at 21.7.2009; art. 118 not in operation at date of making see art. 1(2); art. 118(3) in so far as it relates to paragraph (iii) of the definition of "relevant person" in sub-paragraph (a) in operation for certain purposes at 25.2.2005 and for all other purposes at 6.4.2005 by S.R. 2005/48, **art. 2(4)**, Sch. Pt. 4; art. 118 except paragraph 2(d) in operation at 6.4.2005 by S.R. 2005/48, **art. 2(7)**, Sch. Pt. 7; art. 118(2)(d) in operation for certain purposes at 23.6.2009 and for all other purposes at 21.7.2009 by S.R. 2009/242, **art. 2**

Restrictions on winding up, discharge of liabilities etc.

119.—(1) This Article applies where there is an assessment period in relation to an eligible scheme.

(2 [F50] Subject to paragraph (3), the winding up of the scheme must not begin during the assessment period.

[F50](3) Paragraph (2) does not apply to the winding up of the scheme in pursuance of an order by the Regulator under Article 11(3A) of the 1995 Order (Regulator's powers to wind up occupational pension schemes to protect Pension Protection Fund) directing the scheme to be wound up (and Article 198 makes provision for the backdating of the winding up).

(4) During the assessment period, except in prescribed circumstances and subject to prescribed conditions—

(a) no transfers of, or transfer payments in respect of, any member's rights under the scheme rules are to be made from the scheme, and

(b) no other steps may be taken to discharge any liability of the scheme to or in respect of a member of the scheme in respect of—

(i) pensions or other benefits, or

(ii) such other liabilities as may be prescribed.

[F50](5) Paragraph (4)—

(a) is subject to Article 122, and

(b) applies whether or not the scheme was being wound up immediately before the assessment period or began winding up by virtue of paragraph (3).

(6) Paragraph (7) applies where, on the commencement of the assessment period—

(a) a member's pensionable service terminates, and

(b) he becomes a person to whom Chapter 5 of Part IV of the Pension Schemes Act (early leavers: cash transfer sums and contribution refunds) applies.

Article 134(5) (retrospective accrual of benefits in certain circumstances) is to be disregarded for the purposes of determining whether a member falls within sub-paragraph (a) or (b).

(7) Where this paragraph applies, during the assessment period—

(a) no right or power conferred by that Chapter may be exercised, and

(b) no duty imposed by that Chapter may be discharged.

(8) Where a person is entitled to a pension credit derived from another person's shareable rights (within the meaning of Chapter 1 of Part V of the 1999 Order (sharing of rights under pension arrangements)) under the scheme, nothing in paragraph (4) prevents the trustees or managers of the scheme discharging their liability in respect of the credit in accordance with that Chapter.

(9) Any action taken in contravention of this Article is void, except to the extent that the Board validates the action (see Article 120).

(10) Disregarding paragraph (9), where there is a contravention of this Article, Article 10 of the 1995 Order (civil penalties) applies to any trustee or manager who has failed to take all reasonable steps to secure compliance with this Article.

(11) The Regulator may not make a freezing order (see Article 19) in relation to the scheme during the assessment period.

F50 mod. by SR 2005/91

Power to validate contraventions of Article 119

120.—(1 [F51] The Board may validate an action for the purposes of Article 119(9) only if it is satisfied that to do so is consistent with the objective of ensuring that the scheme's protected liabilities do not exceed its assets or, if they do exceed its assets, that the excess is kept to a minimum.

(2) Where the Board determines to validate, or not to validate, any action of the trustees or managers for those purposes, it must issue a notice to that effect and give a copy of that notice to—

(a) the Regulator,

(b) the trustees or managers of the scheme,

(c [F52] any insolvency practitioner in relation to the employer or, if there is no such insolvency practitioner, the employer, and

(d) any other person who appears to the Board to be directly affected by the determination.

[F52](3) A notice under paragraph (2) must contain a statement of the Board's reasons for the determination.

(4) The validation of an action does not take effect—

(a) until—

(i) the Board has issued a notice under paragraph (2) relating to the determination, and

(ii) the period within which the issue of that notice may be reviewed by virtue of Chapter 6 has expired, and

(b) if the issue of the notice is so reviewed, until—

(i) the review and any reconsideration,

(ii) any reference to the PPF Ombudsman in respect of the issue of the notice, and

(iii) any appeal against his determination or directions,

has been finally disposed of.

(5 [F51] In paragraph (1) the reference to the assets of the scheme is a reference to those assets excluding any assets representing the value of any rights in respect of money purchase benefits under the scheme rules.

F51 mod. by SR 2005/55
F52 mod. by SR 2005/91

Board to act as creditor of the employer

121.—(1) Paragraph (2) applies where there is an assessment period in relation to an eligible scheme.

(2 [F53] During the assessment period, the rights and powers of the trustees or managers of the scheme in relation to any debt (including any contingent debt) due to them by the employer, whether by virtue of Article 75 of the 1995 Order (deficiencies in the scheme assets) or otherwise, are exercisable by the Board to the exclusion of the trustees or managers.

(3) Where, by virtue of paragraph (2), any amount is paid to the Board in respect of such a debt, the Board must pay that amount to the trustees or managers of the scheme.[F53]

F53 mod. by SR 2005/91

Payment of scheme benefits

122.—(1) Paragraphs (2) and (3) apply where there is an assessment period in relation to an eligible scheme.

(2) The benefits payable to or in respect of any member under the scheme rules during the assessment period must be reduced to the extent necessary to ensure that they do not exceed the compensation which would be payable to or in respect of the member in accordance with this Chapter if—

(a [F54] the Board assumed responsibility for the scheme in accordance with this Chapter, and

(b) the assessment date referred to in Schedule 6 were the date on which the assessment period began.

(3 [F54] But where, on the commencement of the assessment period—

(a) a member's pensionable service terminates, and

(b) he becomes a person to whom Chapter 5 of Part IV of the Pension Schemes Act (early leavers: cash transfer sums and contribution refunds) applies,

no benefits are payable to or in respect of him under the scheme during the assessment period.

(4) Article 134(5) (retrospective accrual of benefits in certain circumstances) is to be disregarded for the purposes of determining whether a member falls within sub-paragraph (a) or (b) of paragraph (3).

(5) Nothing in paragraph (3) prevents the payment of benefits attributable (directly or indirectly) to a pension credit during the assessment period in accordance with paragraph (2).

(6) Where at any time during the assessment period the scheme is being wound up, subject to any reduction required under paragraph (2) and to paragraph (3), the benefits payable to or in respect of any member under the scheme rules during that period are the benefits that would have been so payable in the absence of the winding up of the scheme.

(7) Paragraphs (2), (3) and (6) are subject to Articles 134(1) to (3) and 138(13) (which provide for the adjustment of amounts paid during an assessment period when that period ends other than as a result of the Board assuming responsibility for the scheme).

(8) For the purposes of paragraphs (2) and (3) the trustees or managers of the scheme may take such steps as they consider appropriate (including steps adjusting future payments under the scheme rules) to recover any overpayment or pay any shortfall.

(9) Article 10 of the 1995 Order (civil penalties) applies to a trustee or manager of a scheme who fails to take all reasonable steps to secure compliance with paragraphs (2) and (3).

(10) Regulations may provide that, where there is an assessment period in relation to an eligible scheme—

(a) in such circumstances as may be prescribed paragraph (2) does not operate to require the reduction of benefits payable to or in respect of any member;

(b) the commencement of a member's pension or payment of a member's lump sum or other benefits is, in such circumstances and on such terms and conditions as may be prescribed, to be postponed for the whole or any part of the assessment period for which he continues in employment after attaining normal pension age.

(11) For the purposes of paragraph (10)—

(a) "normal pension age", in relation to an eligible scheme and any pension or other benefit under it, means the age specified in the scheme rules as the earliest age at which the pension or other benefit becomes payable without actuarial adjustment (disregarding any scheme rule making special provision as to early payment on the grounds of ill health), and

(b) where different ages are so specified in relation to different parts of a pension or other benefit—

(i) paragraph (10) has effect as if those parts were separate pensions or, as the case may be, benefits, and

(ii) in relation to a part of a pension or other benefit, the reference in that paragraph to normal pension age is to be read as a reference to the age specified in the scheme rules as the earliest age at which that part becomes so payable.

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

(a [F54] a member of the scheme died before the commencement of the assessment period, and

(b) during the assessment period, a person becomes entitled under the scheme rules to a benefit of a prescribed description in respect of the member,

the benefit, or any part of it, is, for the purposes of paragraph (2), to be treated as having become payable before the commencement of the assessment period.

(13) Nothing in paragraph (2) or (3) applies to money purchase benefits.

F54 mod. by SR 2005/55

Loans to pay scheme benefits

123.—(1) Paragraph (2) applies where Article 122(2) applies in relation to an eligible scheme.

(2 [F55] Where the Board is satisfied that the trustees or managers of the scheme are not able to pay benefits under the scheme rules (reduced in accordance with Article 122(2)) as they fall due, it may, on an application by the trustees or managers, lend to them such amounts as the Board considers appropriate for the purpose of enabling them to pay those benefits.

(3) Where an amount lent to the trustees or managers of a scheme under paragraph (2) is outstanding at—

(a) the time the Board ceases to be involved with the scheme, or

(b) if earlier—

(i) the time during the assessment period when an order is made under Article 11(3A) of the 1995 Order directing the winding up of the scheme, or

(ii) where no such order is made during that period, the time when the assessment period ends because the conditions in Article 138(2) or (5) are satisfied,

that amount, together with the appropriate interest on it, falls to be repaid by the trustees or managers of the scheme to the Board at that time.

(4) No loan may be made under paragraph (2) after the time mentioned in paragraph (3)(b)(i).

(5) In paragraph (2) the reference to "benefits" does not include money purchase benefits.

(6) In paragraph (3) "the appropriate interest" on an amount lent under paragraph (2) means interest at the prescribed rate from the time the amount was so lent until repayment.

(7) Subject to this Article, the Board may make a loan under paragraph (2) on such terms as it thinks fit.

F55 mod. by SR 2005/55

Ill health pensions

Reviewable ill health pensions

124 [F56]**.**—(1) This Article applies where there is an assessment period in relation to an eligible scheme.

(2) The Board may review a reviewable ill health pension in respect of a member if—

(a [F57] disregarding Article 125, the member would be entitled to compensation under paragraph 3 of Schedule 6 in respect of the pension if the Board assumed responsibility for the scheme,

(b) the member did not attain normal pension age in respect of the pension before the assessment date, and

(c) the pension is attributable to the member's pensionable service.

(3) An ill health pension in respect of a member is reviewable for the purposes of paragraph (2) if the member is entitled to the pension by reason of an award under the scheme rules ("the award") which was made—

(a) in the period of three years ending immediately before the assessment date, or

(b) before the end of the prescribed period beginning with the assessment date, in response to an application made before that date.

(4) Where—

(a [F57] before the assessment date, an application was made under the scheme for the award of a pension before normal pension age by virtue of any provision of the scheme rules making special provision as to early payment of pension on grounds of ill health, and

(b) the trustees or managers of the scheme failed to decide the application before the end of the period mentioned in paragraph (3)(b),

Article 10 of the 1995 Order (civil penalties) applies to any trustee or manager who has failed to take all reasonable steps to secure that the application was decided before the end of that period.

(5 [F57] Where—

(a) the award was made in response to an application which—

(i) was made on or after the assessment date, or

(ii) was made before that date but not decided by the trustees or managers of the scheme before the end of the period mentioned in paragraph (3)(b), and

(b) in the absence of this paragraph, the award would take effect before the assessment date,

the award is, for the purposes of determining the compensation payable under this Chapter in a case where the Board assumes responsibility for the scheme, to be treated as taking effect after the date on which the decision to make the award was made.

(6) Regulations must prescribe the procedure to be followed in relation to the review of a pension under this Article and any subsequent decision under Article 125.

F56 mod. by SR 2005/171
F57 mod. by SR 2005/55

Effect of a review

125 [F58]**.**—(1) This Article applies where, during an assessment period in relation to an eligible scheme, the Board reviews an ill health pension by virtue of Article 124.

(2 [F59] Where the conditions of paragraph (3) are satisfied, the Board may determine that the compensation payable in respect of the pension, in a case where the Board assumes responsibility for the scheme, is to be determined in the prescribed manner on and after the relevant date.

(3) The conditions are—

(a [F59] that the annual rate of compensation which would be payable under this Part in respect of the pension at the assessment date, if the Board assumed responsibility for the scheme, exceeds the notional reviewed rate of compensation in respect of the pension,

(b) that the Board is satisfied—

(i) that the decision to make the award was made in ignorance of, or was based upon a mistake as to, a material fact relevant to the decision,

(ii) that, at the time that decision was made, the member knew or could reasonably have been expected to know of that fact and that it was relevant to the decision, and

(iii) that, had the trustees or managers known about, or not been mistaken as to, that fact, they could not reasonably have decided to make the award, and

(c) that the Board is not satisfied that the criteria in the admissible rules governing entitlement to early payment of pension on grounds of ill health were satisfied in respect of the member at any time after that decision but before the assessment date.

(4 [F59] For the purposes of paragraph (2) "the relevant date" means the date during the assessment period on which a scheme valuation in relation to the scheme becomes binding.

(5) The power to make a decision in respect of the pension under paragraph (2) may only be exercised at a time which falls—

(a [F59] during the assessment period but before the time the Board first approves a scheme valuation under Article 128 in relation to the scheme, and

(b) within a reasonable period beginning with the assessment date or, where the decision to make the award was made at a later date, that date.

(6) Regulations made for the purposes of paragraph (2) may, in particular, include provision applying any provision of Schedule 6 with such modifications as may be prescribed.

F58 mod. by SR 2005/171
F59 mod. by SR 2005/55

Articles 124 and 125: interpretation

126 [F60]**.**—(1 [F61] For the purposes of Articles 124 and 125—

"admissible rules" is to be construed in accordance with Schedule 6;

"assessment date" means the date on which the assessment period begins;

"ill health pension", in relation to a scheme, means a pension which, immediately before the assessment date, is a pension to which a person is entitled under the admissible rules

in circumstances where that entitlement arose before normal pension age by virtue of any provision of the admissible rules making special provision as to early payment of pension on grounds of ill health;

"normal pension age", in relation to a scheme and any pension under it, means the age specified in the admissible rules as the earliest age at which the pension becomes payable without actuarial adjustment (disregarding any admissible rule making special provision as to early payment on the grounds of ill health) and sub-paragraphs (2) and (3) of paragraph 34 of Schedule 6 apply in relation to this Article as they apply in relation to that Schedule;

"notional reviewed rate of compensation", in respect of an ill health pension, means—

(a) the annual rate of compensation which would be payable in respect of the pension at the assessment date, if the Board assumed responsibility for the scheme and the compensation so payable at that date was determined in accordance with regulations under Article 125(2), or

(b) if no such compensation would have been so payable at that date, nil;

"pensionable service" is to be construed in accordance with Schedule 6;

"scheme valuation", in relation to a scheme, means a valuation under Article 127 of the assets and protected liabilities of the scheme as at the time immediately before the assessment period begins.

(2) For the purposes of Article 124(4)—

(a) the definition of "normal pension age" in paragraph (1), and

(b) sub-paragraphs (2) and (3) of paragraph 34 of Schedule 6 as they apply by virtue of that definition,

have effect as if the references in those provisions to the admissible rules were references to the scheme rules.

(3) Paragraph 37(4) of Schedule 6 (references to "ill health" to be construed in accordance with regulations) applies in relation to Articles 124 and 125 and this Article as if, in that provision, the reference to that Schedule included a reference to those Articles and this Article.

(4 [F61] In those Articles references to the Board assuming responsibility for the scheme are to the Board assuming responsibility for the scheme in accordance with this Chapter at the time the assessment period in question comes to an end.

F60 mod. by SR 2005/171
F61 mod. by SR 2005/55

Valuation of assets and liabilities

Board's obligation to obtain valuation of assets and protected liabilities

127.—(1 [F62] This Article applies in a case within paragraph (1) of Article 111 or 112.

(2 [F63] [F62]For the purposes of determining whether the condition in paragraph (2)(a) of the Article in question is satisfied, the Board must, as soon as reasonably practicable, obtain an actuarial valuation of the scheme as at the relevant time.

(3) For those purposes, regulations may provide that any of the following are to be regarded as assets or protected liabilities of the scheme at the relevant time if prescribed requirements are met—

(a) a debt due to the trustees or managers of the scheme by virtue of a contribution notice issued under Article 34, 43 or 51 during the pre-approval period;

(b) an obligation arising under financial support for the scheme (within the meaning of Article 41) put in place during the pre-approval period in accordance with a financial support direction issued under Article 39;

(c) an obligation imposed by a restoration order under Article 48 during the pre–approval period in respect of a transaction involving assets of the scheme.

(4) For the purposes of this Article, regulations may prescribe how—

(a) the assets and the protected liabilities of eligible schemes, and

(b) their amount or value,

are to be determined, calculated and verified.

(5) Regulations under paragraph (4) may provide, in particular, that when calculating the amount or value of assets or protected liabilities of an eligible scheme at the relevant time which consist of any of the following—

(a) a debt (including any contingent debt) due to the trustees or managers of the scheme from the employer under Article 75 of the 1995 Order (deficiencies in the scheme assets),

(b) a debt due to the trustees or managers of the scheme by virtue of a contribution notice issued under Article 34, 43 or 51,

(c) an obligation arising under financial support for the scheme (within the meaning of Article 41) put in place in accordance with a financial support direction issued under Article 39, or

(d) an obligation imposed by a restoration order made under Article 48 in respect of a transaction involving assets of the scheme,

account must be taken in the prescribed manner of prescribed events which occur during the pre-approval period.

[[F64](5A) Paragraph (5B) applies if—

(a) during the pre#approval period any liability to provide pensions or other benefits to or in respect of any member or members under the scheme is discharged by virtue of regulations under Article 119(4) or the Board validating any action mentioned in Article 119(9), and

(b) at the relevant time the protected liabilities of the scheme include any cost within Article 115(1)(a) relating to compensation in respect of those pensions or other benefits.

(5B) If this paragraph applies, for the purposes mentioned in paragraph (2)—

(a) in determining that cost the effect of the discharge on the compensation payable in respect of those pensions or other benefits under paragraph 23A of Schedule 6 must be taken into account,

(b) in a case where assets of the scheme at the relevant time were transferred from the scheme during the pre#approval period in consideration for the discharge, those assets are not to be regarded as assets of the scheme at the relevant time, and

(c) in a case where assets that were not assets of the scheme at that time ("later#acquired assets") were so transferred, the value of the assets of the scheme at that time is to be reduced by the value of the later#acquired assets at the time of the discharge.**]**

(6) Subject to any provision made under paragraph (4), the matters mentioned in sub-paragraphs (a) and (b) of that paragraph are to be determined, calculated and verified in accordance with guidance issued by the Board.

(7 [F62] In calculating the amount of any liabilities for the purposes of this Article, a provision of the scheme rules which limits the amount of the scheme's liabilities by reference to the value of its assets is to be disregarded.

(8) The duty imposed by paragraph (2) ceases to apply if and when the Board ceases to be involved with the scheme.

(9) Nothing in paragraph (2) requires the actuarial valuation to be obtained during any period when the Board considers that an event may occur which, by virtue of regulations under paragraph (3) or (4)**[**[F64] or by virtue of paragraph (5B)**]**, may affect the value of the assets or the amount of the protected liabilities of the scheme for the purposes of the valuation.

(10) In a case where there are one or more reviewable ill health pensions (within the meaning of Article 124), nothing in paragraph (2) requires the actuarial valuation to be obtained during the period mentioned in Article 125(5)(b) (period during which Board may exercise its power to make a decision following a review) relating to any such pension.

(11) For the purposes of this Article—

(a [F63] [F62]"actuarial valuation", in relation to the scheme, means a written valuation of the assets and protected liabilities of the scheme which—

(i) is in the prescribed form and contains the prescribed information, and

(ii) is prepared and signed by—

(a) a person with prescribed qualifications or experience, or

(b) a person approved by the Department,

(b [F63] "the pre-approval period", in relation to the scheme, means the period which—

(i) begins immediately after the relevant time, and

(ii) ends immediately before the time the Board first approves a valuation of the scheme under Article 128 after the relevant time,

(c [F62] "the relevant time"

(i) in a case within paragraph (1) of Article 111, has the meaning given in paragraph (4)(b) of that Article, and

(ii [F62] in a case within paragraph (1) of Article 112, has the meaning given in paragraph (3)(b) of that Article, and

(d) references to "assets" do not include assets representing the value of any rights in respect of money purchase benefits under the scheme rules.[F62]

F62 mod. by SR 2005/91
F63 mod. by SR 2005/55
F64 SR 2005/137

Approval of valuation

128.—(1 [F65] [F66]This Article applies where the Board obtains a valuation in respect of a scheme under Article 127.

(2) Where the Board is satisfied that the valuation has been prepared in accordance with that Article, it must—

(a) approve the valuation, and

(b) give a copy of the valuation to—

(i) the Regulator,

(ii) the trustees or managers of the scheme, and

(iii [F66] any insolvency practitioner in relation to the employer or, if there is no such insolvency practitioner, the employer.

[F66](3) Where the Board is not so satisfied, it must obtain another valuation under that Article.

F65 mod. by SR 2005/55
F66 mod. by SR 2005/91

Binding valuations

129.—(1 [F67] For the purposes of this Chapter a valuation obtained under Article 127 is not binding until—

(a) it is approved under Article 128,

(b) the period within which the approval may be reviewed by virtue of Chapter 6 has expired, and

(c) if the approval is so reviewed—

(i) the review and any reconsideration,

(ii) any reference to the PPF Ombudsman in respect of the approval, and

(iii) any appeal against his determination or directions,

has been finally disposed of.

(2 [F68] [F67]Subject to Article 156(3) and (4) (treatment of fraud compensation payments), for the purposes of determining whether or not the condition in Article 111(2)(a) or, as the case may be, 112(2)(a) (condition that scheme assets are less than protected liabilities) is satisfied in relation to a scheme, a binding valuation is conclusive.

(3) Where a valuation becomes binding under this Article the Board must as soon as reasonably practicable give a notice to that effect together with a copy of the binding valuation to—

(a) the Regulator,

(b) the trustees or managers of the scheme, and

(c [F67] any insolvency practitioner in relation to the employer or, if there is no such insolvency practitioner, the employer.

[F67](4) A notice under paragraph (3) must be in the prescribed form and contain the prescribed information.

F67 mod. by SR 2005/91
F68 mod. by SR 2005/55

Refusal to assume responsibility

Schemes which become eligible schemes

130.—(1 [F69] [F70]Regulations may provide that where the Board is satisfied that an eligible scheme was not such a scheme throughout such period as may be prescribed, the Board must refuse to assume responsibility for the scheme under this Chapter.

(2 [F69] [F70]Where, by virtue of paragraph (1), the Board is required to refuse to assume responsibility for a scheme, it—

(a) must issue a notice to that effect (a "withdrawal notice"), and

(b) give a copy of that notice to—

(i) the Regulator,

(ii) the trustees or managers of the scheme, and

(iii [F70] any insolvency practitioner in relation to the employer or, if there is no such insolvency practitioner, the employer.

[F70](3) For the purposes of this Part a withdrawal notice issued by virtue of this Article is not binding until—

(a) the period within which the issue of the notice may be reviewed by virtue of Chapter 6 has expired, and

(b) if the issue of the notice is so reviewed—

(i) the review and any reconsideration,

(ii) any reference to the PPF Ombudsman in respect of the issue of the notice, and

(iii) any appeal against his determination or directions,

has been finally disposed of and the notice has not been revoked, varied or substituted.

(4) Where a withdrawal notice issued by virtue of this Article becomes binding, the Board must as soon as reasonably practicable give a notice to that effect together with a copy of the binding notice to—

(a) the Regulator,

(b) the trustees or managers of the scheme, and

(c [F70] any insolvency practitioner in relation to the employer or, if there is no such insolvency practitioner, the employer.

[F70](5) Notices under this Article must be in the prescribed form and contain such information as may be prescribed.

(6) A notice given under paragraph (4) must state the time from which the Board ceases to be involved with the scheme (see Article 133).

F69 mod. by SR 2005/55
F70 mod. by SR 2005/91

New schemes created to replace existing schemes

131.—(1 [F71] [F72]The Board must refuse to assume responsibility for a scheme ("the new scheme") under this Chapter where it is satisfied that—

(a) the new scheme was established during such period as may be prescribed,

(b) the employer in relation to the new scheme was, at the date of establishment of that scheme, also the employer in relation to a scheme established before the new scheme ("the old scheme"),

(c) a transfer or transfers of, or a transfer payment or transfer payments in respect of, any rights of members under the old scheme has or have been made to the new scheme, and

(d) the main purpose or one of the main purposes of establishing the new scheme and making the transfer or transfers, or transfer payment or transfer payments, was to enable those members to receive compensation under the pension compensation provisions in respect of their rights under the new scheme in circumstances where, in the absence of the transfer or transfers, regulations under Article 130 would have operated to prevent such payments in respect of their rights under the old scheme.

(2 [F71] Where, under paragraph (1), the Board is required to refuse to assume responsibility for a scheme, it—

(a) must issue a notice to that effect (a "withdrawal notice"), and

(b) give a copy of that notice to—

(i) the Regulator,

(ii) the trustees or managers of the scheme, and

(iii [F72] any insolvency practitioner in relation to the employer or, if there is no such insolvency practitioner, the employer.

[F72](3) For the purposes of this Part a withdrawal notice issued under this Article is not binding until—

(a) the period within which the issue of the notice may be reviewed by virtue of Chapter 6 has expired, and

(b) if the issue of the notice is so reviewed—

(i) the review and any reconsideration,

(ii) any reference to the PPF Ombudsman in respect of the issue of the notice, and

(iii) any appeal against his determination or directions,

has been finally disposed of and the notice has not been revoked, varied or substituted.

(4) Where a withdrawal notice issued under this Article becomes binding, the Board must as soon as reasonably practicable give a notice to that effect together with a copy of the binding notice to—

(a) the Regulator,

(b) the trustees or managers of the scheme, and

(c [F72] any insolvency practitioner in relation to the employer or, if there is no such insolvency practitioner, the employer.

[F72](5) Notices under this Article must be in the prescribed form and contain such information as may be prescribed.

(6) A notice given under paragraph (4) must state the time from which the Board ceases to be involved with the scheme (see Article 133).

F71 mod. by SR 2005/55
F72 mod. by SR 2005/91

Withdrawal following issue of Article 106(4) notice

132.—(1) This Article applies where—

(a) a notice under Article 106(4) (inability to confirm status of scheme) is issued in relation to an eligible scheme and becomes binding, and

(b) a withdrawal event has not occurred in relation to the scheme in respect of a withdrawal notice which has been issued during the period—

(i) beginning with the occurrence of the last insolvency event in relation to the employer, and

(ii) ending immediately before the notice under Article 106(4) becomes binding,

and the occurrence of such a withdrawal event in respect of a withdrawal notice issued during that period is not a possibility (see Article 133).

(2) The Board must determine whether any insolvency event—

(a) has occurred in relation to the employer since the issue of the notice under Article 106(4), or

(b) is likely to so occur before the end of the period of six months beginning with the date on which this Article applies.

(3) If the Board determines under paragraph (2) that no insolvency event has occurred or is likely to occur as mentioned in that paragraph, it must issue a notice to that effect (a "withdrawal notice").

(4) Where—

(a) no withdrawal notice is issued under paragraph (3) before the end of the period mentioned in paragraph (2)(b), and

(b) no further insolvency event occurs in relation to the employer during that period,

the Board must issue a notice to that effect (a "withdrawal notice").

(5) Where the Board is required to issue a withdrawal notice under this Article, it must give a copy of the notice to—

(a) the Regulator,

(b) the trustees or managers of the scheme, and

(c [F73] the employer.

[F73](6) For the purposes of this Part, a withdrawal notice issued under this Article is not binding until—

(a) the period within which the issue of the notice may be reviewed by virtue of Chapter 6 has expired, and

(b) if the issue of the notice is so reviewed—

(i) the review and any reconsideration,

(ii) any reference to the PPF Ombudsman in respect of the issue of the notice, and

(iii) any appeal against his determination or directions,

has been finally disposed of and the notice has not been revoked, varied or substituted.

(7) Where a withdrawal notice issued under this Article becomes binding, the Board must as soon as reasonably practicable give a notice to that effect together with a copy of the binding notice to—

(a) the Regulator,

(b) the trustees or managers of the scheme, and

(c [F73] the employer.

[F73](8) Notices under this Article must be in the prescribed form and contain such information as may be prescribed.

(9) A notice given under paragraph (7) must state the time from which the Board ceases to be involved with the scheme (see Article 133).

F73 mod. by SR 2005/91

Cessation of involvement with a scheme

Circumstances in which Board ceases to be involved with an eligible scheme

133.—(1) Where an assessment period begins in relation to an eligible scheme, the Board ceases to be involved with the scheme, for the purposes of this Part, on the occurrence of the first withdrawal event after the beginning of that period.

(2) For this purpose the following are withdrawal events in relation to a scheme—

(a) a withdrawal notice issued under Article 106(2)(b) (scheme rescue has occurred) becoming binding;

(b) a withdrawal notice issued under Article 114(3) (scheme rescue has occurred) becoming binding;

(c) a withdrawal notice issued under or by virtue of Article 130 or 131 (refusal to assume responsibility) becoming binding;

(d) a withdrawal notice issued under Article 132 (no insolvency event has occurred or is likely to occur) becoming binding,

and references in this Chapter to a "withdrawal event" are to be construed accordingly.

(3) Paragraph (4) applies where a withdrawal notice mentioned in paragraph (2) is issued in relation to a scheme and becomes binding and—

(a) an insolvency event in relation to the employer occurs during the interim period and, if paragraph (4) did not apply, the event would not be a qualifying insolvency event within the meaning given by paragraph (3) of Article 111 solely because the condition in head (ii) of sub-paragraph (b) of that paragraph would not be satisfied, or

(b) an application under Article 113(1) is made, or a notification under Article 113(5)(a) is given, in relation to the scheme during the interim period and, if paragraph (4) did not apply, the application or notification would be disregarded for the purposes of—

(i) paragraph (1) of Article 112 by virtue of paragraph (4) of that Article, and

(ii) paragraph (4) of Article 116 by virtue of paragraph (5) of that Article.

(4) In such a case, the withdrawal notice is to be treated for the purposes of paragraphs (1) and (2), as if the time when it became binding was the time immediately before—

(a) in a case falling within paragraph (3)(a), the occurrence of the insolvency event, and

(b) in a case falling within paragraph (3)(b), the making of the application under Article 113(1) or, as the case may be, the giving of the notification under Article 113(5)(a).

(5) For the purposes of paragraph (3), the "interim period" in relation to a scheme means the period beginning with the issuing of the withdrawal notice in relation to the scheme and ending with that notice becoming binding.

(6) For the purposes of this Chapter—

(a) the occurrence of a withdrawal event in relation to a scheme in respect of a withdrawal notice issued during a particular period ("the specified period") is a possibility until each of the following is no longer reviewable—

(i) any withdrawal notice which has been issued in relation to the scheme during the specified period;

(ii) any failure to issue such a withdrawal notice during the specified period;

(iii) any notice which has been issued by the Board under Chapter 2 or this Chapter which is relevant to the issue of a withdrawal notice in relation to the scheme during the specified period or to such a withdrawal notice which has been issued during that period becoming binding;

(iv) any failure to issue such a notice as is mentioned in head (iii), and

(b) the issue of, 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, and

(ii) if the matter is so reviewed, until—

(a) the review and any reconsideration,

(b) any reference to the PPF Ombudsman in respect of the matter, and

(c) any appeal against his determination or directions,

has been finally disposed of.

Consequences of the Board ceasing to be involved with a scheme

134.—(1) Where—

(a) an assessment period comes to an end by virtue of the Board ceasing to be involved with an eligible scheme, and

(b) during the assessment period any amount of any benefit payable to a member, or to a person in respect of a member, under the scheme rules was not paid by reason of Article 122 (requirement to pay benefits in accordance with the pension compensation provisions),

that amount falls due to the member, or as the case may be, person at the end of that period.

(2) Where the winding up of the scheme began before the end of the assessment period (whether by virtue of Article 198 (backdating the winding up of eligible schemes) or otherwise), the reference in paragraph (1)(b) to the amount of any benefit payable to a member, or to a person in respect of a member, under the scheme rules is a reference to the amount so payable taking account of any reduction required by virtue of Articles 73 to 73B of the 1995 Order (provisions relating to the winding up of certain schemes).

(3) Where—

(a) an assessment period comes to an end by virtue of the Board ceasing to be involved with an eligible scheme, and

(b) during the assessment period the amount of benefit paid to a member, or to a person in respect of a member, under the scheme rules exceeded the amount that would have been payable in the absence of Article 122(6) (requirement to disregard winding up when paying benefits during assessment period),

the trustees or managers of the scheme must, at the end of that period, take such steps as they consider appropriate (including steps to adjust future payments under the scheme rules) to recover an amount equal to the excess from the person to whom it was paid.

(4) Paragraphs (1) to (3) are without prejudice to Article 73A(2)(b) of the 1995 Order (requirement to adjust benefits paid to reflect liabilities which can be met on winding up).

(5) Regulations may provide that, in cases within sub-paragraph (a) of paragraph (1), benefits are to accrue under the scheme rules, in such circumstances as may be prescribed, to or in respect of members of the scheme in respect of any specified period of service being service in employment which, but for Article 117(5), would have qualified the member in question for those benefits under the scheme rules.

(6) Regulations under paragraph (5) may in particular make provision—

(a) for benefits not to accrue to, or in respect of, a member unless contributions are paid by or on behalf of the member towards the scheme within a prescribed period;

(b) for contributions towards the scheme which, but for Article 117, would have been payable by or on behalf of the employer (otherwise than on behalf of an employee) during the assessment period, to fall due;

(c) requiring that such contributions as are mentioned in sub-paragraph (a) or (b) are accepted for the assessment period or any part of that period;

(d) modifying Article 28 of the 1999 Order (reduction of benefit where a person's shareable rights are subject to a pension debit), in its application in relation to cases where benefits accrue under the scheme by virtue of regulations under paragraph (5).

(7) In this Article "contributions" means, in relation to an eligible scheme, contributions payable towards the scheme by or on behalf of the employer or the active members of the scheme in accordance with the schedule of contributions maintained under Article 206 in respect of the scheme.

Reconsideration

Application for reconsideration

135.—(1 [F74] Where paragraph (2) or (3) applies in relation to an eligible scheme, the trustees or managers of the scheme may make an application to the Board under this Article for it to assume responsibility for the scheme in accordance with this Chapter.

(2) This paragraph applies where—

(a) a scheme failure notice has been issued under Article 106(2)(a) in relation to the scheme, that notice has become binding and the trustees or managers have received a copy of the binding notice under Article 109(3),

(b [F74] the valuation obtained by the Board under Article 127 in respect of the scheme has become binding, and

(c [F74] the Board would have been required to assume responsibility for the scheme under Article 111 but for the fact that the condition in paragraph (2)(a) of that Article was not satisfied.

(3) This paragraph applies where—

(a) the Board has issued a scheme failure notice under paragraph (2) of Article 114 in relation to the scheme, that notice has become binding and the trustees or managers have received a copy of the binding notice under paragraph (7) of that Article,

(b [F74] the valuation obtained by the Board under Article 127 in respect of the scheme has become binding, and

(c [F74] the Board would have been required to assume responsibility for the scheme under Article 112 but for the fact that the condition in paragraph (2)(a) of that Article was not satisfied.

(4) An application under this Article must be in the prescribed form, contain the prescribed information and be accompanied by—

(a) a protected benefits quotation in the prescribed form, and

(b) audited scheme accounts for a period which—

(i) begins with such date as may be determined in accordance with regulations, and

(ii) ends with a date which falls within the prescribed period ending with the day on which the application is made.

(5) An application under this Article must be made within the authorised period.

(6) In this Article "the authorised period" means the prescribed period which begins—

(a) where paragraph (2) applies, with the later of—

(i) the day on which the trustees or managers received the copy of the binding notice mentioned in sub-paragraph (a) of that paragraph, and

(ii) the day on which they received a copy of the binding valuation mentioned in sub-paragraph (b) of that paragraph, and

(b) where paragraph (3) applies, with the later of—

(i) the day on which the trustees or managers received the copy of the binding notice mentioned in sub-paragraph (a) of that paragraph, and

(ii) the day on which they received a copy of the binding valuation mentioned in sub-paragraph (b) of that paragraph.

(7) Where the Board receives an application under paragraph (1), it must give a copy of the application to the Regulator.

(8 [F74] [F75]For the purposes of this Article—

"audited scheme accounts", in relation to a scheme, means—

(a) accounts obtained by the trustees or managers of the scheme ("the scheme accounts") which are prepared in accordance with paragraphs (9) to (11) and audited by the auditor in relation to the scheme, and

(b) a report by the auditor, in the prescribed form, as to whether or not such requirements as may be prescribed are satisfied in relation to the scheme accounts;

"auditor", in relation to a scheme, has the meaning given by Article 47 of the 1995 Order;

"protected benefits quotation", in relation to a scheme, means a quotation for one or more annuities from one or more insurers, being companies willing to accept payment in respect of the members from the trustees or managers of the scheme, which would provide in respect of each member of the scheme from the reconsideration time—

(a) 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 assumed responsibility for the scheme by virtue of this Article, or

(b) benefits in accordance with the member's entitlement or accrued rights (including pension credit rights within the meaning of Article 121(1) of the 1995 Order) under the scheme rules (other than his entitlement or rights in respect of money purchase benefits),

whichever benefits can, in the case of that member, be secured at the lower cost;

"the reconsideration time", in relation to an application under this Article, means the time immediately before the end of the period to which the audited scheme accounts mentioned in paragraph (4)(b) relate.

(9) The scheme accounts are prepared in accordance with this paragraph if, subject to paragraphs (10) and (11), they—

(a [F74] include a statement of the assets of the scheme (excluding any assets representing the value of any rights in respect of money purchase benefits under the scheme rules) as at the reconsideration time, and

(b) are prepared in accordance with such other requirements as may be prescribed.

(10) Subject to paragraph (11), regulations under paragraph (4) of Article 127 (other than regulations made by virtue of paragraph (5) of that Article), and guidance under paragraph (6) of that Article, apply to the scheme accounts as they apply for the purposes of a valuation under that Article.

(11) Regulations may provide that, where an asset of a prescribed description has been acquired during the assessment period, the value assigned to the asset as at the reconsideration time is to be determined, for the purposes of the scheme accounts, in the prescribed manner.

(12) For the purposes of this Article—

(a) regulations may prescribe how the cost of securing the benefits mentioned in paragraph (a) of the definition of "protected benefits quotation" in paragraph (8) is to be determined, calculated and verified, and

(b) subject to any provision made under sub-paragraph (a), that cost is to be determined, calculated and verified in accordance with guidance issued by the Board.

(13) Where the scheme is being wound up, for the purposes of determining the benefits which fall within paragraph (b) of the definition of "protected benefits quotation" in paragraph (8) no account is to be taken of the winding up of the scheme.

F74 mod. by SR 2005/55
F75 mod. by SR 2005/91

Commencement Information

I7 Art. 135 partly in operation; art. 135 not in operation at date of making see art. 1(2); art. 135(4)(6)(9)(b) in operation for certain purposes at 25.2.2005 and wholly in operation at 6.4.2005 by S.R. 2005/48, art. 2(4), Sch. Pt. 4; art. 135(8) partly in operation at 25.2.2005 and 6.4.2005 by S.R. 2005/48, art. 2(4), Sch. Pt. 4; art. 135 partly in operation at 6.4.2005 by S.R. 2005/48, art. 2(7), Sch. Pt. 7; art. 135(8) in operation at 1.4.2006 in so far as not already in operation by S.R. 2006/95, **art. 2(b)**, Sch. Pt. 2

Duty to assume responsibility following reconsideration

136.—(1 [F76] This Article applies where an application is made in respect of a scheme in accordance with Article 135.

(2 [F77] [F76]The Board must assume responsibility for the scheme in accordance with this Chapter if it is satisfied that the value of the assets of the scheme at the reconsideration time is less than the aggregate of—

(a) the amount quoted in the protected benefits quotation accompanying the application,

(b) the amount at that time of the liabilities of the scheme which are not liabilities to, or in respect of, members of the scheme, and

(c) the estimated costs of winding up the scheme at that time.

(3) Where the Board makes a determination for the purposes of paragraph (2), it must issue a determination notice and give a copy of that notice to—

(a) the trustees or managers of the scheme, and

(b) the Regulator.

[F76](4) In paragraph (3) "determination notice" means a notice which is in the prescribed form and contains such information about the determination as may be prescribed.

(5 [F77] But where the Board is satisfied of the matters mentioned in paragraph (2), it is not required to assume responsibility for the scheme under paragraph (2) until the determination notice issued under paragraph (3) becomes binding.

(6) For the purposes of paragraph (5) a determination notice is not binding until—

(a) the period within which the issue of the notice may be reviewed by virtue of Chapter 6 has expired, and

(b) if the issue of the notice is so reviewed—

(i) the review and any reconsideration,

(ii) any reference to the PPF Ombudsman in respect of the issue of the notice, and

(iii) any appeal against his determination or directions,

has been finally disposed of and the notice has not been revoked, varied or substituted.

(7) Where a determination notice issued under paragraph (3) becomes binding, the Board must as soon as reasonably practicable give a notice to that effect together with a copy of the binding notice to—

(a) the trustees or managers of the scheme, and

(b) the Regulator.

[F76](8) A notice under paragraph (7) must be in the prescribed form and contain such information as may be prescribed.

(9) The Board may—

(a [F77] for the purposes of paragraph (2), obtain its own valuation of the assets of the scheme as at the reconsideration time (within the meaning of Article 135), and

(b [F77] for the purposes of paragraph (2)(b), obtain its own valuation of the liabilities of the scheme as at that time;

and where it does so, paragraphs (9)(b), (10) and (11) of Article 135 apply in relation to the valuation as they apply in relation to the scheme accounts (within the meaning of that Article).

(10) Regulations under paragraph (4) of Article 127, and guidance under paragraph (6) of that Article, apply for the purposes of this Article in relation to the estimated costs within paragraph (2)(c) as they apply for the purposes of Article 127 in relation to protected liabilities within Article 115(1)(c).

(11 [F77] In this Article references to the assets of the scheme do not include assets representing the value of any rights in respect of money purchase benefits under the scheme rules.

(12) This Article is subject to Articles 130 and 131 (refusal to assume responsibility for a scheme).

F76 mod. by SR 2005/91
F77 mod. by SR 2005/55

VALID FROM 01/11/2006

Closed schemes

Closed schemes

137.—(1 [F78] This Article applies where Article 135(2) or (3) (scheme rescue not possible but scheme has sufficient assets to meet the protected liabilities) applies in relation to an eligible scheme.

(2 [F78] If the trustees or managers of the scheme are unable to obtain a full buy-out quotation, they must, within the authorised period, apply to the Board for authority to continue as a closed scheme.

(3 [F79] For the purposes of determining whether they must make an application under paragraph (2), the trustees or managers of the scheme must take all reasonable steps to obtain a full buy-out quotation in respect of the scheme.

(4) An application under paragraph (2) must—

(a) be in the prescribed form and contain the prescribed information, and

(b) be accompanied by evidence in the prescribed form which shows that the trustees or managers of the scheme have complied with the obligation under paragraph (3) but were unable to obtain a full buy-out quotation.

(5 [F78] Where the Board receives an application under paragraph (2), if it is satisfied that the trustees or managers have complied with the obligation under paragraph (3) but were unable to obtain a full buy-out quotation, it must authorise the scheme to continue as a closed scheme.

(6) Where the Board determines an application in respect of a scheme under this Article, it must issue a determination notice and give a copy of that notice to—

(a) the trustees or managers of the scheme, and

(b) the Regulator.

F78(7 F79 F78In this Article—

"authorised period" has the same meaning as in Article 135;

"determination notice" means a notice which is in the prescribed form and contains such information about the determination as may be prescribed;

"full buy-out quotation", in relation to a scheme, means a quotation for one or more annuities from one or more insurers (being companies willing to accept payment in respect of the members from the trustees or managers of the scheme) which would provide in respect of each member of the scheme, from a relevant date, benefits in accordance with the member's entitlement or accrued rights, including pension credit rights, under the scheme rules (other than his entitlement or rights in respect of money purchase benefits);

"pension credit rights" has the meaning given by Article 121(1) of the 1995 Order;

"relevant date" means a date within the authorised period.

(8) If the trustees or managers of the scheme fail to comply with paragraph (2) or (3), Article 10 of the 1995 Order (civil penalties) applies to any trustee or manager who has failed to take all reasonable steps to secure compliance.

F78 mod. by SR 2005/91
F79 mod. by SR 2005/55

Commencement Information

I8 Art. 137 wholly in operation at 6.4.2007; art. 137 not in operation at date of making see art. 1(2); Art. 137(4)(7) in operation for certain purposes at 1.11.2006 and wholly in operation at 6.4.2007 by S.R. 2006/352, **art. 2(3)**, Sch. Pt. 1; art. 137 in operation at 6.4.2007 in so far as it is not already in operation by S.R. 2006/352, **art. 2(5)**, Sch. Pt. 2

Winding up

Requirement to wind up schemes with sufficient assets to meet protected liabilities

138.—(1) Where, in relation to an eligible scheme, an assessment period within Article 116(2) or (4) comes to an end because the conditions in paragraph (2) are satisfied, the trustees or managers of the scheme must—

(a) wind up the scheme, or

(b) where the winding up of the scheme began before the assessment period (whether by virtue of Article 198 or otherwise), continue the winding up of the scheme.

(2 F80 The conditions are—

(a F80 that paragraph (2) or (3) of Article 135 (scheme rescue not possible but scheme has sufficient assets to meet the protected liabilities) applies in relation to the scheme,

(b) that—

(i) the trustees or managers did not make an application under that Article or Article 137(2) within the authorised period (within the meaning of Article 135(6)) (or any such application has been withdrawn), or

(ii) if such an application was made, it has been finally determined, and

(c [F81] that, if an application was made under Article 135, the Board is not required to assume responsibility for the scheme by virtue of Article 136(2).

(3) For the purposes of paragraph (2)(b)(ii) an application is not finally determined until—

(a) the Board has issued a determination notice in respect of the application under Article 136 or, as the case may be, 137,

(b) the period within which the issue of the notice may be reviewed by virtue of Chapter 6 has expired, and

(c) if the issue of the notice is so reviewed—

(i) the review and any reconsideration,

(ii) any reference to the PPF Ombudsman in respect of the issue of the notice, and

(iii) any appeal against his determination or directions,

has been finally disposed of.

(4) Where, in relation to an eligible scheme, an assessment period within Article 143(3) comes to an end because the conditions in paragraph (5) are satisfied, the trustees or managers of the scheme must continue the winding up of the scheme begun (whether in accordance with this Article or otherwise) before that assessment period.

(5) The conditions are—

(a) that an application is made by, or notice is given to, the trustees or managers of the scheme under Article 141 (applications and notifications where closed schemes have insufficient assets),

(b [F81] that the valuation obtained by the Board in respect of the scheme under Article 142(3) has become binding, and

(c [F81] that the Board is not required to assume responsibility for the scheme by virtue of Article 142(1) (duty to assume responsibility for closed scheme).

(6 [F80] Where a scheme is wound up in accordance with paragraph (1)(a), the winding up is to be taken as beginning immediately before the assessment period.

(7) Without prejudice to the power to give directions under Article 118, but subject to any order made under paragraph (8), the Board may give the trustees or managers of the scheme directions relating to the manner of the winding up of the scheme under this Article (and may vary or revoke any such direction given by it).

(8) The Regulator may by order direct any person specified in the order—

(a) to take such steps as are so specified as it considers are necessary as a result of—

(i) the winding up of the scheme beginning, by virtue of paragraph (6), immediately before the assessment period, or

(ii) the winding up of the scheme being continued under paragraph (1)(b), and

(b) to take those steps within a period specified in the order.

(9) If the trustees or managers of a scheme fail to comply with a direction to them under paragraph (7), or contained in an order under paragraph (8), Article 10 of the 1995 Order (civil penalties) applies to any trustee or manager who has failed to take all reasonable steps to secure compliance.

(10) That Article also applies to any other person who, without reasonable excuse, fails to comply with a direction to him contained in an order under paragraph (8).

(11 [F80] The winding up of a scheme under this Article is as effective in law as if it had been made under powers conferred by or under the scheme.

(12 [F80] This Article must be complied with in relation to a scheme—

(a) in spite of any statutory provision or rule of law, or any rule of the scheme, which would otherwise operate to prevent the winding up, and

(b) without regard to any such statutory provision, 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.

(13) Where an assessment period in relation to an eligible scheme comes to an end by virtue of the conditions in paragraph (2) or (5) being satisfied, paragraphs (1) to (4) of Article 134 apply as they apply where an assessment period comes to an end by virtue of the Board ceasing to be involved with the scheme, except that in paragraph (2) of that Article the reference to Article 198 is to be read as a reference to paragraph (6) of this Article.

(14) Where a public service pension scheme is required to be wound up under this Article, the appropriate authority may by order make provision modifying any statutory provision in which the scheme is contained or under which it is made.

(15) In paragraph (14), "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.

F80 mod. by SR 2005/91
F81 mod. by SR 2005/55

Commencement Information

I9 Art. 138 wholly in operation at 6.4.2007; art. 138 not in operation at date of making see art. 1(2); art. 138(1)(2)(a)(c)(6)-(15) in operation at 6.4.2005 by S.R. 2005/48, art. 2(7), Sch. Pt. 7; art. 138 in operation at 6.4.2007 in so far as it is not already in operation by S.R. 2006/352, **art. 2(5)**, Sch. Pt. 2

VALID FROM 01/11/2006

Provisions applying to closed schemes

Treatment of closed schemes

139.—(1 [F82] In this Article "closed scheme" means an eligible scheme which is authorised under Article 137 to continue as a closed scheme.

(2 [F82] The provisions mentioned in paragraph (3) apply in relation to a closed scheme at any time when the trustees or managers of the scheme are required to wind up or continue winding up the scheme under Article 138 as if that time fell within an assessment period in relation to the scheme.

(3) The provisions are—

(a) Article 36(5) and (6) (Board to act as creditor for debt due by virtue of a contribution notice under Article 34);

(b) Article 45(5) and (6) (Board to act as creditor for debt due by virtue of a contribution notice under Article 43);

(c) Article 50(5) and (6) (Board to act as creditor for debt due by virtue of a restoration order under Article 48);

(d) Article 52(5) and (6) (Board to act as creditor for debt due by virtue of a contribution notice under Article 51);

(e) Article 117 (admission of new members, payment of contributions etc.);

(f) Article 118 (directions);

(g) Article 121 (Board to act as creditor of the employer).

(4) Regulations may require the trustees or managers of a closed scheme in relation to which the provisions mentioned in paragraph (3) apply to comply with such requirements as may be prescribed when providing for the discharge of any liability to, or in respect of, a member of the scheme for pensions or other benefits.

F82 mod. by SR 2005/91

Commencement Information

I10 Art. 139 wholly in operation at 6.4.2007; art. 139 not in operation at date of making see art. 1(2); Art. 139(1)(4) in operation for certain purposes at 1.11.2006 and wholly in operation at 6.4.2007 by S.R. 2006/352, **art. 2(3)**, Sch. Pt. 1; art. 139 in operation at 6.4.2007 in so far as it is not already in operation by S.R. 2006/352, **art. 2(5)**, Sch. Pt. 2

Valuations of closed schemes

140.—(1 [F83] [F84]Regulations may make provision requiring the trustees or managers of closed schemes to obtain actuarial valuations of the scheme at such intervals as may be prescribed for the purposes of enabling them to determine—

(a) the benefits payable under the scheme rules;

(b) whether to make an application under Article 141.

(2) Regulations under this Article may prescribe how—

(a [F84] the assets, the full scheme liabilities and the protected liabilities in relation to closed schemes, and

(b) their amount or value,

are to be determined, calculated and verified.

(3) Subject to any provision made under paragraph (2), those matters are to be determined, calculated and verified in accordance with guidance issued by the Board.

(4) In calculating the amount of any liabilities for the purposes of a valuation required by virtue of this Article, a provision of the scheme rules which limits the amount of the scheme's liabilities by reference to the value of its assets is to be disregarded.

(5 [F83] [F84]Nothing in regulations under this Article may require the trustees or managers of a closed scheme to obtain an actuarial valuation of the scheme until—

(a) the period within which the issue of the determination notice, under Article 137(6), in respect of the Board's determination to authorise the scheme to continue as a closed scheme, may be reviewed by virtue of Chapter 6 has expired, and

(b) if the issue of the notice is so reviewed—

(i) the review and any reconsideration,

(ii) any reference to the PPF Ombudsman in respect of the issue of the notice, and

(iii) any appeal against his determination or directions,

has been finally disposed of and the notice has not been revoked, varied or substituted.

(6 [F83] In this Article, in relation to a scheme—

"actuarial valuation" means a written valuation of—

(a) the scheme's assets,

(b) the full scheme liabilities, and

(c) the protected liabilities in relation to the scheme,

prepared and signed by the actuary;

"the actuary" means—

(a) the actuary appointed under Article 47(1)(b) of the 1995 Order (professional advisers) in relation to the scheme, or

(b) if no such actuary has been appointed—

(i) a person with prescribed qualifications or experience, or

(ii) a person approved by the Department;

"assets" do not include assets representing the value of any rights in respect of money purchase benefits under the scheme rules;

"closed scheme" has the same meaning as in Article 139;

"full scheme liabilities" means—

(a) the liabilities under the scheme rules to or in respect of members of the scheme,

(b) other liabilities of the scheme, and

(c) the estimated cost of winding up the scheme;

"liabilities" do not include liabilities in respect of money purchase benefits under the scheme rules.

F83 mod. by SR 2005/55
F84 mod. by SR 2005/91

Commencement Information

I11 Art. 140 wholly in operation at 6.4.2007; art. 140 not in operation at date of making see art. 1(2); Art. 140(1)(2)(5)(6) in operation for certain purposes at 1.11.2006 and wholly in operation at 6.4.2007 by S.R. 2006/352, **art. 2(3)**, Sch. Pt. 1; art. 140 in operation at 6.4.2007 in so far as it is not already in operation by S.R. 2006/352, **art. 2(5)**, Sch. Pt. 2

VALID FROM 01/11/2006

Reconsideration of closed schemes

Applications and notifications where closed schemes have insufficient assets

141.—(1 [F85] If at any time the trustees or managers of a closed scheme become aware that the value of the assets of the scheme is less than the amount of the protected liabilities in relation to the scheme, they must, before the end of the prescribed period beginning with that time, make an application to the Board for it to assume responsibility for the scheme.

(2) Where the Board receives an application under paragraph (1), it must give a copy of the application to the Regulator.

(3 [F85] If at any time the Regulator becomes aware that the value of the assets of the scheme is less than the amount of the protected liabilities in relation to the scheme, it must give the Board a notice to that effect.

(4) Where the Board receives a notice under paragraph (3), it must give the trustees or managers of the scheme a notice to that effect.

[F86](5) The duty imposed by paragraph (1) does not apply where the trustees or managers of a closed scheme become aware as mentioned in that paragraph by reason of a notice given to them under paragraph (4).

(6) The duty imposed by paragraph (3) does not apply where the Regulator becomes aware as mentioned in that paragraph by reason of a copy of an application made by the trustees or managers of the closed scheme being given to it under paragraph (2).

(7) Regulations may require notices and applications under this Article to be in the prescribed form and to contain the prescribed information.

(8) If the trustees or managers of a closed scheme fail to comply with paragraph (1), Article 10 of the 1995 Order (civil penalties) applies to any trustee or manager who has failed to take all reasonable steps to secure compliance.

(9 [F85] In this Article—

"assets", in relation to a scheme, do not include assets representing the value of any rights in respect of money purchase benefits under the scheme rules;

"closed scheme" has the same meaning as in Article 139.

F85 mod. by SR 2005/55
F86 mod. by SR 2005/91

Commencement Information

I12 Art. 141 wholly in operation at 6.4.2007; art. 141 not in operation at date of making see art. 1(2); Art. 141(1)(7)(9) in operation for certain purposes at 1.11.2006 and wholly in operation at 6.4.2007 by S.R. 2006/352, **art. 2(3)**, Sch. Pt. 1; art. 141 in operation at 6.4.2007 in so far as it is not already in operation by S.R. 2006/352, **art. 2(5)**, Sch. Pt. 2

VALID FROM 06/04/2007

Duty to assume responsibility for closed schemes

142.—(1 [F87] Where the trustees or managers of a closed scheme—

(a) make an application under paragraph (1) of Article 141, or

(b) receive a notice from the Board under paragraph (4) of that Article,

the Board must assume responsibility for the scheme in accordance with this Chapter if the value of the assets of the scheme at the relevant time was less than the amount of the protected liabilities at that time.

(2 [F87] In paragraph (1) the reference to the assets of the scheme is a reference to those assets excluding any assets representing the value of any rights in respect of money purchase benefits under the scheme rules.

(3 [F87] For the purposes of determining whether the condition in paragraph (1) is satisfied, the Board must, as soon as reasonably practicable, obtain an actuarial valuation (within the meaning of Article 127) of the scheme as at the relevant time.

(4) Subject to paragraph (6), paragraph (3) of Article 127 applies for those purposes as it applies for the purposes mentioned in paragraph (2) of that Article (and the definitions contained in paragraphs (b) and (d) of paragraph (11) of that Article apply accordingly).

(5) Subject to paragraph (6), the following provisions apply in relation to a valuation obtained under paragraph (3) as they apply in relation to a valuation obtained under Article 127—

(a) paragraphs (4) to (7) and (11)(b) and (d) of that Article;

(b) Article 128 (approval of valuation), other than paragraph (2)(b)(iii) (duty to give copy of approved valuation to employer's insolvency practitioner);

(c) Article 129 (binding valuations), other than paragraph (3)(c) (duty to give copy of binding valuation to employer's insolvency practitioner).

(6) In the application of Articles 127 and 129 by virtue of paragraph (4) or (5)—

(a) paragraphs (3), (5)**[**[F88], (5A), (5B)**]** and (11)(b) and (c) of Article 127 apply as if the references to "the relevant time" were references to that term as defined in paragraph (8), and

(b) paragraph (2) of Article 129 applies as if the reference to Article 112(2)(a) included a reference to paragraph (1) of this Article.

(7) An application under paragraph (1) of Article 141, or notification under paragraph (4) of that Article, is to be disregarded for the purposes of paragraph (1) if it is made or given during an assessment period (see Articles 116 and 143) in relation to the scheme which began before the application was made or notification was given.

(8) In this Article—

"closed scheme" has the same meaning as in Article 139;

"the relevant time" means the time immediately before the application mentioned in paragraph (1)(a) was made, or (as the case may be) the notice mentioned in paragraph (1)(b) was received, by the trustees or managers of the scheme.

F87 mod. by SR 2005/55
F88 SR 2005/137

VALID FROM 06/04/2007

Closed schemes: further assessment periods

143.—(1) Paragraph (3) applies where—

(a) an application is made under paragraph (1) of Article 141 in relation to a closed scheme, or

(b) the trustees or managers of the scheme receive a notice under paragraph (4) of that Article.

(2) For the purposes of paragraph (1) an application under paragraph (1) of Article 141, or notification under paragraph (4) of that Article, is to be disregarded if it is made or given

during an assessment period (see Article 116 and this Article) in relation to the scheme which began before the application was made or notification was given.

(3) An assessment period—

(a) begins when the application is made or the notice is received by the trustees or managers of the scheme, and

(b) ends when—

(i) the trustees or managers receive a transfer notice under Article 144, or

(ii [F89] the conditions in Article 138(5) (closed scheme with sufficient assets to meet protected liabilities etc.) are satisfied in relation to the scheme,

whichever first occurs.

(4) In this Article "closed scheme" has the same meaning as in Article 139.

F89 mod. by SR 2005/55

Assumption of responsibility for a scheme

Transfer notice

144 [F90]**.**—(1 [F90] [F91]This Article applies where the Board is required to assume responsibility for a scheme under Article 111, 112, 136 or 142.

[F91](2) The Board must give the trustees or managers a notice (a "transfer notice").

[F91](3) In a case to which Article 111 or 112 applies, a transfer notice may not be given until the valuation obtained under Article 127 is binding.

(4) In a case to which Article 142 applies, a transfer notice may not be given until the valuation obtained under paragraph (3) of that Article is binding.

[F90F91](5 [F90] A transfer notice may not be given in relation to a scheme during any period when the issue of, or failure to issue, a withdrawal notice under or by virtue of Article 130 or 131 (refusal to assume responsibility) is reviewable (see Article 133(6)(b)).

(6 [F91] The Board must give a copy of any notice given under paragraph (2) to—

(a) the Regulator, and

(b) any insolvency practitioner in relation to the employer or, if there is no such insolvency practitioner, the employer.

(7) This Article is subject to Article 156(1) and (2) (no transfer notice within first 12 months of assessment period or when fraud compensation application is pending).[F90]

F90 mod. by SR 2005/55
F91 mod. by SR 2005/91

Commencement Information

I13 Art. 144 wholly in operation at 6.4.2007; art. 144 not in operation at date of making see art. 1(2); Art. 144 partly in operation at 6.4.2005 by S.R. 2005/48, art. 2(7), Sch. Pt. 7; Art. 144(7) in operation at 6.4.2006 in so far as not already in operation by S.R. 2006/95, **art. 2(c)**, Sch. Pt. 3; Art. 144 in operation at 6.4.2007 in so far as it is not already in operation by S.R. 2006/352, **art. 2(5)**, Sch. Pt. 2

. . . . . F92

F92 mod. by SR 2005/91

Effect of Board assuming responsibility for a scheme

145.—(1 F93 Where a transfer notice is given to the trustees or managers of an eligible scheme, the Board assumes responsibility for the scheme in accordance with this Chapter.

(2 F93 The effect of the Board assuming responsibility for a scheme is that—

(a F93 the property, rights and liabilities of the scheme are transferred to the Board, without further assurance, with effect from the time the trustees or managers receive the transfer notice,

(b F93 F94the trustees or managers of the scheme are discharged from their pension obligations from that time, and

(c) from that time the Board is responsible for securing that compensation is (and has been) paid in accordance with the pension compensation provisions,

and, accordingly, the scheme is to be treated as having been wound up immediately after that time.

(3 F93 In paragraph (2)(a) the reference to liabilities of the scheme does not include any liability to, or in respect of, any member of the scheme, other than—

(a) liabilities in respect of money purchase benefits, and

(b) such other liabilities as may be prescribed.

(4) In paragraph (2)(b) "pension obligations" in relation to the trustees or managers of the scheme means—

(a F94 their obligations to provide pensions or other benefits to or in respect of persons (including any obligation to provide guaranteed minimum pensions within the meaning of the Pension Schemes Act), and

(b) their obligations to administer the scheme in accordance with the scheme rules and this or any other statutory provision.

(5 F93 Schedule 5 makes provision in respect of the transfer of the property, rights and liabilities of a scheme under paragraph (2)(a).

(6) Regulations may make further provision regarding such transfers.

(7) Without prejudice to the generality of paragraph (6), regulations may authorise the Board to modify a term of a relevant contract of insurance if—

(a) any rights or liabilities under the contract are transferred to the Board by virtue of paragraph (2)(a), and

(b F93 as a result of the transfer, the Board is required, by reason of that term, to pay a specified amount or specified amounts to a specified person who, immediately before the time mentioned in paragraph (2)(a), was a member of the scheme or a person entitled to benefits in respect of such a member.

(8) In paragraph (7)—

"relevant contract of insurance" means a contract of insurance which—

(a) is entered into with a view to securing the whole or part of the scheme's liability for—

(i) 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

(ii) any benefit which will be payable in respect of that person on his death, and

(b) is a contract—

(i) which may not be surrendered, or

(ii) in respect of which the amount payable on surrender does not exceed the liability secured;

"specified" means specified in, or determined in accordance with, the contract of insurance.

F93 mod. by SR 2005/55
F94 mod. by SR 2005/91

The pension compensation provisions

146.—(1 [F95] [F96]Schedule 6 makes provision for compensation to be paid in relation to a scheme for which the Board assumes responsibility in accordance with this Chapter, including provision for—

(a [F96] periodic compensation to be paid to or in respect of members,

(b [F96] lump sum compensation to be paid to members,

(c [F96] a cap to be imposed on the periodic compensation and lump sum compensation payable, and

(d [F96] annual increases to be made to periodic compensation.

(2) In this Part references to the pension compensation provisions are to the provisions of, and the provisions made by virtue of, this Article, Articles 124 to 126, 145(2)(c), 148 and 152 and Schedule 6. (Those references do not include any provision of, or made by virtue of, Article 154 (discharge of liabilities in respect of money purchase benefits)).

F95 mod. by SR 2005/55
F96 mod. by SR 2005/91

Adjustments to be made where the Board assumes responsibility for a scheme

147.—(1 [F97] This Article applies where the Board assumes responsibility for an eligible scheme in accordance with this Chapter.

(2) Any benefits (other than money purchase benefits) which—

(a [F98] were payable under the scheme rules to any member, or to any person in respect of any member, during the period beginning with the assessment date and ending with the receipt by the trustees or managers of the transfer notice, and

(b) have been paid before the trustees or managers receive the transfer notice,

are to be regarded as going towards discharging any liability of the Board to pay compensation to the member or, as the case may be, person in accordance with the pension compensation provisions.

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

(a [F97] a member of the scheme died before the commencement of the assessment period, and

(b) during the period mentioned in paragraph (2)(a), a person became entitled under the scheme rules to a benefit of a prescribed description in respect of the member,

the benefit, or any part of it, is for the purposes of paragraph (2), to be treated as having become payable before the assessment date.

(4) The Board must—

(a) if any amount paid, during the period mentioned in paragraph (2)(a), by the trustees or managers of the scheme to a member, or to a person in respect of a member, exceeded the entitlement of that member or person under the pension compensation provisions, take such steps as it considers appropriate (including adjusting future compensation payments made in accordance with those provisions) to recover an amount equal to the aggregate of—

(i) the amount of the excess, and

(ii) interest on that amount, at the prescribed rate, for the period which begins when the excess was paid by the trustees or managers and ends with the recovery of the excess, and

(b) if any amount so paid was less than that entitlement (or no amount was paid in respect of that entitlement), pay an amount to the member or person concerned equal to the aggregate of—

(i) the amount of the shortfall, and

(ii) interest on that amount, at the prescribed rate, for the period which begins when the shortfall ought to have been paid by the trustees or managers and ends with the payment of the shortfall by the Board.

(5) In paragraph (4) references to an amount paid do not include—

(a) an amount paid in respect of any money purchase benefit, or

(b) any other amount of a prescribed description.

(6) Nothing in paragraph (4) requires the Board—

(a) to recover any amount from a person in such circumstances as may be prescribed, or

(b) to recover from any person any amount which it considers to be trivial.

(7) In this Article "assessment date" is to be construed in accordance with Schedule 6.

F97 mod. by SR 2005/55
F98 mod. by SR 2005/91

Postponement of compensation entitlement for the assessment period

148 [F99]**.**—(1 [F100] Regulations may provide that, where the Board assumes responsibility for an eligible scheme, the entitlement of any member of the scheme to compensation under this Chapter is, in such circumstances as may be prescribed, postponed for the whole or any part of the assessment period for which he continued in employment after attaining normal pension age.

(2) Regulations under paragraph (1) may provide that the postponement is on such terms and conditions (including those relating to increments) as may be prescribed.

(3) In paragraph (1) the reference to "normal pension age" is to normal pension age, within the meaning of paragraph 34 of Schedule 6, in relation to the pension or lump sum in respect of which the entitlement to compensation arises.

F99 mod. by SR 2005/171
F100 mod. by SR 2005/55

Guaranteed minimum pensions

149.—(1 [F101] The Board must notify the Commissioners of Inland Revenue where, by reason of it assuming responsibility for an eligible scheme in accordance with this Chapter, the trustees or managers of the scheme are discharged from their liability to provide a guaranteed minimum pension (within the meaning of the Pension Schemes Act) to or in respect of a member of the scheme.

(2) Notification under paragraph (1) must be given as soon as reasonably practicable.

(3) In section 43 of the Pension Schemes Act (further provision concerning entitlement to a guaranteed minimum pension for the purposes of section 42), after subsection (7) add—

> "(8) For the purposes of section 42, a person shall be treated as entitled to a guaranteed minimum pension to which he would have been entitled but for the fact that the trustees or managers were discharged from their liability to provide that pension on the Board of the Pension Protection Fund assuming responsibility for the scheme." .

F101 mod. by SR 2005/55

Duty to pay scheme benefits unpaid at assessment date etc.

150.—(1 [F102] [F103]This Article applies where the Board assumes responsibility for a scheme in accordance with this Chapter.

(2) Subject to paragraph (4), the Board must pay any amount by way of pensions or other benefits which a person had become entitled to payment of under the scheme rules before the assessment date but which remained unpaid at the time the transfer notice was received by the trustees or managers of the scheme.

(3) If, immediately before the assessment date, the person is entitled to the amount but has postponed payment of it, paragraph (2) does not apply.

(4) Paragraph (2) does not apply in relation to the amount of—

(a) any transfer payment, or

(b) any payment in respect of a refund of contributions.

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

(a [F102] a member of the scheme died before the commencement of the assessment period, and

(b) during the period beginning with the assessment date and ending with the receipt by the trustees or managers of the transfer notice, a person became entitled under the scheme rules to a benefit of a prescribed description in respect of the member,

that person's entitlement to the benefit, or to any part of it, is, for the purposes of paragraph (2), to be treated as having arisen before the assessment date.

(6 [F102] Regulations may make provision requiring the Board, in such circumstances as may be prescribed, to take such steps (including making payments) as may be prescribed in respect of rights of prescribed descriptions to which members of the scheme were entitled immediately before the commencement of the assessment period.

(7) For the purposes of regulations made under paragraph (6)—

(a) this Chapter (other than this paragraph), and

(b) the scheme rules (including any relevant legislative provision within the meaning of Article 2(4)),

are to have effect subject to such modifications as may be prescribed.

(8) In this Article "assessment date" is to be construed in accordance with Schedule 6.

F102 mod. by SR 2005/55
F103 mod. by SR 2005/91

Commencement Information

I14 Art. 150 wholly in operation at 1.3.2009; art. 150 not in operation at date of making see art. 1(2); art. 150(1)-(5) and (8) in operation for certain purposes at 1.1.2006 and for all other purposes at 6.4.2006 by S.R. 2005/543, **art. 2(5)**, Sch. Pt. 5; art. 150 in operation at 1.3.2009 in so far as it is not already in operation by S.R. 2009/62, **art. 2**

Modification of Chapter where liabilities discharged during assessment period

151.—(1) Regulations may modify any of the provisions of this Chapter as it applies to cases—

(a) where any liability to provide pensions or other benefits to or in respect of any member or members under a scheme is discharged during an assessment period in relation to the scheme by virtue of—

(i) regulations under Article 119(4), or

(ii) the Board validating any action mentioned in Article 119(9), or

(b) where, in prescribed circumstances, any such liability of a prescribed description is discharged on the assessment date but before the commencement of the assessment period.

(2) In this Article "assessment date" is to be construed in accordance with Schedule 6.

Administration of compensation

152.—(1) Regulations may make further provision regarding the operation and administration of this Chapter.

(2) Regulations under paragraph (1) may, in particular, make provision—

(a [F104] prescribing the manner in which and time when compensation is to be paid (including provision requiring periodic compensation to be paid by instalments);

(b) for calculating the amounts of compensation according to a prescribed scale or otherwise adjusting them to avoid fractional amounts or facilitate computation;

(c [F104] prescribing the circumstances and manner in which compensation to which a person ("the beneficiary") is entitled may be made to another person on behalf of the beneficiary for any purpose (including the discharge in whole or in part of an obligation of the beneficiary or any other person);

(d [F104] for the payment or distribution of compensation to or among persons claiming to be entitled on the death of any person and for dispensing with strict proof of their title;

(e [F104] for the recovery of amounts of compensation paid by the Board in excess of entitlement (together with interest on such amounts for the period from payment until recovery);

(f [F104] specifying the circumstances in which payment of compensation can be suspended.

(3) In this Article "compensation" means compensation payable under Schedule 6 or under Article 125(2).

F104 mod. by SR 2005/171

VALID FROM 16/03/2011

[F105 Charges in respect of pension sharing etc.

F105 Art. 152A and preceding cross heading inserted (16.3.2011 for certain purposes, otherwise 6.4.2011) by Pensions (No. 2) Act (Northern Ireland) 2008 (c. 13), **ss. 99**, 118(1); S.R. 2011/108, **art. 2(1)(b)(2)**, Sch.

Charges in respect of pension sharing etc.

152A.—(1) Regulations may make provision for the purpose of enabling the Board to recover prescribed charges in respect of complying with a relevant order or provision.

(2) In paragraph (1) "a relevant order or provision" means any of the following—

(a) an order under Article 25 of the Matrimonial Causes (Northern Ireland) Order 1978 (financial provision in connection with divorce etc.) so far as the order—

(i) includes provision made by virtue of Article 27B or 27C of that Order (powers to include provision about pensions), and

(ii) applies in relation to the Board by virtue of Article 27E of that Order;

(b) an order under Article 25 of that Order so far as the order includes provision made by virtue of Article 27F of that Order (attachment of pension compensation on divorce etc.);

(c) an order under Part 1 of Schedule 15 to the Civil Partnership Act 2004 (financial provision orders in connection with dissolution of civil partnerships etc.: Northern Ireland) so far as the order—

(i) includes provision made by virtue of Part 5 of that Schedule (powers to include provision about pensions), and

(ii) applies in relation to the Board by virtue of Part 6 of that Schedule;

(d) an order under Part 1 of that Schedule so far as the order includes provision made by virtue of paragraph 29A of that Schedule (attachment of pension compensation on dissolution of civil partnership etc.: Northern Ireland);

(e) an order made under any provision corresponding to a provision mentioned in sub-paragraphs (a) to (d) in force in England and Wales;

(f) an order or provision to which any of paragraphs (f) and (g) of section 168A(2) of the Pensions Act 2004 applies;

(g) an order or provision of a kind mentioned in Article 25(1) of the 1999 Order (pension sharing) so far as the order or provision applies in relation to the Board by virtue of Article 199 of this Order.

(3) Regulations under paragraph (1) may include provision enabling the Board to set off against any PPF compensation payable to a person any charges owed to it by that person under the regulations.

(4) In this Article "PPF compensation" means compensation payable—

(a) under or by virtue of this Chapter, or

(b) under or by virtue of Chapter 1 of Part 3 of the Pensions (No. 2) Act (Northern Ireland) 2008 (pension compensation on divorce etc.).**]**

Discharge of Board's liabilities

Discharge of liabilities in respect of compensation

153.—(1 [F106] This Article applies where the Board assumes responsibility for an eligible scheme in accordance with this Chapter.

(2) The Board may provide for the discharge of any liability imposed by this Chapter to provide compensation—

(a) by the taking out of a policy of insurance or a number of such policies;

(b) by the entry into an annuity contract or a number of such contracts;

(c) by the transfer of the benefit of such a policy or policies or such a contract or contracts;

(d) in prescribed circumstances, by the payment of a cash sum calculated in the prescribed manner.

F106 mod. by SR 2005/55

Commencement Information

I15 Art. 153 partly in operation; art. 153 not in operation at date of making see art. 1(2); art. 153(1)(2)(a)-(c) in operation at 6.4.2006 by S.R. 2006/95, **art. 2(c)**, Sch. Pt. 3

Discharge of liabilities in respect of money purchase benefits

154.—(1 [F107] This paragraph applies where—

(a) the Board assumes responsibility for an eligible scheme in accordance with this Chapter, and

(b) one or more members are entitled, or have accrued rights, under the scheme rules to money purchase benefits.

(2) Regulations must make provision in respect of cases to which paragraph (1) applies requiring the Board to secure that liabilities in respect of such benefits transferred to the Board under Article 145 are discharged by it in the prescribed manner.

(3) The provision made under paragraph (2) must include provision prescribing the manner in which protected rights are to be given effect to.

(4) In this Article—

"accrued rights", under the scheme rules, include pension credit rights within the meaning of Article 121(1) of the 1995 Order;

"protected rights" has the meaning given by section 6 of the Pension Schemes Act (protected rights and money purchase benefits).

F107 mod. by SR 2005/55

Equal treatment

Equal treatment

155.—(1) This Article applies where—

(a) a woman has been employed on like work with a man in the same employment,

(b) a woman has been employed on work rated as equivalent with that of a man in the same employment, or

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

and service in that employment was pensionable service under an occupational pension scheme.

(2) If, apart from this paragraph, any of the payment functions so far as it relates (directly or indirectly) to that pensionable service —

(a) is or becomes less favourable to the woman than it is to the man, or

(b) is or becomes less favourable to the man than it is to the woman,

that function has effect with such modifications as are necessary to ensure that the provision is not less favourable.

(3) Paragraph (2) does not operate in relation to any difference as between a woman and a man in the operation of any of the payment functions if the Board proves 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.

(4) Paragraph (2) does not apply in such circumstances as may be prescribed.

(5) This Article has effect in relation to the exercise of any payment function in so far as it relates (directly or indirectly) to any pensionable service on or after 17th May 1990.

(6) In this Article—

"payment function" means any function conferred on the Board by or by virtue of this Chapter which relates to a person's entitlement to or the payment of any amount under or by virtue of—

(a) the pension compensation provisions,

(b) Article 150 (duty to pay scheme benefits unpaid at assessment date etc.),

(c) Article 153 (discharge of liabilities in respect of compensation), or

(d) Article 154 (discharge of liabilities in respect of money purchase benefits);

"pensionable service" has the meaning given by Article 121(1) of the 1995 Order.

Relationship with fraud compensation regime

Relationship with fraud compensation regime

156.—(1 [F108] No transfer notice may be given in respect of a scheme within the first 12 months of an assessment period in relation to the scheme.

(2) Where an application has been made under Article 165 (application for fraud compensation payment), no transfer notice may be given until—

(a) the Board has determined the application,

(b) the period within which the Board's determination may be reviewed by virtue of Chapter 6 has expired, and

(c) if the determination is so reviewed—

(i) the review and any reconsideration,

(ii) any reference to the PPF Ombudsman in respect of the determination, and

(iii) any appeal against his determination or directions,

has been finally disposed of.

(3) Paragraph (4) applies where during an assessment period in relation to a scheme the Board determines to make one or more fraud compensation payments ("the fraud compensation") to the trustees or managers of the scheme under Chapter 4.

(4 [F108] For the purposes of determining whether the condition in Article 111(2)(a), 112(2)(a), 136(2) or 142(1) is satisfied, any fraud compensation payment which becomes payable after the relevant time is, to the extent that it relates to a loss incurred by the scheme before that time, to be regarded as an asset of the scheme at that time.

(5) For the purposes of paragraph (4) "the relevant time"

(a) in the case of Article 111(2)(a), has the same meaning as in that provision,

(b) in the case of Article 112(2)(a), has the same meaning as in that provision,

(c) in the case of Article 136(2), means the reconsideration time (within the meaning of Article 135), and

(d) in the case of Article 142(1), has the same meaning as in that provision.

(6 [F108] Paragraph (4) does not apply to the extent that the fraud compensation is payable in respect of a reduction in the value of money purchase assets of the scheme.
For this purpose "money purchase assets" means assets representing the value of any rights in respect of money purchase benefits under the scheme rules.

F108 mod. by SR 2005/55

Commencement Information

I16 Art. 156 wholly in operation at 6.4.2007; art. 156 not in operation at date of making see art. 1(2); art. 156(1) in operation at 6.4.2005 by S.R. 2005/48, art. 2(7), Sch. Pt. 7; art. 156(2)-(6) (except (5)(d)) in operation at 1.9.2005 by S.R. 2005/321, art. 2(16), Sch. Pt. 3; art. 156 in operation at 6.4.2007 in so far as it is not already in operation by S.R. 2006/352, **art. 2(5)**, Sch. Pt. 2

The levies

Initial levy

157.—(1) Regulations must make provision for imposing a levy ("the initial levy") in respect of eligible schemes for the period ("the initial period") which—

(a) begins with the day appointed for this purpose by the regulations, and

(b) ends on the following 31st March or, if the regulations so provide, 12 months after the day referred to in sub-paragraph (a).

(2) The regulations must prescribe—

(a) the factors by reference to which the initial levy is to be assessed,

(b) the rate of the levy, and

(c) the time or times during the initial period when the levy, or any instalment of the levy, becomes payable.

(3) Regulations under this Article may only be made with the approval of the Department of Finance and Personnel.

Pension protection levies

158.—(1) For each financial year falling after the initial period, the Board must impose both of the following—

(a) a risk-based pension protection levy in respect of all eligible schemes;

(b) a scheme-based pension protection levy in respect of eligible schemes.

In this Chapter "pension protection levy" means a levy imposed in accordance with this Article.

(2) For the purposes of this Article—

(a [F109] a risk-based pension protection levy is a levy assessed by reference to—

(i) the difference between the value of a scheme's assets (disregarding any assets representing the value of any rights in respect of money purchase benefits under the scheme rules) and the amount of its protected liabilities,

(ii) except in relation to any prescribed scheme or scheme of a prescribed description, the likelihood of an insolvency event occurring in relation to the employer in relation to a scheme, and

(iii) if the Board considers it appropriate, one or more other risk factors mentioned in paragraph (3), and

(b) a scheme-based pension protection levy is a levy assessed by reference to—

(i) the amount of a scheme's liabilities to or in respect of members (other than liabilities in respect of money purchase benefits), and

(ii) if the Board considers it appropriate, one or more other scheme factors mentioned in paragraph (4).

(3) The other risk factors referred to in paragraph (2)(a)(iii) are factors which the Board considers indicate one or more of the following—

(a) the risks associated with the nature of a scheme's investments when compared with the nature of its liabilities;

(b) such other matters as may be prescribed.

(4) The other scheme factors referred to in paragraph (2)(b)(ii) are—

(a) the number of persons who are members, or fall within any description of member, of a scheme;

(b) the total annual amount of pensionable earnings of active members of a scheme;

(c) such other factors as may be prescribed.

(5) The Board must, before the beginning of each financial year, determine in respect of that year—

(a) the factors by reference to which the pension protection levies are to be assessed,

(b) the time or times by reference to which those factors are to be assessed,

(c) the rate of the levies, and

(d) the time or times during the year when the levies, or any instalment of levy, becomes payable.

(6) Different risk factors, scheme factors or rates may be determined in respect of different descriptions of scheme.

(7) The rate determined in respect of a description of scheme may be nil.

(8) In this Article—

"initial period" is to be construed in accordance with Article 157;

"pensionable earnings", in relation to an active member under a scheme, means the earnings by reference to which a member's entitlement to benefits would be calculated under the scheme rules if he ceased to be an active member at the time by reference to which the factor within paragraph (4)(b) is to be assessed.

(9) The Board's duty to impose pension protection levies in respect of any financial year is subject to—

(a) Article 160 (amounts to be raised by the pension protection levies), and

(b) Article 163 (transitional provision).

F109 mod. by SR 2005/91

Modifications etc. (not altering text)

C3 Art. 158 modified (30.3.2006) by Occupational Pension Schemes (Pension Protection Levies) (Transitional Period and Modification for Multi-employer Schemes) Regulations (Northern Ireland) 2006 (S.R. 2006/84), **reg. 3(2)(a)**

C4 Art. 158 modified (30.3.2006) by Occupational Pension Schemes (Pension Protection Levies) (Transitional Period and Modification for Multi-employer Schemes) Regulations (Northern Ireland) 2006 (S.R. 2006/84), **reg. 4(2)**

C5 Art. 158 modified (30.3.2006) by Occupational Pension Schemes (Pension Protection Levies) (Transitional Period and Modification for Multi-employer Schemes) Regulations (Northern Ireland) 2006 (S.R. 2006/84), **reg. 5(2)**

C6 Art. 158(1) modified (30.3.2006) by Occupational Pension Schemes (Pension Protection Levies) (Transitional Period and Modification for Multi-employer Schemes) Regulations (Northern Ireland) 2006 (S.R. 2006/84), **reg. 3(2)(b)**

C7 Art. 158(2)(a)(i) applied (with modifications) by S.R. 2005/55, reg. 3(5) (as added (8.3.2010) by Pension Protection Fund and Occupational Pension Schemes (Miscellaneous Amendments) Regulations (Northern Ireland) 2010 (S.R. 2010/32), **reg. 2(5)**)

Supplementary provisions about pension protection levies

159.—(1) The Board must consult such persons as it considers appropriate in the prescribed manner before making a determination under Article 158(5) in respect of a financial year if—

(a) that year is the first financial year for which the Board is required to impose levies under Article 158,

(b) any of the proposed levy factors or levy rates is different, or applies to a different description of scheme, from the levy factors and levy rates in respect of the pension protection levies imposed in the previous financial year, or

(c) no consultation has been required under this paragraph in relation to the pension protection levies imposed for either of the previous two financial years.

(2) The Board must publish details of any determination under Article 158(5) in the prescribed manner.

Amounts to be raised by the pension protection levies

160.—(1) Before determining the pension protection levies to be imposed for a financial year, the Board must estimate the amount which will be raised by the levies it proposes to impose.

(2) The Board must impose levies for a financial year in a form which it estimates will raise an amount not exceeding the levy ceiling for the financial year.

(3) The pension protection levies imposed for a financial year must be in a form which the Board estimates will result in at least 80% of the amount raised by the levies for that year being raised by the risk-based pension protection levy.

(4) For the first financial year after the transitional period, regulations may modify paragraph (2) so as to provide that the reference to the levy ceiling for the financial year is to be read as a reference to such lower amount as is prescribed.

(5) For the second financial year after the transitional period and for any subsequent financial year, the Board must impose pension protection levies in a form which it estimates will raise an amount which does not exceed by more than 25% the amount estimated under paragraph (1) in respect of the pension protection levies imposed for the previous financial year.

(6) Whenever the Secretary of State makes an order under section 177(6) of the Pensions Act 2004 (c. 35), the Department may make a corresponding order for Northern Ireland.

(7) Regulations under paragraph (4) may be made only with the approval of the Department of Finance and Personnel.

(8) In this Article—

(a) "risk-based pension protection levy" and "scheme-based pension protection levy" are to be construed in accordance with Article 158, and

(b) "transitional period" has the meaning given by Article 163(3).

Modifications etc. (not altering text)

C8 Art. 160(2) modified (20.11.2006) by Pension Protection Fund (Levy Ceiling) Regulations (Northern Ireland) 2006 (S.R. 2006/409), **reg. 2**

Commencement Information

I17 Art. 160 partly in operation; art. 160 not in operation at date of making see art. 1(2); art. 160(1)-(3)(8)(a) in operation at 9.12.2005 by S.R. 2005/543, art. 2(2), Sch. Pt. 2; art. 160(8) in operation at 1.4.2006 in so far as not already in operation by S.R. 2006/95, **art. 2(b)**, Sch. Pt. 2; art. 160(4)(5)(7) in operation at 1.9.2006 by S.R. 2006/352, **art. 2(1)**

The levy ceiling

161. Whenever the Secretary of State makes an order under section 178 of the Pensions Act 2004 (c. 35), the Department may make a corresponding order for Northern Ireland.

Valuations to determine scheme underfunding

162.—(1) For the purposes of enabling risk-based pension protection levies (within the meaning of Article 158) to be calculated in respect of eligible schemes, regulations may make provision requiring the trustees or managers of each such scheme to provide the Board or the Regulator on the Board's behalf—

(a [F110] with an actuarial valuation of the scheme at such intervals as may be prescribed, and

(b) with such other information as the Board may require in respect of the assets and protected liabilities of the scheme at such times as may be prescribed.

(2) For the purposes of this Article, in relation to a scheme—

"an actuarial valuation" means a written valuation of the scheme's assets and protected liabilities prepared and signed by the actuary;

"the actuary" means—

(a) the actuary appointed under Article 47(1)(b) of the 1995 Order (professional advisers) in relation to the scheme, or

(b) if no such actuary has been appointed—

(i) a person with prescribed qualifications or experience, or

(ii) a person approved by the Department.

(3) Regulations under this Article may prescribe how—

(a) the assets and the protected liabilities of schemes, and

(b) their amount or value,

are to be determined, calculated and verified.

(4) Subject to any provision made under paragraph (3), those matters are to be determined, calculated and verified in accordance with guidance issued by the Board.

(5) In calculating the amount of any liabilities for the purposes of a valuation required by virtue of this Article, a provision of the scheme rules which limits the amount of the scheme's liabilities by reference to the value of its assets is to be disregarded.

(6) In this Article references to "assets" do not include assets representing the value of any rights in respect of money purchase benefits under the scheme rules.

F110 mod. by SR 2005/91

Pension protection levies during the transitional period

163.—(1) Regulations may provide that in respect of any financial year during the transitional period—

(a) Articles 158 and 160(3) are to apply with such modifications as may be prescribed;

(b) Article 160(2) is to apply as if the reference to the levy ceiling for the financial year were a reference to such lower amount as is specified in the regulations.

(2) Regulations which contain provision made by virtue of paragraph (1)(b) may only be made with the approval of the Department of Finance and Personnel.

(3) For the purposes of this Article "the transitional period" means the prescribed period beginning immediately after the initial period (within the meaning of Article 157).

(4) If the transitional period begins with a date other than 1st April, regulations may provide that any provision of this Article or of Articles 158 to 162 applies, with such modifications as may be prescribed, in relation to—

(a) the period beginning at the same time as the transitional period and ending with the following 31st March, and

(b) the financial year which begins immediately after that period.

Calculation, collection and recovery of levies

164.—(1) This Article applies in relation to—

(a) the initial levy imposed under Article 157 in respect of a scheme, and

(b) any pension protection levy imposed under Article 158 in respect of a scheme.

(2) The levy is payable to the Board by or on behalf of—

(a) the trustees or managers of the scheme, or

(b) any other prescribed person.

(3) The Board must in respect of the levy—

(a) determine the schemes in respect of which it is imposed,

(b) calculate the amount of the levy in respect of each of those schemes, and

(c) notify any person liable to pay the levy in respect of the scheme of the amount of the levy in respect of the scheme and the date or dates on which it becomes payable.

(4) The Board may require the Regulator to discharge, on the Board's behalf, its functions under paragraph (3) in respect of the levy.

(5) Where a scheme is an eligible scheme for only part of the period for which the levy is imposed, except in prescribed circumstances, the amount of the levy payable in respect of the scheme for that period is such proportion of the full amount as that part bears to that period.

(6) An amount payable by a person on account of the levy is a debt due from him to the Board.

(7) An amount so payable may be recovered—

(a) by the Board, or

(b) if the Board so determines, by the Regulator on its behalf.

(8) Regulations may make provision relating to—

(a) the collection and recovery of amounts payable by way of any levy in relation to which this Article applies;

(b) the circumstances in which any such amount may be waived.

VALID FROM 26/02/2010

[[F111]Pension protection levy: interest for late payment

164A.—(1) Regulations may make provision for interest to be charged at the prescribed rate in the case of late payment of a pension protection levy.

(2) Interest is payable by or on behalf of the person or persons by or on behalf of whom the levy is payable.

(3) Interest payable by a person by virtue of this Article is a debt due from the person to the Board.

(4) Interest is recoverable by the Board or, if the Board so determines, by the Regulator on its behalf.

(5) Without prejudice to the generality of paragraph (1), regulations under this Article may include provision relating to—

(a) the collection and recovery of interest;

(b) the circumstances in which interest may be waived.**]**

F111 Art. 164A inserted (26.2.2010) by Pensions (No. 2) Act (Northern Ireland) 2008 (c. 13), ss. 104, 118(1), **Sch. 9 para. 4**; S.R. 2010/50, **art. 2(1)**

CHAPTER 4

FRAUD COMPENSATION

Entitlement to fraud compensation

Cases where fraud compensation payments can be made

165.—(1 [F112] The Board shall, in accordance with this Article, make one or more payments (in this Part referred to as "fraud compensation payments") in respect of an occupational pension scheme if—

(a) the scheme is not a prescribed scheme or a scheme of a prescribed description,

(b [F112] the value of the assets of the scheme has been reduced since the relevant date and the Board considers that there are reasonable grounds for believing that the reduction was attributable to an act or omission constituting a prescribed offence,

(c) paragraph (2), (3) or (4) applies,

(d) an application is made which meets the requirements of paragraph (5), and

(e) the application is made within the authorised period.

[F112](2) This paragraph applies where—

(a [F112] a qualifying insolvency event has occurred in relation to the employer in relation to the scheme,

(b [F112] after that event, a scheme failure notice has been issued under Article 106(2)(a) in relation to the scheme and that notice has become binding, and

(c) a cessation event has not occurred in relation to the scheme in respect of a cessation notice which has been issued during the period—

(i [F112] beginning with the occurrence of the insolvency event, and

(ii [F112] ending immediately before the issuing of the scheme failure notice under Article 106(2)(a),

and the occurrence of such a cessation event in respect of a cessation notice issued during that period is not a possibility.

(3) This paragraph applies where—

(a) in relation to the scheme, an application has been made under paragraph (1), or a notification has been given under paragraph (5)(a), of Article 113, and

(b [F112] in response to that application, or the notice given by the Regulator under paragraph (4) of that Article, the Board has issued a scheme failure notice under Article 114(2) in relation to the scheme and that notice has become binding.

(4) This paragraph applies where—

(a) the scheme is not an eligible scheme,

(b [F112] the employer in relation to the scheme is unlikely to continue as a going concern,

(c [F112] the prescribed requirements are met in relation to the employer,

(d) the application under this Article states that the case is one in relation to which sub-paragraphs (b) and (c) apply, and

(e) in response to that application the Board has issued a notice under Article 166(2) confirming that a scheme rescue is not possible in relation to the scheme and that notice has become binding.

(5) An application meets the requirements of this paragraph if—

(a) it is made by a prescribed person, and

(b) it is made in the prescribed manner and contains the prescribed information.

(6) Subject to paragraph (7), an application is made within the authorised period if it is made within the period of 12 months beginning with the later of—

(a) the time of the relevant event, or

(b) the time when the auditor or actuary of the scheme, or the trustees or managers, knew or ought reasonably to have known that a reduction of value falling within paragraph (1)(b) had occurred,

or within such longer period as the Board may determine in any case.

(7 [F112] No application for fraud compensation may be made under this Article in respect of a scheme once a transfer notice is given in relation to the scheme under Article 144.

(8 [F112] For the purposes of this Article, an insolvency event ("the current event") in relation to the employer is a qualifying insolvency event if—

(a) it occurs on or after the day appointed under Article 110(2), and

[F112](b) either—

(i) it is the first insolvency event to occur in relation to the employer on or after that day, 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 insolvency event which occurred before the current event, and

(b) ending with the occurrence of the current event.

(9) For the purposes of this Article—

(a [F112] a cessation event in relation to a scheme occurs when a cessation notice in relation to the scheme becomes binding,

(b) a "cessation notice" means—

(i) a withdrawal notice issued in relation to the scheme under Article 106(2)(b) (scheme rescue has occurred),

(ii) a withdrawal notice issued in relation to the scheme under Article 114(3) (scheme rescue has occurred),

(iii) a withdrawal notice issued in relation to the scheme under Article 132 (no insolvency event has occurred or is likely to occur),

(iv) a notice issued in relation to the scheme under Article 166(2)(b) (scheme rescue has occurred), or

(v) a notice issued under Article 106(4) (inability to confirm status of scheme) in a case where the notice has become binding and Article 132 does not apply,

(c [F112] 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 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), and

(d) the issue of, 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, and

(ii) if the matter is so reviewed, until—

(a) the review and any reconsideration,

(b) any reference to the PPF Ombudsman in respect of the matter, and

(c) any appeal against his determination or directions,

has been finally disposed of.

(10) In this Article—

"auditor" and "actuary", in relation to an occupational pension scheme, have the meaning given by Article 47 of the 1995 Order;

"the relevant event" means—

(a) in a case where paragraph (2) applies in relation to an eligible scheme, the event within sub-paragraph (a) of that paragraph,

(b) in any other case where paragraph (2) applies, the issue of the scheme failure notice under Article 106(2)(a) mentioned in sub-paragraph (b) of that paragraph,

(c) in a case where paragraph (3) applies, the event within sub-paragraph (a) of that paragraph, and

(d) in a case where paragraph (4) applies, the trustees or managers becoming aware that sub-paragraphs (b) and (c) of that paragraph apply in relation to the scheme;

"the relevant date" means—

(a) in the case of an occupational pension scheme established under a trust, 6th April 1997, and

(b) in any other case, the day appointed by the Department by order for the purposes of this Article.

(11) This Article is subject to Article 167(2) (no fraud compensation payments to be made until settlement date determined).

F112 mod. by SR 2005/381

Board's duties in respect of certain applications under Article 165

166.—(1 [F113] This Article applies where, in a case to which sub-paragraphs (a) to (c) of paragraph (4) of Article 165 apply (employer not likely to continue as going concern etc.), the Board receives an application within sub-paragraph (d) of that paragraph.

[F113](2 [F113] If the Board is able to confirm—

(a) that a scheme rescue is not possible, or

(b) that a scheme rescue has occurred,

it must, as soon as reasonably practicable, issue a notice to that effect.

(3) Where the Board issues a notice under paragraph (2), it must, as soon as reasonably practicable, give a copy of the notice to—

(a) the Regulator,

(b) the trustees or managers of the scheme,

(c) if the trustees or managers did not make the application mentioned in paragraph (1), the person who made that application, and

(d [F113] any insolvency practitioner in relation to the employer or, if there is no such insolvency practitioner, the employer.

[F113](4) For the purposes of this Chapter a notice issued under paragraph (2) is not binding until—

(a) the period within which the issue of the notice may be reviewed by virtue of Chapter 6 has expired, and

(b) if the issue of the notice is so reviewed—

(i) the review and any reconsideration,

(ii) any reference to the PPF Ombudsman in respect of the issue of the notice, and

(iii) any appeal against his determination or directions,

has been finally disposed of and the notice has not been revoked, varied or substituted.

(5) Where a notice issued under paragraph (2) becomes binding, the Board must as soon as reasonably practicable give a notice to that effect together with a copy of the binding notice to the persons to whom it is required to give a copy notice under paragraph (3).

(6) A notice under paragraph (5) must be in the prescribed form and contain such information as may be prescribed.

(7) Article 114(5) (circumstances in which scheme rescue can or cannot be confirmed) applies for the purposes of this Article.

F113 mod. by SR 2005/381

Recovery of value

167.—(1) Where an application for a fraud compensation payment is made, the trustees or managers must obtain any recoveries of value, to the extent that they may do so without disproportionate cost and within a reasonable time.

(2) No fraud compensation payment may be made until the date ("the settlement date") determined by the Board, after consulting the trustees or managers of the scheme in question, as the date after which further recoveries of value are unlikely to be obtained without disproportionate cost or within a reasonable time.

(3 [F114] In this Article "recovery of value" means any increase in the value of the assets of the scheme, being an increase attributable to any payment received (otherwise than from the Board) by the trustees or managers of the scheme in respect of any act or omission—

(a) which there are reasonable grounds for believing constituted an offence prescribed for the purposes of sub-paragraph (b) of Article 165(1), and

(b) to which any reduction in value falling within that sub-paragraph was attributable.

(4) It is for the Board to determine whether anything received by the trustees or managers of the scheme is to be treated as a payment received in respect of any such act or omission.
For this purpose "payment" includes any money or money's worth.

F114 mod. by SR 2005/381

Fraud compensation payments

168.—(1) Where the Board determines to make one or more fraud compensation payments, it must make the payment or payments to the trustees or managers of the scheme in accordance with this Article.

(2) A fraud compensation payment may be made on such terms (including terms requiring repayment in whole or in part) and on such conditions as the Board considers appropriate.

[F115](3) The amount of the payment (or, if there is more than one, the aggregate) must not exceed the difference between—

(a) the amount of the reduction (or, if more than one, the aggregate amount of the reductions) within Article 165(1)(b), and

(b) the amount of any recoveries of value obtained before the settlement date (within the meaning of Article 167(2)).

(4) Subject to paragraph (3), the Board—

(a) must determine the amount of any fraud compensation payment in accordance with regulations made for the purposes of this paragraph, and

(b) must take account of any interim payment already made under Article 169.

(5) The Board must give written notice of its determination under paragraph (4) to—

(a) the Regulator,

(b) the trustees or managers of the scheme,

(c) if the trustees or managers did not make the application under Article 165 (fraud compensation payments), the person who made that application, and

(d [F115] any insolvency practitioner in relation to the employer or, if there is no such insolvency practitioner, the employer.[F115]

F115 mod. by SR 2005/381

Interim payments

169.—(1 [F116] The Board may, on an application under Article 165, make a payment or payments to the trustees or managers of an occupational pension scheme if—

(a) it is of the opinion that—

(i) the case is one to which paragraph (1) of that Article applies or may apply, and

(ii) the trustees or managers would not otherwise be able to meet liabilities of a prescribed description, but

(b) it has not determined the settlement date under Article 167.

(2) Amounts payable under this Article must not exceed the amounts determined in accordance with regulations.

[F116](3) The Board may, except in prescribed circumstances, recover so much of any payment made under paragraph (1) as it considers appropriate if, after the payment is made, it determines—

(a) that the case is not one to which Article 165(1) applies, or

(b) that the amount of the payment was excessive.

(4) Subject to that, a payment under paragraph (1) may be made on such terms (including terms requiring repayment in whole or in part) and on such conditions as the Board considers appropriate.

F116 mod. by SR 2005/381

VALID FROM 15/03/2010

Board's powers to make fraud compensation transfer payments

170.—(1) This Article applies where—

(a) the Board assumes responsibility for a scheme in accordance with Chapter 3,

(b) the value of the assets of the scheme was reduced after the relevant date but before the transfer notice (within the meaning of Article 144) was received by the trustees or managers of the scheme and there are reasonable grounds for believing that the reduction was attributable to an act or omission constituting an offence prescribed for the purposes of Article 165(1)(b), and

(c) no application was made under Article 165 in respect of that reduction (or any such application was withdrawn before it was determined).

(2) The Board may transfer an amount from the Fraud Compensation Fund to the Pension Protection Fund ("fraud compensation transfer payment") in respect of the reduction in value, subject to the provisions of this Article.

(3) The Board must obtain any recoveries of value, to the extent that it may do so without disproportionate cost and within a reasonable time.

(4) No fraud compensation transfer payment may be made until the date determined by the Board as the date after which further recoveries of value are unlikely to be obtained without disproportionate cost and within a reasonable time.

(5) In this Article "recovery of value" means any increase in the value of the Pension Protection Fund, being an increase attributable to any payment received (otherwise than under this Article) by the Board in respect of any act or omission—

(a) which there are reasonable grounds for believing constituted an offence prescribed for the purposes of Article 165(1)(b), and

(b) to which any reduction in value falling within paragraph (1)(b) was attributable.

(6) It is for the Board to determine whether anything received by it is to be treated as a payment received in respect of any such act or omission.
For this purpose "payment" includes any money or money's worth.

(7) The amount of any fraud compensation transfer payment (or, if there is more than one, the aggregate) must not exceed the difference between—

(a) the amount of the reduction (or, if more than one, the aggregate amount of the reductions) within paragraph (1)(b), and

(b) the amount of any recoveries of value obtained by the Board before the date determined by the Board under paragraph (4).

(8) Subject to paragraph (7), the Board must determine the amount of any fraud compensation transfer payment in accordance with regulations made for the purposes of this paragraph.

(9) In this Article "the relevant date" has the meaning given by Article 165(10).

Commencement Information

I18 Art. 170 wholly in operation at 6.4.2010; art. 170 not in operation at date of making see art. 1(2); art. 170 in operation for certain purposes at 15.3.2010 by S.R. 2010/100, art. 2(1)(a); art. 170 in operation for all other purposes at 6.4.2010 by S.R. 2010/100, **art. 2(1)(b)**

The levy

Fraud compensation levy

171.—(1) For the purposes of meeting expenditure payable out of the Fraud Compensation Fund, regulations may provide for the imposition of a levy ("fraud compensation levy") in respect of occupational pension schemes.

(2) Paragraph (1) does not apply in relation to any scheme which is prescribed or of a description prescribed under Article 165(1)(a) (schemes not eligible for fraud compensation).

(3) A fraud compensation levy imposed in respect of a scheme is payable to the Board by or on behalf of—

(a) the trustees or managers of the scheme, or

(b) any other prescribed person.

(4) A fraud compensation levy is so payable at prescribed times and at a rate, not exceeding the prescribed rate, determined by the Board.

(5) In determining the amount of expenditure in respect of which a fraud compensation levy is to be imposed, the Board may take one year with another (and, in doing so, must have regard to expenditure estimated to be incurred in current or future periods and to actual expenditure incurred in previous periods).

(6) Notice of the rates determined by the Board under paragraph (4) must be given to prescribed persons in the prescribed manner.

(7) The Board must in respect of any fraud compensation levy imposed under this Article—

(a) determine the schemes in respect of which it is imposed,

(b) calculate the amount of the levy in respect of each of those schemes, and

(c) notify any person liable to pay the levy in respect of the scheme of the amount of the levy in respect of the scheme and the date or dates on which it becomes payable.

(8) The Board may require the Regulator to discharge, on the Board's behalf, its functions under paragraph (7) in respect of the levy.

(9) An amount payable by a person on account of a fraud compensation levy is a debt due from him to the Board.

(10) An amount so payable may be recovered—

(a) by the Board, or

(b) if the Board so determines, by the Regulator on its behalf.

(11) Without prejudice to the generality of paragraph (1), (9) or (10), regulations under this Article may include provision relating to—

(a) the collection and recovery of amounts payable by way of levy under this Article;

(b) the circumstances in which any such amount may be waived.

PROSPECTIVE

[F117Fraud compensation levy: interest for late payment

171A.—(1) Regulations may make provision for interest to be charged at the prescribed rate in the case of late payment of a fraud compensation levy.

(2) Interest is payable by or on behalf of the person or persons by or on behalf of whom the levy is payable.

(3) Interest payable by a person by virtue of this Article is a debt due from the person to the Board.

(4) Interest is recoverable by the Board or, if the Board so determines, by the Regulator on its behalf.

(5) Without prejudice to the generality of paragraph (1), regulations under this Article may include provision relating to—

(a) the collection and recovery of interest;

(b) the circumstances in which interest may be waived.**]**

F117 Art. 171A inserted (prosp.) by Pensions (No. 2) Act (Northern Ireland) 2008 (c. 13), ss. 104, 118(1), **Sch. 9 para. 5**

CHAPTER 5

GATHERING INFORMATION

Information to be provided to the Board etc.

172.—(1) Regulations may require such persons as may be prescribed to provide—

(a) to the Board, or

(b) to a person—

(i) with whom the Board has made arrangements under paragraph 2 of Schedule 4, and

(ii) who is authorised by the Board for the purposes of the regulations,

information of a prescribed description at such times, or in such circumstances, as may be prescribed.

(2) Regulations under paragraph (1) may in particular make provision for requiring such persons as may be prescribed to provide any information or evidence needed for a determination of entitlement to compensation under Chapter 3.

(3) Regulations made by virtue of sub-paragraph (b) of that paragraph must make provision regarding the manner in which the persons required to provide information are to be notified of the identity of the person authorised as mentioned in head (ii) of that sub-paragraph.

Notices requiring provision of information

173.—(1) Any person to whom paragraph (3) applies may be required by a notice in writing to produce any document, or provide any other information, which is—

(a) of a description specified in the notice, and

(b) relevant to the exercise of the Board's functions in relation to an occupational pension scheme.

(2) A notice under paragraph (1) may be given by—

(a) the Board, or

(b) a person authorised by the Board for the purposes of this Article in relation to the scheme.

(3) This paragraph applies to—

(a) a trustee or manager of the scheme,

(b) a professional adviser in relation to the scheme,

(c) the employer in relation to the scheme,

(d) an insolvency practitioner in relation to the employer, and

(e) any other person appearing to the Board, or person giving the notice, to be a person who holds, or is likely to hold, information relevant to the discharge of the Board's functions in relation to the scheme.

(4) Where the production of a document, or the provision of information, is required by a notice given under paragraph (1), the document must be produced, or information must be provided, in such a manner, at such a place and within such a period as may be specified in the notice.

Entry of premises

174.—(1) An appointed person may, for the purpose of enabling or facilitating the performance of any function of the Board in relation to an occupational pension scheme, at any reasonable time enter scheme premises and, while there—

(a) may make such examination and inquiry as may be necessary for such purpose,

(b) may require any person on the premises to produce, or secure the production of, any document relevant to that purpose for inspection by the appointed person,

(c) may take copies of any such document,

(d) may take possession of any document appearing to be such a document or take in relation to any such document any other steps which appear necessary for preserving it or preventing interference with it,

(e) may, in the case of any such document which consists of information which is stored in electronic form and is on, or accessible from, the premises, require the information to be produced in a form—

(i) in which it can be taken away, and

(ii) in which it is legible or from which it can readily be produced in a legible form, and

(f) may, as to any matter relevant to the exercise of the Board's functions in relation to the scheme, examine, or require to be examined, either alone or in the presence of another person, any person on the premises whom he has reasonable cause to believe to be able to give information relevant to that matter.

(2) Premises are scheme premises for the purposes of paragraph (1) if the appointed person has reasonable grounds to believe that—

(a) they are being used for the business of the employer,

(b) an insolvency practitioner in relation to the employer is acting there in that capacity,

(c) documents relevant to—

(i) the administration of the scheme, or

(ii) the employer,

are being kept there, or

(d) the administration of the scheme, or work connected with the administration of the scheme, is being carried out there,

unless the premises are a private dwelling-house not used by, or by permission of, the occupier for the purposes of a trade or business.

(3) An appointed person applying for admission to any premises for the purposes of this Article must, if so required, produce his certificate of appointment.

(4) When exercising a power under this Article an appointed person may be accompanied by such persons as he considers appropriate.

(5) Any document of which possession is taken under this Article may be retained until the end of the period comprising—

(a) the period of 12 months beginning with the date on which possession was taken of the document, and

(b) any extension of that period under paragraph (6).

(6) The Board may before the end of the period mentioned in paragraph (5) (including any extension of it under this paragraph) extend it by such period not exceeding 12 months as the Board considers appropriate.

(7) In this Article "appointed person" means a person appointed by the Board for the purposes of this Article in relation to the scheme.

Penalties relating to Articles 173 and 174

175.—(1) A person who, without reasonable excuse, neglects or refuses to provide information or produce a document when required to do so under Article 173 is guilty of an offence.

(2) A person who without reasonable excuse—

(a) intentionally delays or obstructs an appointed person exercising any power under Article 174,

(b) neglects or refuses to produce, or secure the production of, any document when required to do so under that Article, or

(c) neglects or refuses to answer a question or to provide information when so required,

is guilty of an offence.

(3) In paragraph (2)(a) "appointed person" has the same meaning as it has in Article 174.

(4) A person guilty of an offence under paragraph (1) or (2) is liable on summary conviction to a fine not exceeding level 5 on the standard scale.

(5) An offence under paragraph (1) or (2)(b) or (c) 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 by reference to any period of time following the preceding conviction of the offence.

(6) Any person who intentionally and without reasonable excuse alters, suppresses, conceals or destroys any document which he is or is liable to be required to produce under Article 173 or 174 is guilty of an offence.

(7) Any person guilty of an offence under paragraph (6) is liable—

(a) on summary conviction, to a fine not exceeding the statutory maximum;

(b) on conviction on indictment, to a fine or imprisonment for a term not exceeding two years, or both.

Warrants

176.—(1) A justice of the peace may issue a warrant under this Article if satisfied on complaint on oath given by or on behalf of the Board that there are reasonable grounds for believing—

(a) that there is on, or accessible from, any premises any document—

(i) whose production has been required under Article 173 or 174, or any corresponding provision in force in Great Britain, and

(ii) which has not been produced in compliance with that requirement,

(b) that there is on, or accessible from, any premises any document relevant to the exercise of the Board's functions in relation to an occupational pension scheme whose production could be so required and, if its production were so required, the document—

(i) would not be produced, but

(ii) would be removed, or made inaccessible, from the premises, hidden, tampered with or destroyed, or

(c) that a person will do any act which constitutes a misuse or misappropriation of the assets of an occupational pension scheme and that there is on, or accessible from, any premises any document—

(i) which relates to whether the act will be done, and

(ii) whose production could be required under Article 173 or 174 or any corresponding provision in force in Great Britain.

(2) A warrant under this Article shall authorise an inspector—

(a) to enter the premises specified in the complaint, using such force as is reasonably necessary for the purpose,

(b) to search the premises and—

(i) take possession of any document appearing to be such a document as is mentioned in paragraph (1), or

(ii) take in relation to such a document any other steps which appear necessary for preserving it or preventing interference with it,

(c) to take copies of any such document,

(d) to require any person named in the warrant to provide an explanation of any such document or to state where it may be found or how access to it may be obtained, and

(e) in the case of any such document which consists of information which is stored in electronic form and is on, or accessible from, the premises, to require the information to be produced in a form—

(i) in which it can be taken away, and

(ii) in which it is legible or from which it can readily be produced in a legible form.

(3) When executing a warrant under this Article, an inspector may be accompanied by such persons as he considers appropriate.

(4) A warrant under this Article continues in force until the end of the period of one month beginning with the day on which it is issued.

(5) Any document of which possession is taken under this Article may be retained until the end of the period comprising—

(a) the period of 12 months beginning with the date on which possession was taken of the document, and

(b) any extension of that period under paragraph (6).

(6) The Board may before the end of the period mentioned in paragraph (5) (including any extension of it under this paragraph) extend it by such period not exceeding 12 months as the Board considers appropriate.

(7) In this Article "inspector" means a person appointed by the Board as an inspector.

Provision of false or misleading information

Offence of providing false or misleading information to the Board

177.—(1) Any person who knowingly or recklessly provides information which is false or misleading in a material particular is guilty of an offence if the information—

(a) is provided in purported compliance with a requirement under—

(i) Article 172 (information to be provided to the Board etc.),

(ii) Article 173 (notices requiring provision of information), or

(iii) Article 174 (entry of premises), or

(b) is provided otherwise than as mentioned in sub-paragraph (a) but in circumstances in which the person providing the information intends, or could reasonably be expected to know, that it would be used by the Board for the purposes of exercising its functions under this Order.

(2) Any person guilty of an offence under paragraph (1) is liable—

(a) on summary conviction, to a fine not exceeding the statutory maximum;

(b) on conviction on indictment, to a fine or imprisonment for a term not exceeding two years, or both.

Use of information

Use of information

178. Information held by the Board in the exercise of any of its functions may be used by the Board for the purposes of, or for any purpose connected with or incidental to, the exercise of its functions.

Disclosure of information

Restricted information

179.—(1) Restricted information must not be disclosed—

(a) by the Board, or

(b) by any person who receives the information directly or indirectly from the Board.

(2) Paragraph (1) is subject to—

(a) paragraph (3), and

(b) Articles 180 to 185 and section 235 of the Pensions Act 2004 (c. 35).

(3) Subject to Article 184(4), restricted information may be disclosed with the consent of the person to whom it relates and (if different) the person from whom the Board obtained it.

(4) For the purposes of this Article and Articles 180 to 185, "restricted information" means any information obtained by the Board in the exercise of its functions which relates to the business or other affairs of any person, except for information—

(a) which at the time of the disclosure is or has already been made available to the public from other sources, or

(b) which is in the form of a summary or collection of information so framed as not to enable information relating to any particular person to be ascertained from it.

(5) Any person who discloses information in contravention of this Article is guilty of an offence and liable—

(a) on summary conviction, to a fine not exceeding the statutory maximum;

(b) on conviction on indictment, to a fine or imprisonment for a term not exceeding two years, or both.

(6) Information which—

(a) is obtained under Article 173 by a person authorised under paragraph (2)(b) of that Article, but

(b) if obtained by the Board, would be restricted information,

is treated for the purposes of paragraphs (1) and (3) and Articles 180 to 185 as restricted information which the person has received from the Board.

Disclosure for facilitating exercise of functions by the Board

180.—(1) Article 179 does not preclude the disclosure of restricted information in any case in which disclosure is for the purpose of enabling or assisting the Board to exercise its functions.

(2) Paragraph (3) applies where, in order to enable or assist the Board properly to exercise any of its functions, the Board considers it necessary to seek advice from any qualified person on any matter of law, accountancy, valuation or other matter requiring the exercise of professional skill.

(3) Article 179 does not preclude the disclosure by the Board to a person qualified to provide that advice of such information as appears to the Board to be necessary to ensure that he is properly informed with respect to the matters on which his advice is sought.

Disclosure for facilitating exercise of functions by the Regulator

181. Article 179 does not preclude the disclosure of restricted information in any case in which disclosure is for the purpose of enabling or assisting the Regulator to exercise its functions.

Disclosure for facilitating exercise of functions by other supervisory authorities

182.—(1) Article 179 does not preclude the disclosure by the Board of restricted information to any person specified in the first column of Schedule 7 if the Board considers that the disclosure would enable or assist that person to exercise the functions specified in relation to him in the second column of that Schedule.

(2) The Department may after consultation with the Board—

(a) by order amend Schedule 7 by—

(i) adding any person exercising regulatory functions and specifying functions in relation to that person,

(ii) removing any person for the time being specified in that Schedule, or

(iii) altering the functions for the time being specified in that Schedule in relation to any person, or

(b) by order restrict the circumstances in which, or impose conditions subject to which, disclosure may be made to any person for the time being specified in that Schedule.

Other permitted disclosures

183.—(1) Article 179 does not preclude the disclosure by the Board of restricted information to—

(a) the Department,

(b) the Commissioners of Inland Revenue or their officers, or

(c) the Secretary of State,

if the disclosure appears to the Board to be desirable or expedient in the interests of members of occupational pension schemes or in the public interest.

(2) Article 179 does not preclude the disclosure of restricted information—

(a) by or on behalf of—

(i) the Board, or

(ii) any public authority (within the meaning of section 6 of the Human Rights Act 1998 (c. 42)) which receives the information directly or indirectly from the Board,

for any of the purposes specified in section 17(2)(a) to (d) of the Anti-terrorism, Crime and Security Act 2001 (c. 24) (criminal proceedings and investigations),

(b) in connection with any proceedings arising out of—

(i) this Order,

(ii) the 1999 Order,

(iii) the 1995 Order, or

(iv) the Pension Schemes Act,

or any corresponding enactment in force in Great Britain, or any proceedings for breach of trust in relation to an occupational pension scheme,

(c) with a view to the institution of, or otherwise for the purposes of, proceedings under—

(i) Article 10 or 11 of the Company Directors Disqualification (Northern Ireland) Order 2002 (NI 4), or

(ii) section 7 or 8 of the Company Directors Disqualification Act 1986 (c. 46),

(d) in connection with any proceedings under—

(i) the Insolvency Order, or

(ii) the Insolvency Act 1986 (c. 45),

which the Board has instituted or in which it has a right to be heard,

(e) with a view to the institution of, or otherwise for the purposes of, any disciplinary proceedings relating to the exercise of his professional duties by a solicitor, an actuary, an accountant or an insolvency practitioner,

(f) with a view to the institution of, or otherwise for the purpose of, any disciplinary proceedings relating to the exercise by a public servant of his functions, or

(g) in pursuance of a Community obligation (within the meaning of Schedule 1 to the European Communities Act 1972 (c. 68)).

(3) In paragraph (2)(f), "public servant" means an officer or servant of the Crown or of any prescribed authority.

(4) Article 179 does not preclude the disclosure by the Board of restricted information to—

(a) the Director of Public Prosecutions for Northern Ireland,

(b) the Director of Public Prosecutions,

(c) the Lord Advocate,

(d) a procurator fiscal, or

(e) a constable.

(5) Article 179 does not preclude the disclosure of restricted information in any case where the disclosure is required by or by virtue of a statutory provision.

(6) Article 179 does not preclude the disclosure of restricted information in any case where the disclosure is to a Regulator-appointed trustee of an occupational pension scheme for the purpose of enabling or assisting him to exercise his functions in relation to the scheme.

(7) In paragraph (6), "Regulator-appointed trustee" means a trustee appointed by the Regulator under Article 7 or 23(1) of the 1995 Order or any corresponding provision in force in Great Britain.

(8) Article 179 does not preclude the disclosure by any person mentioned in paragraph (1) or (4) of restricted information obtained by the person by virtue of that paragraph, if the disclosure is made with the consent of the Board.

(9) Article 179 does not preclude the disclosure by any person specified in the first column of Schedule 7 of restricted information obtained by the person by virtue of Article 182(1), if the disclosure is made—

(a) with the consent of the Board, and

(b) for the purpose of enabling or assisting the person to exercise any functions specified in relation to him in the second column of the Schedule.

(10) Before deciding whether to give its consent to such a disclosure as is mentioned in paragraph (8) or (9), the Board must take account of any representations made to it, by the person seeking to make the disclosure, as to the desirability of the disclosure or the necessity for it.

(11) Section 18 of the Anti-terrorism, Crime and Security Act 2001 (c. 24) (restriction on disclosure of information for overseas purposes) has effect in relation to a disclosure authorised by paragraph (2) as it has effect in relation to a disclosure authorised by any of the provisions to which section 17 of that Act applies.

Tax information

184.—(1) This Article applies to information held by any person in the exercise of tax functions about any matter which is relevant, for the purposes of those functions, to tax or duty in the case of an identifiable person (in this Article referred to as "tax information").

(2) No obligation as to secrecy imposed by section 182 of the Finance Act 1989 (c. 26) or otherwise shall prevent the disclosure of tax information to the Board for the purpose of enabling or assisting the Board to discharge its functions.

(3) Where tax information is disclosed to the Board by virtue of paragraph (2) or section 19 of the Anti-terrorism, Crime and Security Act 2001 (c. 24) (disclosure of information held by revenue departments), it must, subject to paragraph (4), be treated for the purposes of Article 179 as restricted information.

(4) Articles 179(3), 180 to 183 and 185 and section 235 of the Pensions Act 2004 (c. 35) do not apply to tax information which is disclosed to the Board as mentioned in paragraph (3), and such information may not be disclosed by the Board or any person who receives the information directly or indirectly from the Board except—

(a) to, or in accordance with authority given by, the Commissioners of Inland Revenue or the Commissioners of Customs and Excise, or

(b) with a view to the institution of, or otherwise for the purposes of, any criminal proceedings.

(5) In this Article "tax functions" has the same meaning as in section 182 of the Finance Act 1989.

Provision of information to members of schemes etc.

Provision of information to members of schemes etc.

185.—(1) Regulations may—

(a) require the Board to provide information of prescribed descriptions to such persons as may be prescribed at prescribed times, or

(b) require trustees or managers of occupational pension schemes to provide such information—

(i) relating to the exercise of the Board's functions in relation to any scheme of which they are trustees or managers,

(ii) relating to any notice issued or application or determination made under Chapter 2, 3 or 4 which relates to any such scheme, or

(iii) otherwise relating to the Board's involvement with any such scheme,

as may be prescribed to prescribed persons at prescribed times or in prescribed circumstances.

(2) Article 179 does not preclude the disclosure of restricted information by the Board which relates to the entitlement of a particular individual to compensation under Chapter 3 if the disclosure is made to that individual or to a person authorised by him.

(3) Article 179 does not preclude the disclosure of restricted information by the Board if—

(a) the information relates to the exercise of the Board's functions in relation to an occupational pension scheme,

(b) the disclosure is made to—

(i) all affected persons, or

(ii) all affected persons of a particular description, and

(c) the Board is satisfied that, in all the circumstances, it is reasonable to make the disclosure.

(4) In paragraph (3) "affected person", in relation to an occupational pension scheme, means a person—

(a) who is a member of the scheme, or

(b) who is for the time being nominated by a member of the scheme for the purposes of that paragraph.

(5) A nomination by a member of the scheme under paragraph (4)(b)—

(a) may be made by notice in writing given by the member,

(b) becomes effective when the notice is received by the Board, and

(c) ceases to be effective when the Board receives a further notice from the member withdrawing the nomination.

(6) In the case of an occupational pension scheme, Article 179 does not preclude the disclosure of restricted information by the Board if—

(a) the disclosure is made to any of the following in relation to the scheme—

(i) a trustee or manager,

(ii) any professional adviser,

(iii) the employer,

(iv) the insolvency practitioner in relation to the employer,

(b) the information is relevant to the exercise of that person's functions in relation to the scheme, and

(c) the Board considers that it is reasonable in all the circumstances to make the disclosure for the purpose of facilitating the exercise of those functions.

Interpretation

Articles 172 to 185: interpretation

186.—(1) This Article applies for the purposes of Articles 172 to 185.

(2) "Document" includes information recorded in any form, and any reference to production of a document, in relation to information recorded otherwise than in a legible form, is to producing a copy of the information—

(a) in a legible form, or

(b) in a form from which it can readily be produced in a legible form.

(3) Where the Board has assumed responsibility for a scheme—

(a) any reference to the Board's functions in relation to the scheme includes a reference to the functions which it has by virtue of having assumed responsibility for the scheme, and

(b) any reference to a trustee, manager, professional adviser or employer in relation to the scheme is to be read as a reference to a person who held that position in relation to the scheme before the Board assumed responsibility for it.

Commencement Information

I19 Art. 186 wholly in operation at 6.4.2006; art. 186 not in operation at date of making see art. 1(2); art. 186(1)(2) in operation at 6.4.2005 by S.R. 2005/48, art. 2(7), Sch. Pt. 7; art. 186 in operation at 6.4.2006 in so far as not already in operation by S.R. 2006/95, **art. 2(c)**, Sch. Pt. 3

Reports

Publishing reports etc.

187.—(1) The Board may, if it considers it appropriate to do so in any particular case, publish a report of the exercise of, or any matter arising out of or connected with the exercise of, any of its functions in that case.

(2) The publication of a report under paragraph (1) may be in such form and manner as the Board considers appropriate.

(3) For the purposes of the law of defamation, the publication of any matter by the Board is privileged unless the publication is shown to be made with malice.

Status: *Point in time view as at 06/04/2006. This version of this Order contains provisions that are not valid for this point in time.*
Changes to legislation: *The Pensions (Northern Ireland) Order 2005 is up to date with all changes known to be in force on or before 03 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

CHAPTER 6

REVIEWS, APPEALS AND MALADMINISTRATION

Review etc. by the Board

Meaning of "reviewable matters"

188.—(1) For the purposes of this Chapter, "reviewable matter" means a matter mentioned in Schedule 8.

(2) Regulations may provide, in relation to any reference in that Schedule to a failure by the Board to do any act or make any determination, that—

(a) the reference is to be construed as a reference to a failure by the Board to do the act or make the determination within a prescribed period, and

(b) the reference is to be construed as not including a failure to do the act or make the determination which first occurs after a prescribed time.

(3) Regulations may make provision suspending the effect of any determination, direction or other act of the Board, or any notice given or issued by it, which relates to a reviewable matter until—

(a) the period within which the matter may be reviewed by virtue of this Chapter has expired, and

(b) if the matter is so reviewed—

(i) the review and any reconsideration,

(ii) any reference to the PPF Ombudsman in respect of the matter, and

(iii) any appeal against his determination or directions,

has been finally disposed of.

(4) Regulations may amend Schedule 8 by—

(a) adding to it any other description of determination, act or failure of, or matter determined or for determination by, the Board, or

(b) removing from it any such determination, act, failure or matter for the time being mentioned in it.

(5) Regulations under paragraph (4) may also modify any provision of this Part in consequence of provision made by virtue of sub-paragraph (a) or (b) of that paragraph.

Review and reconsideration by the Board of reviewable matters

189.—(1) Regulations must—

(a) provide for the Board, on the written application of an interested person, to give a decision ("a review decision") on any reviewable matter, and

(b) require a committee of the Board constituted for the purposes of this Article (the "Reconsideration Committee"), on the written application of an interested person following a review decision, to reconsider the reviewable matter and give a decision ("a reconsideration decision").

(2) In paragraph (1) "interested person", in relation to a reviewable matter, means a person of a description prescribed in relation to reviewable matters of that description.

(3) Regulations under paragraph (1) may—

(a) permit a review decision in respect of a reviewable matter of a prescribed description to be made otherwise than on an application, and

(b) permit a reconsideration decision in respect of such a matter to be made otherwise than on an application.

(4) Regulations under paragraph (1) must provide for the Board's powers on making a review decision or reconsideration decision to include power—

(a) to vary or revoke the determination, direction or other decision already made by the Board in respect of the reviewable matter,

(b) to substitute a different determination, direction or decision,

(c) to provide for such variations, revocations or substitutions, or any determinations, directions or other decisions made as a result of the review decision or reconsideration decision, to be treated as if they were made at such time (which may be a time prior to the making of the review decision or reconsideration decision) as the Board considers appropriate,

(d) to provide for any notice varied, substituted, issued or given by the Board as a result of the review decision or reconsideration decision, to be treated as if it were issued or given at such time (which may be a time prior to the making of the review decision or reconsideration decision) as the Board considers appropriate,

(e) generally to deal with the matters arising on the review decision or reconsideration decision as if they had arisen on the original determination, direction or decision,

(f) to pay such compensation as the Board considers appropriate to such persons as it may determine, and

(g) to make savings and transitional provision.

(5) Regulations under paragraph (1) must include provision—

(a) about applications under the regulations for a review decision or reconsideration decision in respect of a reviewable matter, including the times by which they are to be made,

(b) requiring notice—

(i) of such applications, or

(ii) of a decision of the Board or the Reconsideration Committee by virtue of paragraph (3) to give a review decision or reconsider a reviewable matter otherwise than on such an application,

to be given to interested persons in relation to the matter,

(c) with a view to securing that individuals concerned in giving a reconsideration decision were not concerned in the reviewable matter in respect of which the decision is to be made,

(d) as to the procedure for reaching and giving decisions under the regulations, including—

(i) rights of interested persons to make representations to the Reconsideration Committee on a reconsideration under regulations made under paragraph (1)(b), and

(ii) the times by which decisions are to be given, and

(e) requiring notice of the review decision or the reconsideration decision in respect of a reviewable matter to be given to interested persons in relation to the matter.

(6) Provision required by paragraph (5)(c) may modify paragraphs 15 and 16 of Schedule 5 to the Pensions Act 2004 (c. 35) (membership and procedure of committees of the Board).

Investigation by the Board of complaints of maladministration

190.—(1) Regulations must make provision for dealing with relevant complaints.

(2) For the purposes of this Chapter, “relevant complaint” means a complaint—

(a) by a person who is or might become entitled to compensation under the pension compensation provisions, or

(b) by a person who has made or may make an application under Article 165 (fraud compensation),

alleging that he has sustained injustice in consequence of maladministration in connection with any act or omission by the Board or any person exercising functions on its behalf.

(3) Regulations under paragraph (1) must—

(a) provide for the Board to investigate and give decisions on matters complained of in relevant complaints, and

(b) provide for a committee of the Board, on applications following such decisions, to investigate matters complained of and give decisions on them.

(4) Such regulations may, in particular, make provision—

(a) about the making of relevant complaints and applications under the regulations, including the times by which they are to be made,

(b) with a view to securing that individuals concerned in giving a decision were not concerned in the matter which is the subject of the relevant complaint in question,

(c) as to the procedure for reaching and giving decisions under the regulations, including—

(i) rights of prescribed persons to make representations to the Board, on an investigation under regulations made under paragraph (3)(b), and

(ii) the times by which decisions are to be given, and

(d) requiring notice—

(i) of a relevant complaint under the regulations, or

(ii) of a decision under the regulations in respect of the complaint,

to be given to prescribed persons in relation to the matter.

(5) Regulations under paragraph (1) may confer power on the Board to pay such compensation as it considers appropriate to such persons as it considers have sustained injustice in consequence of the matters complained of.

(6) The power conferred by paragraph (4)(b) includes power to modify paragraphs 15 and 16 of Schedule 5 to the Pensions Act 2004 (c. 35) (membership and procedure of committees of the Board).

The PPF Ombudsman

The PPF Ombudsman

191.—(1) The Department may by order make provision—

(a) about the reimbursement of the PPF Ombudsman in respect of any expenses incurred by him in the performance of his functions;

(b) about the staff of the PPF Ombudsman and the provision of facilities (including additional staff) to him;

(c) about the delegation of the functions of the PPF Ombudsman to his staff or to any such additional staff;

(d) conferring powers to enable the PPF Ombudsman to obtain such information and documents as he may require for the performance of his functions; and

(e) about restrictions on the disclosure of information held by him.

(2) The Department must pay to the PPF Ombudsman such sums as may be required to be paid by the Department to or in respect of the PPF Ombudsman by virtue of an order under paragraph (1).

(3) Regulations may provide for the imposition of a levy in respect of eligible schemes for the purpose of meeting expenditure of the Department under paragraph (2) or of the Secretary of State under section 209(6) of the Pensions Act 2004 (c. 35).

(4) Where regulations make such provision, paragraphs (2), (3), (5), (6) and (7) of Article 103 (administration levy) apply in relation to the levy as they apply in relation to an administration levy (within the meaning of that Article), except that in paragraph (7) of that Article the reference to paragraph (1) of that Article is to be read as a reference to paragraph (3) of this Article.

References to the PPF Ombudsman

Reference of reviewable matter to the PPF Ombudsman

192.—(1) Regulations must make provision—

(a) for a reviewable matter to be referred to the PPF Ombudsman following a reconsideration decision under regulations made under paragraph (1)(b) of, or by virtue of paragraph (3)(b) of, Article 189 in respect of the matter, and

(b) for the PPF Ombudsman—

(i) to investigate and determine what (if any) is the appropriate action for the Board to take in relation to the matter, and

(ii) to remit the matter to the Board with directions for the purpose of giving effect to his determination.

(2) Regulations under paragraph (1) must make provision about the making of references to the PPF Ombudsman, including provision—

(a) about the descriptions of persons who may make them,

(b) about the manner of making such references, including the times by which they are to be made, and

(c) for prescribed persons to be notified of—

(i) references made under the regulations, and

(ii) determinations and directions given under the regulations.

(3) Regulations under paragraph (1) must—

(a) require the PPF Ombudsman to conduct an oral hearing in relation to any reviewable matter referred to him under the regulations or to dispose of the matter on the basis of written representations,

(b) enable the PPF Ombudsman to consider evidence relating to the matter which was not available to the Board or the Reconsideration Committee, and

(c) make other provision about the procedure for conducting investigations, and reaching and giving determinations, under the regulations, including the times by which determinations are to be given.

(4) The provision that may be made by virtue of paragraph (3)(c) includes provision—

(a) conferring rights on prescribed persons—

(i) to make representations to the PPF Ombudsman in relation to a reviewable matter referred to him by virtue of this Article,

(ii) to be heard or represented at any oral hearing by the PPF Ombudsman in relation to such a matter,

(b) about the consideration of evidence by the PPF Ombudsman, including—

(i) production of documents,

(ii) oral hearings,

(iii) expert evidence,

(iv) attendance of witnesses,

(c) conferring rights on prescribed persons to continue a reference made by a person who has died or is otherwise unable to act for himself,

(d) as to the costs or expenses of prescribed persons,

(e) conferring rights on prescribed persons to apply for a stay in relation to prescribed legal proceedings which begin after the reference is made and conferring power on the relevant court to make an order staying the proceedings if it is satisfied of prescribed matters, and

(f) for securing that any determination or direction of the PPF Ombudsman under the regulations is binding on prescribed persons.

(5) Regulations under paragraph (1) may include provision—

(a) conferring power on the PPF Ombudsman to direct the Board to pay such compensation as he considers appropriate to such persons as he may direct,

(b) conferring power on the Board to make such payments,

(c) conferring power on the PPF Ombudsman to direct that—

(i) any determinations, directions or other decisions which are made by the Board in accordance with any determination or direction given by him, or

(ii) any variations, revocations or substitutions of its determinations, directions or other decisions which are made by the Board in accordance with any determination or direction given by him,

are to be treated as if they were made at such time (which may be a time prior to his determination or direction) as he considers appropriate,

(d) conferring power on the PPF Ombudsman to direct that any notice varied, substituted, issued or given by the Board in accordance with any determination or direction given by him is to be treated—

(i) as if it were issued or given at such time (which may be a time prior to his determination or direction) as he considers appropriate;

(ii) as if it became binding for the purposes of this Part at the time at which he gives his determination or direction or at such later time as he considers appropriate,

(e) prescribing the circumstances in which any determination or other act of the Board in accordance with any determination or direction given by the PPF Ombudsman, is not to be treated as being a reviewable matter for the purposes of this Chapter, and

(f) conferring such other powers on the Board as may be required when a matter is remitted to it (including such powers as the Board may have on making a review decision or reconsideration decision under regulations made under Article 189(1)).

Investigation by PPF Ombudsman of complaints of maladministration

193.—(1) Regulations must provide for the investigation and determination by the PPF Ombudsman of such matters as may be prescribed following decisions on relevant complaints given by the Board or the committee of the Board referred to in Article 190(3)(b) under regulations made under that Article.

(2) Regulations under this Article must make provision—

(a) prescribing the descriptions of person who may refer matters to the PPF Ombudsman under the regulations,

(b) about the manner in which such references may be made, including the times by which they are to be made,

(c) about the procedure for conducting investigations, and reaching and giving determinations, on such references, including the times by which the determinations are to be given,

(d) about the powers of the PPF Ombudsman on making such determinations, including—

(i) the power to direct the Board to pay such compensation as he considers appropriate to such persons as he considers have sustained injustice in consequence of the matters complained of, and

(ii) the power to direct the Board to take or refrain from taking such other steps as he may specify,

(e) conferring such powers on the Board as are necessary to comply with such requirements,

(f) for prescribed persons to be notified of—

(i) references to the PPF Ombudsman under the regulations, and

(ii) determinations and directions by the PPF Ombudsman under the regulations,

(g) conferring rights on prescribed persons—

(i) to make representations to the PPF Ombudsman in relation to a matter referred to him by virtue of this Article,

(ii) to be heard or represented at any oral hearing by the PPF Ombudsman in relation to such a matter,

(h) about the consideration of evidence by the PPF Ombudsman, including—

(i) production of documents,

(ii) oral hearings,

(iii) expert evidence,

(iv) attendance of witnesses,

(i) conferring rights on prescribed persons to continue a reference made by a person who has died or is otherwise unable to act for himself,

(j) as to the costs or expenses of prescribed persons,

(k) conferring rights on prescribed persons to apply for a stay in relation to prescribed legal proceedings which begin after the reference is made and conferring power on the relevant court to make an order staying the proceedings if it is satisfied of prescribed matters, and

(l) for securing that any determination or direction of the PPF Ombudsman under the regulations is binding on prescribed persons.

Referral of questions of law

194. The PPF Ombudsman may refer any question of law arising for determination in connection with—

(a) a reviewable matter referred to him by virtue of regulations under Article 192, or

(b) a matter referred to him by virtue of regulations under Article 193,

to the High Court.

Publishing reports etc.

195.—(1) If the PPF Ombudsman considers it appropriate to do so in any particular case, he may publish in such form and manner as he considers appropriate a report of any investigation carried out by virtue of regulations under Article 192 or 193 and of the result of that investigation.

(2) For the purposes of the law of defamation, the publication of any matter by the PPF Ombudsman under or by virtue of any provision of this Chapter shall be absolutely privileged.

Determinations of the PPF Ombudsman

196.—(1) A person bound by a determination or direction by the PPF Ombudsman by virtue of regulations made under Article 192 or 193 may appeal on a point of law arising from the determination or direction to the High Court.

(2) Any determination or direction of the PPF Ombudsman is enforceable in a county court as if it were a judgment or order of that court.

Obstruction etc. of the PPF Ombudsman

197.—(1) This Article applies if any person—

(a) without lawful excuse obstructs the PPF Ombudsman in the performance of his functions, or

(b) is guilty of any act or omission in relation to an investigation by the PPF Ombudsman under regulations made under Article 192 or 193, which, if that investigation were a proceeding in the court, would constitute contempt of court.

(2) The PPF Ombudsman may certify the offence to the court.

(3) Where an offence is certified under paragraph (2), the court may—

(a) inquire into the matter,

(b) hear any witnesses who may be produced against or on behalf of the person charged with the offence and any statement that may be offered in defence, and

(c) deal with him in any manner in which the court could deal with him if he had committed the like offence in relation to the court.

(4) In this Article "the court" means a county court.

CHAPTER 7

MISCELLANEOUS

Backdating the winding up of eligible schemes

Backdating the winding up of eligible schemes

198.—(1) Paragraph (3) applies where—

(a) a qualifying insolvency event occurs in relation to the employer in relation to an eligible scheme, and

(b) the winding up of the scheme begins at or after the time of that event but not later than the first of the following events in relation to the scheme—

(i) a scheme failure notice or a withdrawal notice issued under Article 106(2) in relation to the scheme becoming binding,

(ii) a withdrawal notice issued under Article 132 in relation to the scheme becoming binding, or

(iii) a notice issued under Article 106(4) becoming binding in a case where Article 132 does not apply.

(2) Paragraph (3) also applies where—

(a) the trustees or managers of an eligible scheme—

(i) make an application to the Board under paragraph (1) of Article 113, or

(ii) receive a notice from the Board under paragraph (5)(a) of that Article, and

(b) the winding up of the scheme begins—

(i) at or after the time the application is made or notice is received, but

(ii) not later than a scheme failure notice or a withdrawal notice issued under Article 114(2) or (3) in relation to the scheme becoming binding.

(3) The winding up of the scheme is to be taken as beginning immediately before the event within paragraph (1)(a) or, as the case may be, (2)(a) if—

(a) the winding up is in pursuance of an order of the Regulator under Article 11 of the 1995 Order directing the winding up of the scheme, or

(b) in any other case, the trustees or managers of the scheme so determine.

(4) In a case where paragraph (3) applies, the Regulator may by order direct any person specified in the order—

(a) to take such steps as are so specified as it considers are necessary as a result of the winding up of the scheme beginning in accordance with that paragraph, and

(b) to take those steps within a period specified in the order.

(5) If the trustees or managers of a scheme fail to comply with a direction to them contained in an order under paragraph (4), Article 10 of the 1995 Order (civil penalties) applies to any trustee or manager who has failed to take all reasonable steps to secure compliance.

(6) That Article also applies to any other person who, without reasonable excuse, fails to comply with a direction to him contained in an order under paragraph (4).

(7) For the purposes of this Article "qualifying insolvency event" has the same meaning as in Article 111.

(8) Paragraph (4) of Article 112 applies for the purposes of paragraph (2) of this Article as it applies for the purposes of paragraph (1) of that Article.

(9) This Article is to be read subject to Article 119 (which restricts the winding up of an eligible scheme during an assessment period).

Pension sharing

Pension sharing

199.—(1) Regulations may modify any of the provisions of this Part as it applies in relation to—

(a) cases where a person's shareable rights under an eligible scheme have (at any time) become subject to a pension debit;

(b) cases where—

(i) a pension sharing order or provision in respect of such rights is made before the time a transfer notice under Article 144 is received by the trustees or managers of the eligible scheme, and

(ii) that order or provision takes effect on or after the receipt by them of the notice.

(2) Regulations may also modify any of the provisions of Chapter 1 of Part V of the 1999 Order (pension sharing) as it applies in relation to—

(a) cases within paragraph (1)(a) where any liability of the trustees or managers of the eligible scheme in respect of a pension credit was not discharged before the time a transfer notice under Article 144 was received by the trustees or managers of the eligible scheme;

(b) cases within paragraph (1)(b).

(3) In this Article—

(a) "pension debit" and "shareable rights" have the same meaning as in Chapter 1 of Part V of the 1999 Order (pension sharing), and

(b) "pension sharing order or provision" means an order or provision falling within Article 25(1) of the 1999 Order (activation of pension sharing).

PART IV

SCHEME FUNDING

Introductory

Pension schemes to which this Part applies

200.—(1 [F118] The provisions of this Part apply to every occupational pension scheme other than—

(a [F118] a money purchase scheme, or

(b [F118] a prescribed scheme or a scheme of a prescribed description.

(2 [F118] Regulations under paragraph (1)(b) may provide for exemptions from all or any of the provisions of this Part.

F118 mod. by SR 2005/570

Scheme funding

The statutory funding objective

201.—(1) Every scheme is subject to a requirement ("the statutory funding objective") that it must have sufficient and appropriate assets to cover its technical provisions.

(2) A scheme's "technical provisions" means the amount required, on an actuarial calculation, to make provision for the scheme's liabilities.

(3) For the purposes of this Part—

(a) the assets to be taken into account and their value shall be determined, calculated and verified in a prescribed manner, and

(b) the liabilities to be taken into account shall be determined in a prescribed manner and the scheme's technical provisions shall be calculated in accordance with any prescribed methods and assumptions.

(4) Regulations may—

(a) provide for alternative prescribed methods and assumptions,

(b) provide that it is for the trustees or managers to determine which methods and assumptions are to be used in calculating a scheme's technical provisions, and

(c) require the trustees or managers, in making their determination, to take into account prescribed matters and follow prescribed principles.

(5) Any provision of the scheme rules that limits the amount of the scheme's liabilities by reference to the value of its assets shall be disregarded.

Statement of funding principles

202.—(1) The trustees or managers must prepare, and from time to time review and if necessary revise, a written statement of—

(a) their policy for securing that the statutory funding objective is met, and

(b) such other matters as may be prescribed.

This is referred to in this Part as a "statement of funding principles".

(2) The statement must, in particular, record any decisions by the trustees or managers as to—

(a) the methods and assumptions to be used in calculating the scheme's technical provisions, and

(b) the period within which, and manner in which, any failure to meet the statutory funding objective is to be remedied.

(3) Provision may be made by regulations—

(a) as to the period within which a statement of funding principles must be prepared, and

(b) requiring it to be reviewed, and if necessary revised, at such intervals, and on such occasions, as may be prescribed.

(4) Where any requirement of this Article is not complied with, Article 10 of the 1995 Order (civil penalties) applies to a trustee or manager who has failed to take all reasonable steps to secure compliance.

Actuarial valuations and reports

203.—(1) The trustees or managers must obtain actuarial valuations—

(a [F119] [F120]at intervals of not more than one year or, if they obtain actuarial reports for the intervening years, at intervals of not more than three years, and

(b) in such circumstances and on such other occasions as may be prescribed.

(2) In this Part—

(a [F120] an "actuarial valuation" means a written report, prepared and signed by the actuary, valuing the scheme's assets and calculating its technical provisions,

(b) the effective date of an actuarial valuation is the date by reference to which the assets are valued and the technical provisions calculated,

(c [F119] [F120]an "actuarial report" means a written report, prepared and signed by the actuary, on developments affecting the scheme's technical provisions since the last actuarial valuation was prepared, and

(d [F119] [F120]the effective date of an actuarial report is the date by reference to which the information in the report is stated.

(3 [F119] The intervals referred to in paragraph (1)(a) are between effective dates of the valuations, and—

(a [F119] [F120]the effective date of the first actuarial valuation must be not more than one year after the establishment of the scheme, and

(b [F119] [F120]the effective date of any actuarial report must be not more than one year after the effective date of the last actuarial valuation, or, if more recent, the last actuarial report.

(4 [F119] [F120]The trustees or managers must ensure that a valuation or report obtained by them is received by them within the prescribed period after its effective date.

(5 [F119] [F120]Nothing in this Article affects any power or duty of the trustees or managers to obtain actuarial valuations or reports at more frequent intervals or in other circumstances or on other occasions.

(6 [F119] [F120]An actuarial valuation or report (whether obtained under this Article or in pursuance of any other power or duty) must be prepared in such a manner, give such information, contain such statements and satisfy such other requirements as may be prescribed.

(7 [F119] [F120]The trustees or managers must secure that any actuarial valuation or report obtained by them (whether obtained under this Article or in pursuance of any other power or duty) is made available to the employer within seven days of their receiving it.

(8) Where paragraph (1), (4) or (7) is not complied with, Article 10 of the 1995 Order (civil penalties) applies to a trustee or manager who has failed to take all reasonable steps to secure compliance.

F119 mod. by SR 2005/568
F120 mod. by SR 2005/570

Certification of technical provisions

204.—(1) When an actuarial valuation is carried out, the calculation of the technical provisions must be certified by the actuary.

(2) The certificate must state that in the opinion of the actuary the calculation is made in accordance with regulations under Article 201.

(3) If the actuary cannot give the certificate required by paragraph (2) he must report the matter in writing to the Regulator within a reasonable period after the end of the period within which the valuation must be received by the trustees or managers.

(4) Article 10 of the 1995 Order (civil penalties) applies to the actuary if he fails without reasonable excuse to comply with paragraph (3).

Recovery plan

205.—(1 [F121] [F122]If having obtained an actuarial valuation it appears to the trustees or managers of a scheme that the statutory funding objective was not met on the effective date of the valuation, they must within the prescribed time—

(a [F122] if there is no existing recovery plan in force, prepare a recovery plan;

(b [F122] if there is an existing recovery plan in force, review and if necessary revise it.

(2 [F121] [F122]A recovery plan must set out—

(a) the steps to be taken to meet the statutory funding objective, and

(b) the period within which that is to be achieved.

(3 [F121] [F122]A recovery plan must comply with any prescribed requirements and must be appropriate having regard to the nature and circumstances of the scheme.

(4 [F121] [F122]In preparing or revising a recovery plan the trustees or managers must take account of prescribed matters.

(5 [F121] [F122]Provision may be made by regulations as to other circumstances in which a recovery plan may or must be reviewed and if necessary revised.

(6 [F121] [F122]The trustees or managers must, except in prescribed circumstances, send a copy of any recovery plan to the Regulator within a reasonable period after it is prepared or, as the case may be, revised.
The copy of any recovery plan sent to the Regulator must be accompanied by the prescribed information.

(7) Where any requirement of this Article is not complied with, Article 10 of the 1995 Order (civil penalties) applies to a trustee or manager who has failed to take all reasonable steps to secure compliance.

F121 mod. by SR 2005/568
F122 mod. by SR 2005/570

Schedule of contributions

206.—(1) The trustees or managers must prepare, and from time to time review and if necessary revise, a schedule of contributions.

(2) A "schedule of contributions" means a statement showing—

(a) the rates of contributions payable towards the scheme by or on behalf of the employer and the active members of the scheme, and

(b) the dates on or before which such contributions are to be paid.

(3) Provision may be made by regulations—

(a) as to the period within which, after the establishment of a scheme, a schedule of contributions must be prepared,

(b) requiring the schedule of contributions to be reviewed, and if necessary revised, at such intervals, and on such occasions, as may be prescribed, and

(c) as to the period for which a schedule of contributions is to be in force.

(4) The schedule of contributions must satisfy prescribed requirements.

(5) The schedule of contributions must be certified by the actuary and—

(a) the duty to prepare or revise the schedule is not fulfilled, and

(b) the schedule shall not come into force,

until it has been so certified.

(6) The certificate must state that, in the opinion of the actuary—

(a) the schedule of contributions is consistent with the statement of funding principles, and

(b) the rates shown in the schedule are such that—

(i [F123] [F124]where the statutory funding objective was not met on the effective date of the last actuarial valuation, the statutory funding objective can be expected to be met by the end of the period specified in the recovery plan, or

(ii) where the statutory funding objective was met on the effective date of the last actuarial valuation, the statutory funding objective can be expected to continue to be met for the period for which the schedule is to be in force.

(7) Where the statutory funding objective was not met on the effective date of the last actuarial valuation, the trustees or managers must send a copy of the schedule of contributions to the Regulator within a reasonable period after it is prepared or, as the case may be, revised.

(8) Where any requirement of the preceding provisions of this Article is not complied with, Article 10 of the 1995 Order (civil penalties) applies to a trustee or manager who has failed to take all reasonable steps to secure compliance.

(9) If the actuary is unable to give the certificate required by paragraph (6), he must report the matter in writing to the Regulator within a reasonable period after the end of the period within which the schedule is required to be prepared or, as the case may be, revised.

(10) Article 10 of the 1995 Order (civil penalties) applies to the actuary if he fails without reasonable excuse to comply with paragraph (9).

(11) The provisions of paragraphs (1), (3) and (5) to (10) do not apply in relation to a schedule of contributions imposed by the Regulator under Article 210 or, as the case may be, where such a schedule of contributions is in force.

F123 mod. by SR 2005/568
F124 mod. by SR 2005/570

Failure to make payments

207.—(1) This Article applies where an amount payable in accordance with the schedule of contributions by or on behalf of the employer or an active member of a scheme is not paid on or before the due date.

(2) If the trustees or managers have reasonable cause to believe that the failure is likely to be of material significance in the exercise by the Regulator of any of its functions, they must, except in prescribed circumstances, give notice of the failure to the Regulator and to the members within a reasonable period.

(3) The amount unpaid (whether payable by the employer or not), if not a debt due from the employer to the trustees or managers apart from this paragraph, shall be treated as such a debt.

(4) Article 10 of the 1995 Order (civil penalties) applies—

(a) where paragraph (2) is not complied with, to a trustee or manager who has failed to take all reasonable steps to secure compliance with that paragraph;

(b) to the employer if he fails without reasonable excuse to make a payment required of him—

(i) in accordance with the schedule of contributions, or

(ii) by virtue of paragraph (3).

(5) This Article applies in relation to a schedule of contributions imposed by the Regulator under Article 210 as in relation to one agreed between the trustees or managers and the employer.

Matters requiring agreement of the employer[F125]

208.—(1 [F125] The trustees or managers must obtain the agreement of the employer to—

(a) any decision as to the methods and assumptions to be used in calculating the scheme's technical provisions (see Article 201(4));

(b) any matter to be included in the statement of funding principles (see Article 202);

(c) any provisions of a recovery plan (see Article 205);

(d) any matter to be included in the schedule of contributions (see Article 206).

(2 [F125] If it appears to the trustees or managers that it is not otherwise possible to obtain the employer's agreement within the prescribed time to any such matter, they may (if the employer agrees) by resolution modify the scheme as regards the future accrual of benefits.

(3) No modification may be made under paragraph (2) that 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.

For this purpose "subsisting right" and "survivor" have the meanings given by Article 67A of the 1995 Order.

(4) Any such modification must be—

(a) recorded in writing by the trustees or managers, and

(b) notified to the active members within one month of the modification taking effect.

(5 [F125] If the trustees or managers are unable to reach agreement with the employer within the prescribed time on any such matter as is mentioned in paragraph (1), they must report the failure in writing to the Regulator within a reasonable period.

(6 [F125] Where paragraph (1), (4) or (5) is not complied with, Article 10 of the 1995 Order (civil penalties) applies to a trustee or manager who has failed to take all reasonable steps to secure compliance.

F125 mod. by SR 2005/568

Matters on which advice of actuary must be obtained

209.—(1) The trustees or managers must obtain the advice of the actuary before doing any of the following—

(a) making any decision as to the methods and assumptions to be used in calculating the scheme's technical provisions (see Article 201(4)),

(b) preparing or revising the statement of funding principles (see Article 202),

(c) preparing or revising a recovery plan (see Article 205),

(d) preparing or revising the schedule of contributions (see Article 206),

(e) modifying the scheme as regards the future accrual of benefits under Article 208(2).

(2) Regulations may require the actuary to comply with any prescribed requirements when advising the trustees or managers of a scheme on any such matter.

(3) The regulations may require the actuary to have regard to prescribed guidance.

"Prescribed guidance" means guidance that is prepared and from time to time revised by a prescribed body and, if the regulations so provide, is approved by the Department.

(4) Where paragraph (1) is not complied with, Article 10 of the 1995 Order (civil penalties) applies to a trustee or manager who has failed to take all reasonable steps to secure compliance.

Powers of the Regulator

210.—(1) The powers conferred by this Article are exercisable where it appears to the Regulator with respect to a scheme (as a result of a report made to it or otherwise)—

(a) that the trustees or managers have failed to comply with the requirements of Article 202 with respect to the preparation or revision of a statement of funding principles;

(b) that the trustees or managers have failed to obtain an actuarial valuation as required by Article 203(1);

(c) that the actuary is unable, on an actuarial valuation required by Article 203(1), to certify the calculation of the scheme's technical provisions;

(d [F126] [F127]that the trustees or managers have failed to comply with the requirements of Article 205 with respect to the preparation or revision of a recovery plan;

(e) that the trustees or managers have failed to comply with the requirements of Article 206 with respect to the preparation or revision of a schedule of contributions;

(f) that the actuary is unable to certify a schedule of contributions (see Article 206(6));

(g) that the employer has failed to make payments in accordance with the schedule of contributions, or that are required of him by virtue of Article 207(3), and the failure is of material significance;

(h) that the trustees or managers have been unable to reach agreement with the employer within the prescribed time as to a matter in relation to which such agreement is required (see Article 208(5)).

(2) In any of those circumstances the Regulator may by order exercise all or any of the following powers—

(a) it may modify the scheme as regards the future accrual of benefits;

(b) it may give directions as to—

(i) the manner in which the scheme's technical provisions are to be calculated, including the methods and assumptions to be used in calculating the scheme's technical provisions, or

(ii) the period within which, and manner in which, any failure to meet the statutory funding objective is to be remedied;

(c) it may impose a schedule of contributions specifying—

(i) the rates of contributions payable towards the scheme by or on behalf of the employer and the active members of the scheme, and

(ii) the dates on or before which such contributions are to be paid.

(3) No modification may be made under paragraph (2)(a) that 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.

For this purpose “subsisting right” and “survivor” have the meanings given by Article 67A of the 1995 Order.

(4) In exercising any of the powers conferred by this Article the Regulator must comply with any prescribed requirements.

(5) The powers conferred by this Article are in addition to any other powers exercisable by the Regulator under this Order or the 1995 Order.

F126 mod. by SR 2005/568
F127 mod. by SR 2005/570

VALID FROM 24/07/2006

[F128Requirements for winding up procedure

210A.—(1) Where an occupational pension scheme in respect of which a recovery plan has been prepared under Article 205 begins to wind up during the recovery period, the trustees or managers of the scheme must as soon as reasonably practicable prepare a winding up procedure.

(2) A winding up procedure must—

(a) set out the action to be taken to establish the liabilities to, or in respect of, the members of the scheme, in respect of pensions and other benefits, and to recover any assets of the scheme;

(b) give an estimate of the amount of time it will take to establish those liabilities and to recover any such assets;

(c) give an indication of which of the accrued rights or benefits (if any), to which a person is entitled under the scheme, are likely to be affected by a reduction in actuarial value;

(d) specify which one or more of the ways mentioned in Article 74(3)(a) to (e) of the 1995 Order will be used to discharge the liabilities to, or in respect of, the members of the scheme in respect of pensions or other benefits;

(e) give an estimate of the amount of time it will take to discharge those liabilities.

(3) The requirement imposed by paragraph (2)(c) applies only to the extent that the trustees or managers have sufficient information to give such an indication.

(4) A winding up procedure must be appropriate having regard to the nature and circumstances of the scheme.

(5) A winding up procedure may be reviewed, and if necessary revised, where the trustees or managers consider that there are reasons that may justify a variation to it.

(6) The trustees or managers must send a copy of any winding up procedure to the Regulator as soon as reasonably practicable after it has been prepared or, as the case may be, revised.

(7) Where any requirement of this Article is not complied with, Article 10 of the 1995 Order (civil penalties) applies to a trustee or manager who has failed to take all reasonable steps to secure compliance.

(8) In this Article "recovery period", in relation to an occupational pension scheme, means the period specified in the scheme's recovery plan in accordance with Article 205(2)(b).**]**

F128 Art. 210A inserted (24.7.2006) by Occupational Pension Schemes (Winding up Procedure Requirement) Regulations (Northern Ireland) 2006 (S.R. 2006/297), **reg. 2**

Supplementary provisions

Power to modify provisions of this Part

211. Regulations may modify the provisions of this Part as they apply in prescribed circumstances.

Construction as one with the 1995 Order

212. This Part shall be construed as one with Part II of the 1995 Order.

Status: *Point in time view as at 06/04/2006. This version of this Order contains provisions that are not valid for this point in time.*
Changes to legislation: *The Pensions (Northern Ireland) Order 2005 is up to date with all changes known to be in force on or before 03 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

PART V

FINANCIAL PLANNING FOR RETIREMENT

Retirement planning

Supply of housing benefit information

213.—(1) Section 116D of the Social Security Administration (Northern Ireland) Act 1992 (c. 8) (supply of information by the Housing Executive) is amended as follows.

(2) In subsection (1) for "or employment or training" substitute " , employment or training, private pensions policy or retirement planning ".

(3) After subsection (2) insert—

"(2A) Information supplied under subsection (2) may be used for any purpose relating to private pensions policy or retirement planning." .

(4) After subsection (5) add—

"(6) In this section—

"private pensions policy" means policy relating to occupational pension schemes or personal pension schemes;

"retirement planning" means promoting financial planning for retirement." .

Combined pension forecasts

214.—(1) Regulations may require the trustees or managers of an occupational or personal pension scheme to provide any member of the scheme with—

(a) the information specified in paragraph (2), together with

(b) the information specified in paragraph (3).

(2) The information referred to in paragraph (1)(a) is information relating to the member which—

(a) is state pension information for the purposes of section 38 of the 2000 Act,

(b) has been disclosed to the trustees or managers under that section (or, by virtue of that section, is treated as having been so disclosed), and

(c) is of a description specified in the regulations.

(3) The information referred to in paragraph (1)(b) is information which—

(a) relates to the pensions and other benefits likely to accrue to the member, or capable of being secured by him, under the scheme, and

(b) is of a description specified in the regulations.

(4) Regulations under paragraph (1) may require information referred to in that paragraph to be provided at a time or times specified in the regulations.

Employee information and advice

Information and advice to employees

215.—(1) Regulations may require employers to take action for the purpose of enabling employees to obtain information and advice about pensions and saving for retirement.

(2) Regulations under paragraph (1) may in particular—

(a) provide that they are to apply in relation to employers of a prescribed description and employees of a prescribed description;

(b) make different provision for different descriptions of employers and employees;

(c) make provision as to the action to be taken by employers (including the frequency at which, and the time and place at which, action is to be taken);

(d) make provision as to the description of information and advice in relation to which requirements apply;

(e) make provision about the description of person authorised to provide any such information and advice.

(3) Employers to whom regulations under paragraph (1) apply must provide information to the Regulator about the action taken by them for the purpose of complying with the regulations.

(4) Regulations may make provision as to—

(a) the information to be provided under paragraph (3);

(b) the form and manner in which the information is to be provided;

(c) the period within which the information is to be provided.

(5) Article 10 of the 1995 Order (civil penalties) applies to any person who, without reasonable excuse, fails to comply with paragraph (3).

(6) In this Article "employer" means any employer, whether or not resident or incorporated in any part of the United Kingdom.

PART VI

OCCUPATIONAL AND PERSONAL PENSION SCHEMES: MISCELLANEOUS PROVISIONS

Categories of pension scheme

Categories of pension scheme

216.—(1) Section 1 of the Pension Schemes Act (categories of pension scheme) is amended as follows.

(2) The provisions of the section shall become subsection (1) of the section.

(3) In that subsection, for the definitions of "occupational pension scheme" and "personal pension scheme" substitute—

""occupational pension scheme" means a pension scheme—

(a) that—

(i) for the purpose of providing benefits to, or in respect of, people with service in employments of a description, or

(ii) for that purpose and also for the purpose of providing benefits to, or in respect of, other people,

is established by, or by persons who include, a person to whom subsection (2) applies when the scheme is established or (as the case may be) to whom that subsection would have applied when the scheme was established had that subsection then been in force, and

(b) that has its main administration in the United Kingdom or outside the member States, or

a pension scheme that is prescribed or is of a prescribed description;

"personal pension scheme" means a pension scheme that—

(a) is not an occupational pension scheme, and

(b) is established by a person within any of the paragraphs of section 154(1) of the Finance Act 2004;" .

(4) After that subsection insert—

"(2) This subsection applies—

(a) where people in employments of the description concerned are employed by someone, to a person who employs such people,

(b) to a person in an employment of that description, and

(c) to a person representing interests of a description framed so as to include—

(i) interests of persons who employ people in employments of the description mentioned in paragraph (a), or

(ii) interests of people in employments of that description.

(3) For the purposes of subsection (2), if a person is in an employment of the description concerned by reason of holding an office (including an elective office) and is entitled to remuneration for holding it, the person responsible for paying the remuneration shall be taken to employ the office-holder.

(4) In the definition in subsection (1) of "occupational pension scheme", the reference to a description includes a description framed by reference to an employment being of any of two or more kinds.

(5) In subsection (1) "pension scheme" (except in the phrases "occupational pension scheme", "personal pension scheme" and "public service pension scheme") means a scheme or other arrangements, comprised in one or more instruments or agreements, having or capable of having effect so as to provide benefits to or in respect of people—

(a) on retirement,

(b) on having reached a particular age, or

(c) on termination of service in an employment." .

Meaning of employer in Part II of the 1995 Order

217.—(1) In Article 122 of the 1995 Order (supplementary provision relating to interpretation), in paragraph (3) (extension of meaning of "employer")—

(a) after "include" insert

"(a)" ;

(b) after "scheme" insert

";

(b) such other persons as may be prescribed" .

(2) In Article 167 of that Order (Assembly, etc. control of orders and regulations), in paragraph (3) (orders and regulations subject to confirmatory procedure), omit "or" at the end of sub-paragraph (c) and after that sub-paragraph insert—

"(ca) Article 122(3)(b), or" .

Requirements for member-nominated trustees and directors

Requirement for member-nominated trustees

218.—(1) The trustees of an occupational trust scheme must secure—

(a) that, within a reasonable period of the commencement date, arrangements are in place which provide for at least one-third of the total number of trustees to be member-nominated trustees, and

(b) that those arrangements are implemented.

(2) "Member-nominated trustees" are trustees of an occupational trust scheme who—

(a) are nominated as the result of a process in which at least the following are eligible to participate—

(i) all the active members of the scheme or an organisation which adequately represents the active members, and

(ii) all the pensioner members of the scheme or an organisation which adequately represents the pensioner members, and

(b) are selected as a result of a process which involves some or all of the members of the scheme.

(3) The "commencement date", in relation to a scheme, is—

(a) the date upon which this Article first applies in relation to the scheme, or

(b) in the case of a scheme to which this Article has ceased to apply and then reapplies, the date on which the Article reapplies to it.

(4) The arrangements may provide for a greater number of member-nominated trustees than that required to satisfy the one-third minimum mentioned in paragraph (1)(a) only if the employer has approved the greater number.

(5) The arrangements—

(a) must provide for the nomination and selection process to take place within a reasonable period of any requirement arising under the arrangements to appoint a member-nominated trustee,

(b) must provide, where a vacancy is not filled because insufficient nominations are received, for the nomination and selection process to be repeated at reasonable intervals until the vacancy is filled,

(c) must provide that where the employer so requires, a person who is not a member of the scheme must have the employer's approval to qualify for selection as a member-nominated trustee, and

(d) subject to sub-paragraph (c), may provide that, where the number of nominations received is equal to or less than the number of appointments required, the nominees are deemed to be selected.

(6) The arrangements must provide that the removal of a member-nominated trustee requires the agreement of all the other trustees.

(7) Nothing in the arrangements or in the provisions of the scheme may exclude member-nominated trustees from the exercise of functions exercisable by other trustees by reason only of the fact that they are member-nominated trustees.

(8) This Article does not apply in relation to an occupational trust scheme if—

(a) every member of the scheme is a trustee of the scheme and no other person is such a trustee,

(b) every trustee of the scheme is a company, or

(c) the scheme is of a prescribed description.

(9) If, in the case of an occupational trust scheme, the arrangements required by paragraph (1)—

(a) are not in place as required by paragraph (1)(a), or

(b) are not being implemented,

Article 10 of the 1995 Order (civil penalties) applies to any trustee who has failed to take all reasonable steps to secure compliance.

Modifications etc. (not altering text)

C9 Art. 218 modified (6.4.2006) by Occupational Pension Schemes (Member-nominated Trustees and Directors) Regulations (Northern Ireland) 2006 (S.R. 2006/148), regs. 1(1), **5**

Requirement for member-nominated directors of corporate trustees

219.—(1) Where a company is a trustee of an occupational trust scheme and every trustee of the scheme is a company, the company must secure—

(a) that, within a reasonable period of the commencement date, arrangements are in place which provide for at least one-third of the total number of directors of the company to be member-nominated directors, and

(b) that those arrangements are implemented.

(2) "Member-nominated directors" are directors of the company in question who—

(a) are nominated as the result of a process in which at least the following are eligible to participate—

(i) all the active members of the occupational trust scheme or an organisation which adequately represents the active members, and

(ii) all the pensioner members of the occupational trust scheme or an organisation which adequately represents the pensioner members, and

(b) are selected as a result of a process which involves some or all of the members of that scheme.

(3) The "commencement date", in relation to a company, is—

(a) the date upon which this Article first applies in relation to the company, or

(b) in the case of a company to which this Article has ceased to apply and then reapplies, the date on which the Article reapplies to it.

(4) The arrangements may provide for a greater number of member-nominated directors than that required to satisfy the one-third minimum mentioned in paragraph (1)(a) only if the employer has approved the greater number.

(5) The arrangements—

(a) must provide for the nomination and selection process to take place within a reasonable period of any requirement arising under the arrangements to appoint a member-nominated director,

(b) must provide, where a vacancy is not filled because insufficient nominations are received, for the nomination and selection process to be repeated at reasonable intervals until the vacancy is filled,

(c) must provide that where the employer so requires, a person who is not a member of the scheme must have the employer's approval to qualify for selection as a member-nominated director, and

(d) subject to sub-paragraph (c), may provide that, where the number of nominations received is equal to or less than the number of appointments required, the nominees are deemed to be selected.

(6) The arrangements must provide that the removal of a member-nominated director requires the agreement of all the other directors.

(7) Nothing in the arrangements may exclude member-nominated directors from the exercise of functions exercisable by other directors by reason only of the fact that they are member-nominated directors.

(8) Where the same company is a trustee of two or more occupational trust schemes by reference to each of which this Article applies to the company, then subject to paragraph (9), the preceding provisions of this Article have effect as if—

(a) the schemes were a single scheme,

(b) the members of each of the schemes were members of that single scheme, and

(c) the references to "the employer" were references to all the employers in relation to the schemes.

(9) Where, apart from this paragraph, paragraph (8) would apply in relation to a company, the company may elect that paragraph (8)—

(a) is not to apply as mentioned in that paragraph, or

(b) is to apply but only in relation to some of the schemes to which it would otherwise apply.

(10) This Article does not apply in relation to an occupational trust scheme if the scheme is of a prescribed description.

(11) If, in the case of a company which is a trustee of an occupational trust scheme, the arrangements required by paragraph (1)—

(a) are not in place as required by paragraph (1)(a), or

(b) are not being implemented,

Article 10 of the 1995 Order (civil penalties) applies to the company.

Modifications etc. (not altering text)

C10 Art. 219 modified (6.4.2006) by Occupational Pension Schemes (Member-nominated Trustees and Directors) Regulations (Northern Ireland) 2006 (S.R. 2006/148), regs. 1(1), **5**

C11 Art. 219 modified by S.R. 2006/148, reg. 5 (as amended (6.4.2009) by Occupational and Personal Pension Schemes (Miscellaneous Amendments) Regulations (Northern Ireland) 2009 (S.R. 2009/115), regs. 1(2), **20(3)(b)**)

Member-nominated trustees and directors: supplementary

220.—(1) The Department may, by order, amend Articles 218(1)(a) and (4) and 219(1)(a) and (4) by substituting, in each of those provisions, "one-half" for "one-third".

(2) Regulations may modify Articles 218 and 219 (including any of the provisions mentioned in paragraph (1)) in their application to prescribed cases.

(3) In Articles 218 and 219—

"company" means a company within the meaning given by Article 3(1) of the Companies Order or a company which may be wound up under Part VI of the Insolvency Order (unregistered companies);

"occupational trust scheme" means an occupational pension scheme established under a trust.

Obligations of trustees of occupational pension schemes

Investment principles

221. For Article 35 of the 1995 Order (investment principles) substitute—

"**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." .

Power to make regulations governing investment by trustees

222.—(1) Article 36 of the 1995 Order (choosing investments) is amended as follows.

(2) For paragraph (1) substitute—

"(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." .

(3) Omit paragraph (2).

(4) In paragraph (3) for "the matters mentioned in paragraph (2) and" substitute " the requirements of regulations under paragraph (1), so far as relating to the suitability of investments, and to ".

(5) For paragraph (8) substitute—

"(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." .

(6) After paragraph (8) add—

"(9) Regulations may exclude the application of any of the preceding provisions of this Article to any scheme which is of a prescribed description." .

Borrowing by trustees

223. After Article 36 of the 1995 Order insert—

"**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." .

Requirement for knowledge and understanding: individual trustees

224.—(1) This Article applies to every individual who is a trustee of an occupational pension scheme.

(2) In this Article, "relevant scheme", in relation to an individual, means any occupational pension scheme of which he is a trustee.

(3) An individual to whom this Article applies must, in relation to each relevant scheme, be conversant with—

(a) the trust deed and rules of the scheme,

(b) any statement of investment principles for the time being maintained under Article 35 of the 1995 Order,

(c) in the case of a relevant scheme to which Part IV (scheme funding) applies, the statement of funding principles most recently prepared or revised under Article 202, and

(d) any other document recording policy for the time being adopted by the trustees relating to the administration of the scheme generally.

(4) An individual to whom this Article applies must have knowledge and understanding of—

(a) the law relating to pensions and trusts,

(b) the principles relating to—

(i) the funding of occupational pension schemes, and

(ii) investment of the assets of such schemes, and

(c) such other matters as may be prescribed.

(5) The degree of knowledge and understanding required by paragraph (4) is that appropriate for the purposes of enabling the individual properly to exercise his functions as trustee of any relevant scheme.

Requirement for knowledge and understanding: corporate trustees

225.—(1) This Article applies to any company which is a trustee of an occupational pension scheme.

(2) In this Article, "relevant scheme", in relation to a company, means any occupational pension scheme of which it is a trustee.

(3) A company to which this Article applies must, in relation to each relevant scheme, secure that each individual who exercises any function which the company has as trustee of the scheme is conversant with each of the documents mentioned in paragraph (4) so far as it is relevant to the exercise of the function.

(4) Those documents are—

(a) the trust deed and rules of the scheme,

(b) any statement of investment principles for the time being maintained under Article 35 of the 1995 Order,

(c) in the case of a relevant scheme to which Part IV (scheme funding) applies, the statement of funding principles most recently prepared or revised under Article 202, and

(d) any other document recording policy for the time being adopted by the trustees relating to the administration of the scheme generally.

(5) A company to which this Article applies must secure that any individual who exercises any function which the company has as trustee of any relevant scheme has knowledge and understanding of—

(a) the law relating to pensions and trusts,

(b) the principles relating to—

(i) the funding of occupational pension schemes, and

(ii) investment of the assets of such schemes, and

(c) such other matters as may be prescribed.

(6) The degree of knowledge and understanding required by paragraph (5) is that appropriate for the purposes of enabling the individual properly to exercise the function in question.

(7) References in this Article to the exercise by an individual of any function of a company are to anything done by the individual on behalf of the company which constitutes the exercise of the function by the company.

(8) In this Article "company" means a company within the meaning given by Article 3(1) of the Companies Order or a company which may be wound up under Part VI of the Insolvency Order (unregistered companies).

Requirement for knowledge and understanding: supplementary

226.—(1) For the purposes of Articles 224 and 225, a person's functions as trustee of a relevant scheme are any functions which he has by virtue of being such a trustee and include, in particular—

(a) any functions which he has as one of the trustees authorised under Article 34(5)(a) of the 1995 Order (delegation of investment discretions) in the case of the scheme, and

(b) any functions which he otherwise has as a member of a committee of the trustees of the scheme.

(2) Regulations may provide for any provision in Article 224 or 225—

(a) not to apply, or

(b) to apply with modifications,

to a trustee in prescribed circumstances.

(3) Nothing in either of those Articles affects any rule of law requiring a trustee to have knowledge of, or expertise in, any matter.

Commencement Information

I20 Art. 226 wholly in operation at 6.4.2006; art. 226 not in operation at date of making see art. 1(2); art. 226(2) in operation for certain purposes at 9.3.2006 and wholly in operation at 6.4.2006 by S.R. 2006/95, **art. 2(a)**, Sch. Pt. 1; art. 226 in operation at 6.4.2006 in so far as not already in operation by S.R. 2006/95, **art. 2(c)**, Sch. Pt. 3

[F129Requirement for internal controls

226A.—(1) The trustees or managers of an occupational pension scheme must establish and operate internal controls which are adequate for the purpose of securing that the scheme is administered and managed—

(a) in accordance with the scheme rules, and

(b) in accordance with the requirements of the law.

(2) Nothing in this Article affects any other obligation of the trustees or managers of an occupational pension scheme to establish or operate internal controls, whether imposed by or by virtue of any statutory provision, the scheme rules or otherwise.

(3) This Article does not apply in relation to—

(a) a scheme which is—

(i) established by, or under, a statutory provision, and

(ii) guaranteed by a public authority,

(b) a pay#as#you#go scheme,

(c) a scheme which is established under section 48 of the Northern Ireland Act 1998 (pensions of members), or which was established under Part II of the Ministerial Salaries and Members' Pensions Act (Northern Ireland) 1965 or Article 3 of the Assembly Pensions (Northern Ireland) Order 1976.

(4) Paragraph (3) does not disapply this Article in relation to any scheme the trustees or managers of which are—

(a) authorised under Article 264 (general authorisation to accept contributions from European employers), or

(b) approved under Article 265 in relation to a European employer.

(5) In this Article—

"internal controls" means—

(a) arrangements and procedures to be followed in the administration and management of the scheme,

(b) systems and arrangements for monitoring the administration and management of the scheme, and

(c) arrangements and procedures to be followed for the safe custody and security of the assets of the scheme;

"local authority" has the meaning given by Article 2(2) of the Superannuation (Northern Ireland) Order 1972;

"pay#as#you#go scheme" means an occupational pension scheme under which there is no requirement for assets to be set aside in advance for the purpose of providing benefits under the scheme (disregarding any requirements relating to additional voluntary contributions);

"public authority" means—

(a) a Minister of the Crown (within the meaning of the Ministers of the Crown Act 1975),

(b) a government department (including any body or authority exercising statutory functions on behalf of the Crown), or

(c) a local authority.**]**

F129 SR 2005/567

Payment of surplus to employer

Payment of surplus to employer

227. For Article 37 of the 1995 Order (payment of surplus to employer) substitute—

"**Payment of surplus to employer**

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

(a) apart from this Article power is conferred on the employer or any other person to make payments to the employer out of funds held for the purposes of the scheme, and

(b) 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—

(a) it cannot be exercised by that person but may instead be exercised by the trustees, and

(b) 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) may only be exercised if—

(a) the trustees have obtained a written valuation of the scheme's assets and liabilities prepared and signed by a prescribed person,

(b) there is a certificate in force—

(i) stating that in the opinion of that person the prescribed requirements are met as at the date by reference to which the assets are valued and the liabilities are calculated, and

(ii) specifying what in the opinion of that person is the maximum amount of payment that may be made to the employer,

(c) the payment does not exceed the maximum amount specified in the certificate,

(d) the trustees are satisfied that it is in the interests of the members that the power is exercised in the manner proposed,

(e) 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 proposed,

(f) there is no freezing order in force in relation to the scheme under Article 19 of the Pensions (Northern Ireland) Order 2005, and

(g) notice of the proposal to exercise the power has been given, in accordance with prescribed requirements, to the members of the scheme.

(4) Provision may be made by regulations as to—

(a) the requirements (which may be alternative requirements) that must be met, in relation to any proposed payment to the employer out of funds held for the purposes of a scheme, with respect to the value of the scheme's assets and the amount of its liabilities,

(b) the assets and liabilities to be taken into account for that purpose and the manner in which their value or amount is to be determined, calculated and verified,

(c) the maximum amount of the payment that may be made to the employer, having regard to the value of the scheme's assets and the amount of its liabilities,

(d) the giving of a certificate as to the matters mentioned in sub-paragraphs (a) and (c), and

(e) the period for which such a certificate is to be in force.

(5) The trustees must also comply with any other prescribed requirements in connection with the making of a payment under this Article.

(6) If the trustees—

(a) purport to exercise the power referred to in paragraph (1)(a) without complying with the requirements of this Article, or

(b) fail to comply with any requirement of regulations under paragraph (5),

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

(7) If a person other than the trustees purports to exercise the power referred to in paragraph (1)(a), Article 10 applies to him.

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

Commencement Information

I21 Art. 227 wholly in operation at 6.4.2006; art. 227 not in operation at date of making see art. 1(2); art. 227 in operation for certain purposes at 9.3.2006 and wholly in operation at 6.4.2006 by S.R. 2006/95, **art. 2(a)**, Sch. Pt. 1

Payment of surplus to employer: transitional power to amend scheme

228.—(1) This Article applies to a scheme which immediately before the coming into operation of Article 227 was one to which Article 37 of the 1995 Order applied (see paragraph (1) of that Article, as it then had effect).

(2) No payment to the employer may be made out of funds held for the purposes of the scheme except by virtue of a resolution of the trustees under this Article.
This applies even if the payment is one proposed to be made in fulfilment of an agreement or arrangement entered into before the coming into operation of this Article.

(3) Where the scheme was so expressed as (apart from the said Article 37, as it then applied) to confer power to make payments to the employer out of funds held for the purposes of the scheme

otherwise than in pursuance of proposals approved under paragraph 6(1) of Schedule 22 to the Income and Corporation Taxes Act 1988 (c. 1), the trustees may resolve that the power—

(a) shall become exercisable according to its terms, or

(b) shall become so exercisable, but only in such circumstances and subject to such conditions as may be specified in the resolution.

(4) Where the scheme was so expressed as to confer power to make payments to the employer out of funds held for the purposes of the scheme only in pursuance of proposals approved under paragraph 6(1) of Schedule 22 to the Income and Corporation Taxes Act 1988 (c. 1), the trustees may resolve that the power shall instead be exercisable in such circumstances and subject to such conditions as may be specified in the resolution.

(5) In either case the trustees must be satisfied that it is in the interests of the members of the scheme that the power is exercised in the manner proposed.

(6) The power conferred by paragraph (3) or (4)—

(a) may not be exercised unless notice of the proposal to exercise it has been given, in accordance with prescribed requirements, to the employer and to the members of the scheme,

(b) may only be exercised once, and

(c) ceases to be exercisable five years after the coming into operation of this Article.

(7) The exercise of any power to make payments to the employer by virtue of a resolution under this Article is subject to Article 37 of the 1995 Order as substituted by Article 227.

Commencement Information

I22 Art. 228 wholly in operation at 6.4.2006; art. 228 not in operation at date of making see art. 1(2); art. 228 in operation for certain purposes at 9.3.2006 and wholly in operation at 6.4.2006 by S.R. 2006/95, **art. 2(a)**, Sch. Pt. 1

Restrictions on payment into occupational pension schemes

UK-based scheme to be trust with effective rules

229.—(1) Paragraphs (2) and (3) apply to an occupational pension scheme that has its main administration in the United Kingdom.

(2) If the scheme is not established under irrevocable trusts, the trustees or managers of the scheme must secure that no funding payment is accepted.

(3) If the rules stipulating—

(a) the benefits under the scheme, and

(b) any conditions subject to which benefits under the scheme accrue,

are not in force, or if those rules are not set out in writing, the trustees or managers of the scheme must secure that no funding payment is accepted.

(4) Paragraph (2) or (3) does not apply to an occupational pension scheme if it is a prescribed scheme or a scheme of a prescribed description.

(5) Article 10 of the 1995 Order (civil penalties) applies to a trustee or manager of an occupational pension scheme that has its main administration in the United Kingdom if—

(a) paragraph (2) or (3) requires the trustees or managers of the scheme to secure that no funding payment is accepted,

(b) a funding payment is accepted, and

(c) the trustee or manager has failed to take all reasonable steps to secure that no funding payment is accepted.

(6) In this Article "funding payment", in relation to a scheme, means a payment made to the scheme to fund benefits for, or in respect of, any or all of the members.

Non-European scheme to be trust with UK-resident trustee

230.—(1) Paragraphs (2) and (3) apply to an occupational pension scheme that has its main administration outside the member States.

(2) An employer based in any part of the United Kingdom may cause a contribution to be paid to the scheme in respect of an employee (whether or not employed in the United Kingdom) only if the conditions in paragraph (4) are satisfied at the time of payment.

(3) An employer based outside the United Kingdom may cause a contribution to be paid to the scheme in respect of an employee employed in the United Kingdom only if the conditions in paragraph (4) are satisfied at the time of payment.

(4) Those conditions are—

(a) that the scheme is established under irrevocable trusts, and

(b) that a trustee of the scheme is resident in the United Kingdom.

(5) Paragraph (2) or (3) does not apply to an occupational pension scheme if it is a prescribed scheme or a scheme of a prescribed description.

(6) Article 10 of the 1995 Order (civil penalties) applies to an employer who causes a contribution to be paid to an occupational pension scheme that has its main administration outside the member States if—

(a) paragraph (2) or (3) applies in relation to the payment of the contribution,

(b) the conditions in paragraph (4) are not satisfied at the time of payment, and

(c) the employer does not have a reasonable excuse for causing payment to occur at a time when those conditions are not satisfied.

(7) In this Article "based"

(a) in relation to an employer who is a body corporate, means incorporated, and

(b) in relation to any other employer, means resident.

Representative of non-European scheme to be treated as trustee

231.—(1) In the case of an occupational pension scheme that has its main administration outside the member States, a reference in pensions legislation to the trustees, or a trustee, of the scheme includes a person who is for the time being appointed by the trustees of the scheme to be a representative of the scheme for the purposes of this Article.

(2) Paragraph (1) does not apply to a prescribed reference.

(3) In paragraph (1) "pensions legislation" means any statutory provision contained in or made by virtue of—

(a) the Pension Schemes Act,

(b) the 1995 Order,

(c) Parts II to V of the 1999 Order, or

(d) this Order.

Activities of occupational pension schemes

Activities of occupational pension schemes

232.—(1) If an occupational pension scheme has its main administration in the United Kingdom, the trustees or managers of the scheme must secure that the activities of the scheme are limited to retirement-benefit activities.

(2) Paragraph (1) does not apply to a scheme if it is a prescribed scheme or a scheme of a prescribed description.

(3) Article 10 of the 1995 Order (civil penalties) applies to a trustee or manager of a scheme to which paragraph (1) applies if—

(a) the scheme has activities that are not retirement-benefit activities, and

(b) the trustee or manager has failed to take all reasonable steps to secure that the activities of the scheme are limited to retirement-benefit activities.

(4) In this Article "retirement-benefit activities" means—

(a) operations related to retirement benefits, and

(b) activities arising from operations related to retirement benefits.

(5) In paragraph (4) "retirement benefits" means—

(a) benefits paid by reference to reaching, or expecting to reach, retirement, and

(b) benefits that are supplementary to benefits within sub-paragraph (a) and that are provided on an ancillary basis—

(i) in the form of payments on death, disability or termination of employment, or

(ii) in the form of support payments or services in the case of sickness, poverty or need, or death.

No indemnification for fines or civil penalties

No indemnification for fines or civil penalties

233.—(1) No amount may be paid out of the assets of an occupational or personal pension scheme for the purpose of reimbursing, or providing for the reimbursement of, any trustee or manager of the scheme in respect of—

(a) a fine imposed by way of penalty for an offence of which he is convicted, or

(b) a penalty which he is required to pay under or by virtue of Article 10 of the 1995 Order or section 164(4) of the Pension Schemes Act (civil penalties).

(2) For the purposes of paragraph (1), providing for the reimbursement of a trustee or manager in respect of a fine or penalty includes (among other things) providing for the payment of premiums in respect of a policy of insurance where the risk is or includes the imposition of such a fine or the requirement to pay such a penalty.

(3) Where any amount is paid out of the assets of an occupational or personal pension scheme in contravention of this Article, Article 10 of the 1995 Order Order (civil penalties) applies to any trustee or manager who fails to take all reasonable steps to secure compliance.

(4) Where a trustee or manager of an occupational or personal pension scheme—

(a) is reimbursed, out of the assets of the scheme or in consequence of provision for his reimbursement made out of those assets, in respect of any of the matters mentioned in paragraph (1)(a) or (b), and

(b) knows, or has reasonable grounds to believe, that he has been reimbursed as mentioned in sub-paragraph (a),

then, unless he has taken all reasonable steps to secure that he is not so reimbursed, he is guilty of an offence.

(5) A person guilty of an offence under paragraph (4) is liable—

(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 two years, or a fine, or both.

Pension protection on transfer of employment

Conditions for pension protection

234.—(1) This Article applies in relation to a person ("the employee") where—

(a) there is a transfer of an undertaking, or part of an undertaking, to which the TUPE Regulations apply,

(b) by virtue of the transfer the employee ceases to be employed by the transferor and becomes employed by the transferee, and

(c) at the time immediately before the employee becomes employed by the transferee—

(i) there is an occupational pension scheme ("the scheme") in relation to which the transferor is the employer, and

(ii) one of paragraphs (2), (3) and (4) applies.

(2) This paragraph applies where—

(a) the employee is an active member of the scheme, and

(b) if any of the benefits that may be provided under the scheme are money purchase benefits—

(i) the transferor is required to make contributions to the scheme in respect of the employee, or

(ii) the transferor is not so required but has made one or more such contributions.

(3) This paragraph applies where—

(a) the employee is not an active member of the scheme but is eligible to be such a member, and

(b) if any of the benefits that may be provided under the scheme are money purchase benefits, the transferor would have been required to make

contributions to the scheme in respect of the employee if the employee had been an active member of it.

(4) This paragraph applies where—

(a) the employee is not an active member of the scheme, nor eligible to be such a member, but would have been an active member of the scheme or eligible to be such a member if, after the date on which he became employed by the transferor, he had been employed by the transferor for a longer period, and

(b) if any of the benefits that may be provided under the scheme are money purchase benefits, the transferor would have been required to make contributions to the scheme in respect of the employee if the employee had been an active member of it.

(5) For the purposes of this Article, the condition in paragraph (1)(c) is to be regarded as satisfied in any case where it would have been satisfied but for any action taken by the transferor by reason of the transfer.

(6) In paragraph (1)(a), the reference to an undertaking, or part of an undertaking, has the same meaning as in the TUPE Regulations.

(7) In the case of a scheme which is contracted-out by virtue of section 5 of the Pension Schemes Act, the references in paragraphs (2)(b), (3)(b) and (4)(b) to contributions mean contributions other than minimum payments (within the meaning of that Act).

(8) In this Article—

the "TUPE Regulations" means the Transfer of Undertakings (Protection of Employment) Regulations 1981 (S.I. 1981/1794);

references to the transferor include any associate of the transferor, and Article 4 of the Insolvency Order applies for the purposes of this Article as it applies for the purposes of that Order.

Form of protection

235.—(1) In a case where Article 234 applies, it is a condition of the employee's contract of employment with the transferee that the requirements in paragraph (2) or the requirement in paragraph (3) are complied with.

(2) The requirements in this paragraph are that—

(a) the transferee secures that, as from the relevant time, the employee is, or is eligible to be, an active member of an occupational pension scheme in relation to which the transferee is the employer, and

(b) in a case where the scheme is a money purchase scheme, as from the relevant time—

(i) the transferee makes relevant contributions to the scheme in respect of the employee, or

(ii) if the employee is not an active member of the scheme but is eligible to be such a member, the transferee would be required to make such contributions if the employee were an active member, and

(c) in a case where the scheme is not a money purchase scheme, as from the relevant time the scheme—

(i) satisfies the statutory standard referred to in section 8A of the Pension Schemes Act, or

(ii) if regulations so provide, complies with such other requirements as may be prescribed.

(3) The requirement in this paragraph is that, as from the relevant time, the transferee makes relevant contributions to a stakeholder pension scheme of which the employee is a member.

(4) The requirement in paragraph (3) is for the purposes of this Article to be regarded as complied with by the transferee during any period in relation to which the condition in paragraph (5) is satisfied.

(5) The condition in this paragraph is that the transferee has offered to make relevant contributions to a stakeholder pension scheme of which the employee is eligible to be a member (and the transferee has not withdrawn the offer).

(6) Paragraph (1) does not apply in relation to a contract if or to the extent that the employee and the transferee so agree at any time after the time when the employee becomes employed by the transferee.

(7) In this Article—

"the relevant time" means—

(a) in a case where Article 234 applies by virtue of the application of paragraph (2) or (3) of that Article, the time when the employee becomes employed by the transferee;

(b) in a case where that Article applies by virtue of the application of paragraph (4) of that Article, the time at which the employee would have been a member of the scheme referred to in paragraph (1)(c)(i) of that Article or (if earlier) would have been eligible to be such a member;

"relevant contributions" means such contributions in respect of such period or periods as may be prescribed;

"stakeholder pension scheme" means a pension scheme which is registered under Article 4 of the 1999 Order.

Consultation by employers

Consultation by employers: occupational pension schemes

236.—(1) Regulations may require any prescribed person who is the employer in relation to an occupational pension scheme and who—

(a) proposes to make a prescribed decision in relation to the scheme, or

(b) has been notified by the trustees or managers of the scheme that they propose to make a prescribed decision in relation to the scheme,

to consult prescribed persons in the prescribed manner before the decision is made.

(2) Regulations may require the trustees or managers of an occupational pension scheme not to make a prescribed decision in relation to the scheme unless—

(a) they have notified the employer of the proposed decision, and

(b) they are satisfied that the employer has undertaken any consultation required by virtue of paragraph (1).

(3) The validity of any decision made in relation to an occupational pension scheme is not affected by any failure to comply with regulations under this Article.

(4) Article 238 contains further provisions about regulations under this Article.

Modifications etc. (not altering text)

C12 Art. 236 modified (2.2.2006) by Occupational Pension Schemes (Consultation by Employers) (Modification for Multi-employer Schemes) Regulations (Northern Ireland) 2006 (S.R. 2006/4), **reg. 2**

Consultation by employers: personal pension schemes

237.—(1) Regulations may require any prescribed person who—

(a) is the employer in relation to a personal pension scheme where direct payment arrangements exist in respect of one or more members of the scheme who are his employees, and

(b) proposes to make a prescribed decision affecting the application of the direct payment arrangements in relation to those employees,

to consult prescribed persons in the prescribed manner before he makes the decision.

(2) The validity of any decision prescribed for the purposes of paragraph (1)(b) is not affected by any failure to comply with regulations under this Article.

(3) Article 238 contains further provisions about regulations under this Article.

Further provisions about regulations relating to consultation

238.—(1) In this Article "consultation regulations" means regulations under Article 236 or 237.

(2) Consultation regulations may—

(a) make provision about the time to be allowed for consultation;

(b) prescribe the information which must be provided to the persons who are required to be consulted;

(c) confer a discretion on the employer in prescribed cases as to the persons who are to be consulted;

(d) make provision about the representatives the employees may have for the purposes of the regulations and the methods by which those representatives are to be selected;

(e) require or authorise the holding of ballots;

(f) amend, apply with or without modifications, or make provision similar to, any provision of the Employment Rights (Northern Ireland) Order 1996 (NI 16) (including, in particular, Parts VI, XI and XV), the Industrial Tribunals (Northern Ireland) Order 1996 (NI 18) or the Trade Union and Labour Relations (Northern Ireland) Order 1995 (NI 12);

(g) enable any requirement for consultation imposed by the regulations to be waived or relaxed by order of the Regulator;

(h) require the employer to communicate to the trustees and managers of the scheme any representations received by the employer in response to any consultation required by the regulations.

(3) Persons on whom obligations are imposed by consultation regulations, either as employers or as the trustees or managers of occupational pension schemes, must, if so required by the Regulator, provide information to the Regulator about the action taken by them for the purpose of complying with the regulations.

(4) Consultation regulations may make provision as to—

(a) the information to be provided under paragraph (3);

(b) the form and manner in which the information is to be provided;

(c) the period within which the information is to be provided.

(5) Nothing in consultation regulations is to be regarded as affecting any duty to consult arising otherwise than under the regulations.

Modifications etc. (not altering text)

C13 Art. 238 modified (2.2.2006) by Occupational Pension Schemes (Consultation by Employers) (Modification for Multi-employer Schemes) Regulations (Northern Ireland) 2006 (S.R. 2006/4), **reg. 2**

Modification of pension rights

Modification of subsisting rights

239. For Article 67 of the 1995 Order substitute—

"**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.

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

(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 sub-paragraph (a).

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

(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).

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.

The actuarial equivalence requirements: further provisions

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—

(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.

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.

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.

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

(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.

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.

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.” .

Short service benefit

Increase in age at which short service benefit must be payable

240.—(1) In section 67 of the Pension Schemes Act (basic principle as to short service benefit), for subsection (3) substitute—

“(3) Subject to subsection (4), short service benefit must be made payable as from an age which is no greater than—

(a) the age of 65, or

(b) if in the member's case normal pension age is greater than 65, normal pension age.” .

(2) In section 68 of that Act (no discrimination between short service and long service beneficiaries), at the end add—

"(4) This section is subject to subsections (3) and (6) of section 67 (age at which short service benefit is to be payable)." .

Early leavers

Early leavers: cash transfer sums and contribution refunds

241. After section 97 of the Pension Schemes Act insert—

"CHAPTER 5

EARLY LEAVERS: CASH TRANSFER SUMS AND CONTRIBUTION REFUNDS

97AA Scope of Chapter 5

(1) This Chapter applies to any member of an occupational pension scheme to which Chapter 1 applies (see section 65(3)) if—

(a) his pensionable service terminates before he attains normal pension age, and

(b) on the date on which his pensionable service terminates—

(i) the three month condition is satisfied, but

(ii) he does not have relevant accrued rights to benefit under the scheme.

(2) For the purposes of subsection (1), the three month condition is that the period of the member's pensionable service under the scheme, taken together with—

(a) any previous period of his pensionable service under the scheme, and

(b) any period throughout which he was employed in linked qualifying service under another scheme,

amounts to at least three months.

(3) A period counts for the purposes of paragraph (a) or (b) of subsection (2) only so far as it counts towards qualification for long service benefit within the meaning of Chapter 1.

(4) For the purposes of subsection (1), "relevant accrued rights to benefit under the scheme", in relation to a member of a scheme, means rights which—

(a) have accrued to or in respect of him under the scheme, and

(b) entitle him to the relevant benefits which would have accrued to or in respect of him under the applicable rules if paragraphs (a) and (b) of section 67(1) (and the word "and" immediately preceding them) did not have effect.

(5) References in the following provisions of this Chapter to a member, in relation to an occupational pension scheme, are to a member of the scheme to which this Chapter applies.

97AB Right to cash transfer sum and contribution refund

(1) On the termination of his pensionable service, a member of an occupational pension scheme acquires a right to whichever one he elects of the following options—

(a) a cash transfer sum;

(b) a contribution refund.

(2) Subsection (1) is subject to the following provisions of this Chapter.

(3) In this Chapter "cash transfer sum" means, in relation to a member of an occupational pension scheme, the cash equivalent, at the date on which his pensionable service terminates, of the benefits mentioned in section 97AA(4)(b).

(4) In this Chapter, "contribution refund" means, in relation to a member of an occupational pension scheme, a sum representing the aggregate of—

(a) the member's employee contributions to the scheme, and

(b) where transfer credits have been allowed to the member under the scheme by virtue of a payment ("the transfer payment") made by the trustees or managers of another occupational pension scheme, the member's employee contributions to that other scheme, so far as they—

(i) relate to the transfer payment, and

(ii) do not, in aggregate, exceed the amount of the transfer payment.

(5) In subsection (4), "employee contributions" means, in relation to a member of an occupational pension scheme, contributions made to the scheme by or on behalf of the member on his own account, but does not include—

(a) a transfer payment by virtue of which transfer credits have been allowed to the member under the scheme, or

(b) any pension credit or amount paid to the scheme which is attributable (directly or indirectly) to a pension credit.

97AC Notification of right to cash transfer sum or contribution refund

(1) This section applies where the pensionable service of a member of an occupational pension scheme has terminated.

(2) The trustees or managers of the scheme must—

(a) within a reasonable period after the termination give the member a statement in writing containing information adequate to explain—

(i) the nature of the right acquired by him under section 97AB, and

(ii) how he may exercise the right,

and such other information as may be prescribed, and

(b) afford the member a reasonable period after giving him that statement within which to exercise the right.

(3) The statement given under subsection (2)(a) must specify, in particular—

(a) in relation to the cash transfer sum to which the member acquires a right under section 97AB, its amount and the permitted ways in which the member can use it,

(b) the amount of the contribution refund to which the member so acquires a right, and

(c) the last day on which the member may, disregarding section 97AI(2), exercise the right ("the reply date").

(4) Information which may be prescribed under subsection (2)(a) includes, in particular—

(a) information about any tax liability in respect of, or deduction required or permitted to be made from, the cash transfer sum or contribution refund, and

(b) information about the effect on other rights of the member (whether under the applicable rules or otherwise) of exercising the right.

(5) The trustees or managers may notify the member that, if he does not exercise the right mentioned in subsection (2)(a)(i) on or before the reply date, the trustees or managers will be entitled to pay the contribution refund to him.

(6) Where the trustees or managers of the scheme fail to comply with subsection (2), Article 10 of the Pensions (Northern Ireland) Order 1995 (civil penalties) applies to any trustee or manager who has failed to take all reasonable steps to secure compliance.

97AD Exercise of right under section 97AB

(1) This section applies where a member of an occupational pension scheme acquires a right under section 97AB.

(2) The member may exercise the right by giving a notice in writing to that effect to the trustees or managers stating—

(a) which of the options under section 97AB(1) he elects, and

(b) if he elects for the cash transfer sum, the permitted way in which he requires that sum to be used.

(3) The notice under subsection (2) must be given on or before—

(a) the reply date, or

(b) such later date as the trustees or managers may allow in his case under section 97AI(2).

97AE Permitted ways of using cash transfer sum

(1) This section applies in relation to a cash transfer sum to which a member of an occupational pension scheme acquires a right under section 97AB.

(2) The ways in which the cash transfer sum may be used are—

(a) for acquiring transfer credits allowed under the rules of another occupational pension scheme—

(i) whose trustees or managers are able and willing to accept the cash transfer sum, and

(ii) which satisfies prescribed requirements,

(b) for acquiring rights allowed under the rules of a personal pension scheme—

(i) whose trustees or managers are able and willing to accept the cash transfer sum, and

(ii) which satisfies prescribed requirements,

(c) for purchasing one or more appropriate annuities,

(d) in such circumstances as may be prescribed, for subscribing to other pension arrangements which satisfy prescribed requirements.

(3) For the purposes of subsection (2), “appropriate annuity” means an annuity which satisfies prescribed requirements and is purchased from an insurer who—

(a) falls within section 15(4)(a),

(b) is chosen by the member, and

(c) is willing to accept payment on account of the member from the trustees or managers of the scheme.

97AF Calculation of cash transfer sum and contribution refund

(1) Cash transfer sums are to be calculated and verified in the prescribed manner.

(2) Any calculation of a contribution refund must conform with such requirements as may be prescribed.

(3) Regulations may provide—

(a) for amounts to be deducted in respect of administrative costs in calculating cash transfer sums;

(b) for a cash transfer sum or contribution refund to be increased or reduced in prescribed circumstances.

(4) The circumstances that may be prescribed under subsection (3)(b) include in particular—

(a) a failure by the trustees or managers of the scheme to comply with section 97AG(2) or (4) in relation to the cash transfer sum or contribution refund, and

(b) the state of funding of the scheme.

(5) Regulations under subsection (3)(b) may provide—

(a) for a cash transfer sum to be reduced so that the member has no right to have any amount paid by way of cash transfer sum in respect of him;

(b) for a contribution refund to be reduced so that the member has no right to receive any amount by way of contribution refund under this Chapter.

97AG Duties of trustees or managers following exercise of right

(1) This section applies where a member of an occupational pension scheme has exercised a right under section 97AB in accordance with section 97AD.

(2) Where the member has elected for the cash transfer sum, the trustees or managers of the scheme must, within a reasonable period beginning with the date on which the right was exercised, do what is needed to carry out the requirement specified in the member's notice under section 97AD(2)(b).

(3) When the trustees or managers have done what is needed to carry out that requirement, they are discharged from any obligation—

(a) in respect of any rights (including conditional rights) of, or in respect of, the member to relevant benefits under the applicable rules, and

(b) to make any other payment by way of refund to or in respect of the member of, or in respect of—

(i) the contributions, or any payment, mentioned in section 97AB(4), or

(ii) any other contributions made to the scheme, or any other scheme, in respect of the member (other than any pension credit or amount attributable (directly or indirectly) to a pension credit).

(4) Where the member has elected for the contribution refund, the trustees or managers of the scheme must, within a reasonable period beginning with the date on which the right was exercised, do what is needed to secure that the amount of the contribution refund is paid to the member or as he directs.

(5) When the trustees or managers have done what is needed to secure the payment of the contribution refund as mentioned in subsection (4)—

(a) they are discharged from any obligation in respect of any rights (including conditional rights) of, or in respect of, the member to relevant benefits under the applicable rules, and

(b) if they are required under the applicable rules, or determine in accordance with those rules, to make any payment ("the refund payment") by way of refund to or in respect of the member of, or in respect of—

(i) the contributions, or any payment, mentioned in section 97AB(4), or

(ii) any other contributions made to the scheme, or any other scheme, in respect of the member (other than any pension credit or amount attributable (directly or indirectly) to a pension credit),

the amount of the contribution refund may be set off against the refund payment.

(6) Where the trustees or managers fail to comply with subsection (2) or (4), Article 10 of the Pensions (Northern Ireland) Order 1995 (civil penalties) applies to any trustee or manager who has failed to take all reasonable steps to secure compliance.

97AH Powers of trustees or managers where right not exercised

(1) This section applies where—

(a) a member of an occupational pension scheme does not exercise a right acquired by him under section 97AB on or before the reply date or such later date as the trustees or managers of the scheme allow in his case under section 97AI(2), and

(b) the trustees or managers of the scheme have notified the member as mentioned in section 97AC(5).

(2) The trustees or managers may within a reasonable period beginning with—

(a) the reply date, or

(b) if a later date has been allowed as mentioned in subsection (1), that later date,

pay the contribution refund to the member.

(3) When the trustees or managers have paid the contribution refund to the member—

(a) they are discharged from any obligation in respect of any rights (including conditional rights) of, or in respect of, the member to relevant benefits under the applicable rules, and

(b) if they are required under the applicable rules, or determine in accordance with those rules, to make any payment ("the refund payment") by way of refund to or in respect of the member of, or in respect of—

(i) the contributions, or any payment, mentioned in section 97AB(4), or

(ii) any other contributions made to the scheme, or any other scheme, in respect of the member (other than any pension credit or amount attributable (directly or indirectly) to a pension credit),

the amount of the contribution refund may be set off against the refund payment.

97AI Rights under section 97AB: further provisions

(1) A member of an occupational pension scheme loses any right acquired by him under section 97AB—

(a) if the scheme is wound up, or

(b) subject to subsection (2), if he fails to exercise the right on or before the reply date.

(2) If the member has failed to exercise any such right on or before the reply date, the trustees or managers of the scheme may allow him to exercise it on or before such later date as they may determine on the application of the member.

(3) Where the trustees or managers determine a later date under subsection (2)—

(a) they must give a notice in writing to that effect to the member, and

(b) subsection (1)(b) applies in relation to the member as if the reference to the reply date were a reference to the later date.

(4) For the purposes of section 24(1) of the Interpretation Act (Northern Ireland) 1954 (service of documents) in its application to this section and sections 97AC(2) and 97AD(2) —

(a) omit the word "registering", and

(b) the last known address of any person is his latest address known to the trustees or managers of the scheme.

(5) This Chapter is subject to any provision made by or under section 57 (deduction of contributions equivalent premium from refund of scheme contributions)—

(a) permitting any amount to be deducted from any payment of a contribution refund, or

(b) requiring the payment of a contribution refund to be delayed.

(6) In this Chapter, except where the context otherwise requires, the following expressions have the following meanings—

"the applicable rules" 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;

"member" has the meaning given in section 97AA(5);

"permitted way", in relation to a cash transfer sum, means any of the ways specified in section 97AE(2) in which the sum may be used;

"relevant benefits" means benefits which are not attributable (directly or indirectly) to a pension credit;

"reply date", in relation to a member whose pensionable service has terminated, has the meaning given in section 97AC(3)(c).

(7) For the purposes of subsection (6)—

(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) this Chapter or Chapter 2, 3 or 4 or regulations made under this Chapter or any of those Chapters;

(iii) Part IVA or regulations made under that Part;

(iv) section 106(1);

(v) Part II of the Pensions (Northern Ireland) Order 1995 (occupational pensions) or orders or regulations made or having effect as if made under that 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);

(iii) Article 114(1) of the Pensions (Northern Ireland) Order 1995;

(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." .

Safeguarding pension rights

Paternity leave and adoption leave

242.—(1) In Schedule 5 to the Social Security (Northern Ireland) Order 1989 (NI 13) (employment-related schemes for pensions or other benefits: equal treatment), after paragraph 5 insert—

"Unfair paternity leave provisions

5A.—(1) Where an employment-related benefit scheme includes any unfair paternity leave provisions (irrespective of any differences on the basis of sex in the treatment accorded to members under those provisions), then—

(a) the scheme shall be regarded to that extent as not complying with the principle of equal treatment; and

(b) subject to sub-paragraph (3), this Schedule shall apply accordingly.

(2) In this paragraph "unfair paternity leave provisions", in relation to an employment-related benefit scheme, means any provision—

(a) which relates to continuing membership of, or the accrual of rights under, the scheme during any period of paid paternity leave in the case of any member who is (or who, immediately before the commencement of such a period, was) an employed earner and which treats such a member otherwise than in accordance with the normal employment requirement; or

(b) which requires the amount of any benefit payable under the scheme to or in respect of any such member, to the extent that it falls to be determined by reference to earnings during a period which included a period of paid paternity leave, to be determined otherwise than in accordance with the normal employment requirement.

(3) In the case of any unfair paternity leave provision—

(a) the more favourable treatment required by paragraph 3(1) is treatment no less favourable than would be accorded to the member in accordance with the normal employment requirement; and

(b) paragraph 3(2) does not authorise the making of any such election as is there mentioned;

but, in respect of any period of paid paternity leave, a member shall only be required to pay contributions on the amount of contractual remuneration or statutory paternity pay actually paid to or for him in respect of that period.

(4) In this paragraph—

"period of paid paternity leave", in the case of a member, means a period—

(a) throughout which the member is absent from work in circumstances where sub-paragraph (5), (6) or (7) applies, and

(b) for which the employer (or if he is no longer in his employment, his former employer) pays him any contractual remuneration or statutory paternity pay; and

"the normal employment requirement" is the requirement that any period of paid paternity leave shall be treated as if it were a period throughout which the member in question works normally and receives the remuneration likely to be paid for doing so.

(5) This sub-paragraph applies if—

(a) the member's absence from work is due to the birth or expected birth of a child, and

(b) the member satisfies the conditions prescribed under section 167ZA(2)(a)(i) and (ii) of the Social Security Contributions and Benefits (Northern Ireland) Act 1992 in relation to that child.

(6) This sub-paragraph applies if—

(a) the member's absence from work is due to the placement or expected placement of a child for adoption under the law of any part of the United Kingdom, and

(b) the member satisfies the conditions prescribed under section 167ZB(2)(a)(i) and (ii) of that Act in relation to that child.

(7) This sub-paragraph applies if—

(a) the member's absence from work is due to the adoption or expected adoption of a child who has entered the United Kingdom in connection with or for the purposes of adoption which does not involve the placement of the child for adoption under the law of any part of the United Kingdom, and

(b) the member satisfies the conditions prescribed under section 167ZB(2)(a)(i) and (ii) of that Act (as applied by virtue of section 167ZK of that Act (adoption cases not involving placement under the law of the United Kingdom)) in relation to that child.

Unfair adoption leave provisions

5B.—(1) Where an employment-related benefit scheme includes any unfair adoption leave provisions (irrespective of any differences on the basis of sex in the treatment accorded to members under those provisions), then—

(a) the scheme shall be regarded to that extent as not complying with the principle of equal treatment; and

(b) subject to sub-paragraph (3), this Schedule shall apply accordingly.

(2) In this paragraph "unfair adoption leave provisions", in relation to an employment-related benefit scheme, means any provision—

(a) which relates to continuing membership of, or the accrual of rights under, the scheme during any period of paid adoption leave in the case of any member who is (or who, immediately before the commencement of such a period, was) an employed earner and which treats such a member otherwise than in accordance with the normal employment requirement; or

(b) which requires the amount of any benefit payable under the scheme to or in respect of any such member, to the extent that it falls to be determined by reference to earnings during a period which included a period of paid adoption leave, to be determined otherwise than in accordance with the normal employment requirement.

(3) In the case of any unfair adoption leave provision—

(a) the more favourable treatment required by paragraph 3(1) is treatment no less favourable than would be accorded to the member in accordance with the normal employment requirement; and

(b) paragraph 3(2) does not authorise the making of any such election as is there mentioned;

but, in respect of any period of paid adoption leave, a member shall only be required to pay contributions on the amount of contractual remuneration or statutory adoption pay actually paid to or for him in respect of that period.

(4) In this paragraph—

"period of paid adoption leave", in the case of a member, means a period—

(a) throughout which the member is absent from work in circumstances where sub-paragraph (5) or (6) applies, and

(b) for which the employer (or, if he is no longer in his employment, his former employer) pays him any contractual remuneration or statutory adoption pay; and

"the normal employment requirement" is the requirement that any period of paid adoption leave shall be treated as if it were a period throughout which the member in question works normally and receives the remuneration likely to be paid for doing so.

(5) This sub-paragraph applies if—

(a) the member's absence from work is due to the placement, or expected placement, of a child for adoption under the law of any part of the United Kingdom, and

(b) the member is a person with whom the child is, or is expected to be, placed for such adoption.

(6) This sub-paragraph applies if—

(a) the member's absence from work is due to the adoption or expected adoption of a child who has entered the United Kingdom in connection with or for the purposes of adoption which does not involve the placement of the child for adoption under the law of any part of the United Kingdom, and

(b) the member is a person by whom the child has been or is expected to be adopted." .

(2) The provision that may be made under section 142(1) of the Adoption and Children Act 2002 (c. 38) (power to make consequential etc. provision to give full effect to any provision of that Act) includes provision modifying paragraph 5A or 5B of Schedule 5 to the Social Security (Northern Ireland) Order 1989 (NI 13) (as inserted by paragraph (1)).

Inalienability of occupational pension

243.—(1) Article 89 of the 1995 Order (inalienability of occupational pension) is amended as follows.

(2) In paragraph (5) (exceptions to the rule of inalienability) at the end add—

"(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." .

(3) In paragraph (6) (limits on the charge, lien or set-off under paragraph (5)(d) or (e)) for "or (e)" substitute " , (e) or (f) ".

Voluntary contributions

Voluntary contributions

244.—(1) Omit section 107 of the Pension Schemes Act (requirements for schemes to provide facilities for members to pay voluntary contributions, and relating to any such contributions).

(2) In section 128 of that Act (duty to bring schemes into conformity with indirectly-applying requirements) omit from "or the voluntary" to third "requirements".

(3) In section 176(1) of that Act (general interpretation) omit the definition of "voluntary contributions requirements".

Payments by employers

Payments made by employers to personal pension schemes

245.—(1) Section 107A of the Pension Schemes Act (monitoring of employers' payments to personal pension schemes) is amended as follows.

(2) For subsections (3) to (7) substitute—

"(3) The trustees or managers of the scheme must monitor the payment of contributions by or on behalf of the employer under the direct payment arrangements.

(4) The trustees or managers may request the employer to provide them, (or arrange for them to be provided) with the payment information specified in the request.

(5) For the purposes of subsection (4) "payment information" is information required by the trustees or managers to enable them to discharge the duty imposed by subsection (3).

(6) The employer must comply with a request under subsection (4) within a reasonable period.

(7) Where, as a result of the employer's failure to so comply, the trustees or managers are unable to discharge the duty imposed by subsection (3), they must give notice to that effect to the Regulatory Authority within a reasonable period.

(7A) Where—

(a) a contribution payable under the direct payment arrangements has not been paid on or before its due date, and

(b) the trustees or managers have reasonable cause to believe that the failure to pay the contribution is likely to be of material significance in the exercise by the Regulatory Authority of any of their functions,

they must give notice to that effect to the Regulatory Authority and the employee within a reasonable period after the due date." .

(3) In subsection (8) (employer's liability for civil penalties) for "subsection (3) or (5)" substitute " subsection (6) and as a result the trustees or managers of the scheme are unable to discharge the duty imposed by subsection (3) ".

(4) In subsection (9) (liability of trustees or managers for civil penalties) for "subsection (6) or (7)" substitute " subsection (7) or (7A) ".

Payments made by employers and members to occupational pension schemes

246.—(1) In Article 49 of the 1995 Order (other responsibilities of trustees, employers, etc.), in paragraph (9) (duty of trustee etc. to report a failure by employer to pay contributions deducted from earnings on time) for sub-paragraph (b) substitute—

"(b) if 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 the member within a reasonable period after the end of the prescribed period under paragraph (8)." .

(2) In Article 86 of that Order (schedules of payments to money purchase schemes), for paragraph (1) (duty of trustees or managers to report a failure to pay amounts on time) substitute—

"(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." .

Winding up

Winding up

247.—(1) For Article 73 of the 1995 Order (preferential liabilities on winding up) substitute—

"**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) 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;

(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.

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) 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) 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 theregulations.

(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.

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.

(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." .

(2) In Article 74 of the 1995 Order (discharge of liabilities by insurance, etc. on winding up)—

(a) for paragraph (1) substitute—

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

(b) in paragraph (2) omit "(including increases in pensions)",

(c) in paragraph (3), after sub-paragraph (d) add—

"(e) by the payment of a cash sum in circumstances where prescribed requirements are met." ,

(d) in paragraph (4)—

(i) for "rules of the scheme" substitute " scheme rules ", and

(ii) omit "(including increases in pensions)",

(e) omit paragraph (5)(b) and the word "or" immediately preceding it, and

(f) after paragraph (5) add—

"(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)." .

Deficiency in assets of certain occupational pension schemes

Debt due from the employer when assets insufficient

248.—(1) Article 75 of the 1995 Order (deficiencies in the assets) is amended as follows.

(2) For paragraphs (1) to (4) substitute—

"(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.” .

(3) In paragraph (5) for “paragraph (1)” substitute “ paragraphs (2) and (4) ”.

(4) In paragraph (6)—

(a) after “scheme” insert “ rules ”, and

(b) at the end add—

“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).” .

(5) After paragraph (6) insert—

“(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—

(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.” .

(6) Omit paragraph (9).

Debt due from the employer in the case of multi-employer schemes

249. After Article 75 of the 1995 Order (deficiencies in the assets) insert—

“**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”).

(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")." .

VALID FROM 12/03/2008

Pension disputes

Resolution of disputes

250. For Article 50 of the 1995 Order (resolution of disputes) substitute—

"**Requirement for dispute resolution arrangements**

50.—(1) The trustees or managers of an occupational pension scheme must secure that dispute resolution arrangements are made and implemented.

(2) Dispute resolution arrangements are such arrangements as are required by this Article for the resolution of pension disputes.

(3) For this purpose a pension dispute is a dispute which—

(a) is between—

(i) the trustees or managers of a scheme, and

(ii) one or more persons with an interest in the scheme (see Article 50A),

(b) is about matters relating to the scheme, and

(c) is not an exempted dispute (see paragraph (9)).

(4) The dispute resolution arrangements must provide a procedure—

(a) for any of the parties to the dispute mentioned in paragraph (3)(a)(ii) to make an application for a decision to be taken on the matters in dispute ("an application for the resolution of a pension dispute"), and

(b) for the trustees or managers to take that decision.

(5) Where an application for the resolution of a pension dispute is made in accordance with the dispute resolution arrangements, the trustees or managers must—

(a) take the decision required on the matters in dispute within a reasonable period of the receipt of the application by them, and

(b) notify the applicant of the decision within a reasonable period of it having been taken.

(6) The procedure provided for by the dispute resolution arrangements must include the provision required by Article 50B.

(7) Dispute resolution arrangements under paragraph (1) must, in the case of existing schemes, have effect on and after the date of the coming into operation of this Article in relation to applications made on or after that date.

(8) This Article does not apply in relation to an occupational pension scheme if—

(a) every member of the scheme is a trustee of the scheme,

(b) the scheme has no more than one member, or

(c) the scheme is of a prescribed description.

(9) For the purposes of this Article a dispute is an exempted dispute if—

(a) proceedings in respect of it have been commenced in any court or tribunal,

(b) the Pensions Ombudsman has commenced an investigation in respect of it as a result of a complaint made or a dispute referred to him, or

(c) it is of a prescribed description.

(10) If, in the case of an occupational pension scheme, the dispute resolution arrangements required by this Article to be made—

(a) have not been made, or

(b) are not being implemented,

Article 10 applies to any of the trustees or managers who have failed to take all reasonable steps to secure that such arrangements are made or implemented.

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**[**[F130], 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.

(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.

The dispute resolution procedure

50B.—(1) The procedure provided for by the dispute resolution arrangements under Article 50 must 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 may include provision about the time limits for making an application for the resolution of a pension dispute but it must require that—

(a) in the case of a person with an interest in a scheme as mentioned in Article 50A(1)(e), the time limit for making an application is the end of the period of six months beginning immediately after the date upon which he ceased to be a person with an interest as mentioned in Article 50A(1)(a), (b), (c) or (d), and

(b) in the case of 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), the time limit for making an application is the end of the period of six months beginning immediately after the date upon which he claims that he ceased to be a person with an interest as mentioned in Article 50A(1)(a), (b), (c) or (d).

(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 are to be reached and given.

(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.” .

F130 SR 2005/434

The Pensions Ombudsman

Deputy Pensions Ombudsman

251. After section 141(3) of the Pension Schemes Act (the Pensions Ombudsman) add—

“(4) The Department may reimburse the Pensions Ombudsman in respect of any expenses incurred by a Deputy Pensions Ombudsman in the performance of any of the Pensions Ombudsman's functions.

(5) In this section “Deputy Pensions Ombudsman” means a person appointed under section 145A of the Pension Schemes Act 1993.” .

Jurisdiction

252.—(1) After section 142(4) of the Pension Schemes Act (power to apply Part X of that Act to those concerned with the administration of a scheme) insert—

“(4A) For the purposes of subsection (4) a person or body of persons is concerned with the administration of an occupational or personal pension scheme where the person or body is responsible for carrying out an act of administration concerned with the scheme.” .

(2) The amendment made by this Article has effect in relation to the making of any provision under section 142(4) of the Pension Schemes Act applying Part X of that Act in relation to a complaint or a dispute in so far as it relates to a matter which arises on or after the day on which this Article comes into operation.

(3) For the purposes of paragraph (2), a question falling within section 142(1)(g) of the Pension Schemes Act is to be treated as a dispute.

Investigations

253.—(1) Omit section 50 of the 2000 Act (which amends sections 144, 145 and 147 of the Pension Schemes Act and which has not been brought into operation except for the purpose of making rules).

(2) Omit the following provisions of the Pension Schemes Act—

(a) section 144(4)(ba) and (bb) as inserted by section 50(2) of the 2000 Act,

(b) section 145(1), (1A) and (1B) as substituted by section 50(3) of the 2000 Act,

(c) section 145(3)(ba) as substituted by section 50(4) of the 2000 Act,

(d) section 145(3)(d) and the word "and" immediately preceding it as added by section 50(5) of the 2000 Act,

(e) section 145(8) as added by section 50(6) of the 2000 Act,

(f) section 147(1)(c) and the word "and" immediately preceding it as added by section 50(7) of the 2000 Act,

(g) section 147(3)(ba) and (bb) as substituted by section 50(8) of the 2000 Act, and

(h) in section 147(3)(c) the words "any of paragraphs (a) to (bb)" as substituted by section 50(8) of the 2000 Act,

to the extent that those amendments made by section 50 of the 2000 Act have been brought into operation for the purpose of making rules.

Pension compensation

Amendments relating to the Pensions Compensation Board

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

(2) In Article 78 (review of decisions of the Pensions Compensation Board) after paragraph (2) insert—

"(2A) The Compensation Board may also review such a determination without an application being made." .

(3) In Article 79 (cases where compensation provisions apply), omit paragraphs (1)(d), (2A) and (7).

(4) In Article 81 (amount of compensation) for paragraphs (3) and (4) substitute—

"(3) The amount of the payment, or (if there is more than one) the aggregate, must not exceed the aggregate of—

(a) the amount (if any) by which the shortfall at the application date exceeds the recoveries of value made between the application date and the settlement date, and

(b) interest at the prescribed rate for the prescribed period on the amount of that excess (if any)." .

Annual increases in rate of pensions

Annual increase in rate of certain occupational pensions

255.—(1) Article 51 of the 1995 Order (annual increase in rate of certain occupational pensions) is amended in accordance with paragraphs (2) to (6).

(2) In paragraph (1)—

(a) omit "and" at the end of head (i) of sub-paragraph (a);

(b) at the end of head (ii) of that sub-paragraph insert—

"(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" , and

(c) for sub-paragraph (b) substitute—

"(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." .

(3) In paragraph (2) after "money purchase benefits" insert " where the pension is in payment before the commencement day ".

(4) In paragraph (4)(b) for "5 per cent. per annum" substitute

"(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." .

(5) After paragraph (4) insert—

"(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.” .

(6) In paragraph (5)—

(a) for “paragraphs (2) and (3)” substitute “ any of the provisions of this Article ”, and

(b) in sub-paragraph (a), after “appointed day” insert “ or the commencement day ”.

(7) After that Article insert—

“**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.” .

(8) In Article 54(3) of that Order (Articles 51 to 53: supplementary), at the appropriate place insert—

““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);” .

Annual increase in rate of certain personal pensions

256.—(1) Article 158 of the 1995 Order (annual increase in rate of certain personal pensions) is amended in accordance with paragraph (2).

(2) In paragraph (1) omit “and” at the end of sub-paragraph (a) and for sub-paragraph (b) substitute—

“(b) the pension became a pension in payment before the commencement day,

(c) the whole, or any part of, the pension is attributable to contributions in respect of employment carried on on or after the appointed day, and

(d) 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 (c), 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.” .

(3) In Article 159(3) of that Order (Article 158: supplementary)—

(a) in the definition of “appropriate percentage”, for the words from “revaluation period” to the end substitute “ latest revaluation period specified in the latest revaluation order under paragraph 2 of Schedule 2 to the Pension Schemes Act which is in force at the time of the increase (expressions used in this definition having the same meaning as in that paragraph of that Schedule) ”, and

(b) at the appropriate place insert—

““ the commencement day ” means the day appointed for the coming into operation of Article 256 of the Pensions (Northern Ireland) Order 2005 (amendments to Article 158);” .

Power to increase pensions giving effect to pension credits etc.

257.—(1) Article 37 of the 1999 Order (power of the Department to increase pensions provided to give effect to certain rights) is amended as follows.

(2) In paragraph (1), for "5 per cent." substitute " the maximum percentage ".

(3) In paragraph (2), for "This" substitute " Subject to paragraph (2A), this ".

(4) After paragraph (2) insert—

"(2A) Paragraph (2) does not apply to pensions which—

(a) are money purchase benefits, and

(b) become pensions in payment on or after the commencement day.

(2B) For the purposes of paragraph (1) the "maximum percentage" means—

(a) 5 per cent. in a case where—

(i) the pension is in payment before the commencement day, or

(ii) the pension is not in payment before the commencement day but the entitlement to the relevant pension credit arose before that day, and

(b) 2.5 per cent. in a case where the entitlement to the relevant pension credit arises on or after the commencement day." .

(5) In paragraph (3), at the appropriate places insert—

""commencement day" means the day appointed for the coming into operation of Article 257 of the Pensions (Northern Ireland) Order 2005 (amendments to Article 37);"

""money purchase benefit" has the meaning given by section 176(1) of the Pension Schemes Act;" ;

""relevant pension credit" means the pension credit to which the eligible pension credit rights or, as the case may be, the safeguarded rights are (directly or indirectly) attributable;" .

Revaluation

Exemption from statutory revaluation requirement

258.—(1) Section 80 of the Pension Schemes Act (basis of revaluation) is amended as follows.

(2) In subsection (5), after paragraph (a) insert

"or

(b) under any arrangement which maintains the value of the pension or other benefit by reference to the rise in the retail prices index during that period," .

(3) After that subsection add—

"(6) In subsection (5)(b), "retail prices index" means—

(a) the general index of retail prices (for all items) published by the Office for National Statistics; or

(b) where that index is not published for a month, any substituted index or figures published by that Office." .

Contracting out

Meaning of "working life" in Pension Schemes Act

259. In section 176 of the Pension Schemes Act (general interpretation), in subsection (1) for the definition of "working life" substitute—

""working life", in relation to a person, means the period beginning with the tax year in which the person attains the age of 16 and ending with—

(a) the tax year before the one in which the person attains the age of 65 in the case of a man or 60 in the case of a woman, or

(b) if earlier, the tax year before the one in which the person dies." .

Power to prescribe conditions by reference to Inland Revenue approval

260. In section 5 of the Pension Schemes Act (requirements for certification of schemes: general), after subsection (5) insert—

"(5A) Regulations about pension schemes made under this Chapter may contain provisions framed by reference to whether or not a scheme—

(a) is approved under Chapter 1 (retirement benefit schemes) of Part XIV of the Income and Corporation Taxes Act 1988, or is a relevant statutory scheme within the meaning of that Chapter, or

(b) is approved under Chapter 4 (personal pension schemes) of that Part." .

Restrictions on commutation and age at which benefits may be received

261.—(1) For section 17(1) of the Pension Schemes Act (commutation of guaranteed minimum pensions) substitute—

"(1) A scheme may, in such circumstances and subject to such restrictions and conditions as may be prescribed, provide for the payment of a lump sum instead of a pension required to be provided by the scheme in accordance with section 9 or 13." .

(2) In section 13 of that Act (minimum pensions for widows and widowers), at the end add—

"(8) Where—

(a) a lump sum is paid to an earner under provisions included in a scheme by virtue of section 17(1), and

(b) those provisions are of a prescribed description,

the earner shall be treated for the purposes of this section as having any guaranteed minimum under section 10 that he would have had but for that payment." .

(3) In section 24 of that Act (ways of giving effect to protected rights), in subsection (4) (provision of a lump sum)—

(a) after "provision of a lump sum" insert " , subject to such restrictions as may be prescribed, ";

(b) omit paragraphs (a) and (b);

(c) at the end add

"; and

(e) such other conditions as may be prescribed are satisfied." .

(4) Omit subsections (4A) and (4B) of that section.

(5) In subsections (3) and (5) of that section, for ", (4) or (4A)" substitute " or (4) ".

(6) In subsection (8) of that section, in the definition of "the starting date" omit ", which must not be earlier than the member's 60th birthday,".

(7) In section 25(1) of that Act (how a pension may comply with "the pension requirements" for the purposes of section 24)—

(a) in paragraph (a), for the words from "date" to "or on" substitute " date that is not later than the member's 65th birthday, or on ";

(b) in paragraph (aa)(ii) omit the words from "and is not" to "75th birthday,".

Stakeholder pensions

Meaning of "stakeholder pension scheme"

262.—(1) Article 3 of the 1999 Order (meaning of "stakeholder pension scheme") is amended in accordance with paragraphs (2) to (4).

(2) In paragraph (1) (requirements to be met by stakeholder pension schemes), in sub-paragraph (a) for "to (9)" substitute " to (10) ".

(3) In paragraph (5) (prescribed requirements relating to administrative expenses of scheme), in sub-paragraph (a) for "by or on behalf of" substitute " by, or on behalf or in respect of, ".

(4) After paragraph (9) add—

"(10) The ninth condition is that—

(a) if the scheme is an occupational pension scheme, it is specified in a contracting-out certificate in relation to all categories of employment to which the scheme relates, and

(b) if the scheme is a personal pension scheme, it is an appropriate scheme within the meaning of section 3(4) of the Pension Schemes Act." .

(5) In Article 4 of that Order (registration of stakeholder pension), in paragraph (2)(b)(i) for "to (9)" substitute " to (10) ".

PART VII

CROSS-BORDER ACTIVITIES WITHIN EUROPEAN UNION

UK occupational pension scheme receiving contributions from European employer

Occupational pension scheme receiving contributions from European employer

263.—(1) The trustees or managers of an occupational pension scheme must not accept any contribution to the scheme from a European employer unless all the following conditions are met.

(2) Condition A is that the trustees or managers of the scheme are authorised by the Regulator under Article 264.

(3) Condition B is that the trustees or managers of the scheme are approved by the Regulator under Article 265 in relation to the European employer.

(4) Condition C is that either—

(a) the period of two months beginning with the date on which the Regulator notified the trustees or managers of the scheme under Article 265(2)(a)(ii) has expired, or

(b) before the end of that period, the trustees or managers have received information forwarded to them by the Regulator in accordance with Article 266(1).

(5) If the trustees or managers of a scheme fail to comply with paragraph (1), Article 10 of the 1995 Order (civil penalties) applies to any trustee or manager who has failed to take all reasonable steps to secure compliance.

(6) In this Part—

"European employer" has the prescribed meaning;

"host member State", in relation to a European employer, means a member State determined in accordance with regulations.

General authorisation to accept contributions from European employers

264.—(1) An application by the trustees or managers of an occupational pension scheme for authorisation under this Article must be made to the Regulator in the prescribed form and in the prescribed manner.

(2) On receipt of the application, the Regulator must—

(a) where the Regulator is satisfied that the applicant meets prescribed conditions, grant the authorisation, and

(b) in any other case, refuse the authorisation.

(3) Regulations may make provision as to—

(a) the revocation by the Regulator of authorisation under this Article, and

(b) the criteria to be applied by the Regulator in reaching any decision relating to the revocation of authorisation.

Approval in relation to particular European employer

265.—(1) An application by the trustees or managers of an occupational pension scheme for approval under this Article in relation to a European employer is made by the trustees or managers of the scheme giving the Regulator in the prescribed manner a notice ("the notice of intention") in the prescribed form which—

(a) specifies the European employer ("the specified employer"),

(b) states their intention, subject to approval under this Article, to accept contributions from the specified employer,

(c) specifies the host member State, and

(d) contains other prescribed information.

(2) On receipt of the notice of intention, the Regulator must within three months—

(a) where the Regulator is satisfied that the persons giving the notice of intention meet prescribed conditions—

(i) notify the competent authority of the host member State of the receipt by the Regulator of the notice of intention and of the contents of the notice, and

(ii) notify the persons who gave the notice of intention that they are approved for the purposes of this Article in relation to the specified employer, or

(b) in any other case, notify the persons who gave the notification that they are not so approved.

(3) If the Regulator does not act under paragraph (2)(a) or (b) within the period of three months beginning with the day on which the notice of intention was received, the persons who gave the

notice of intention are to be taken to have been approved for the purposes of this Article in relation to the specified employer at the end of the period.

(4) Regulations may make provision as to—

(a) the revocation by the Regulator of approval under this Article, and

(b) the criteria to be applied by the Regulator in reaching any decision relating to the revocation of approval.

Notification of legal requirements of host member State outside United Kingdom

266.—(1) Where—

(a) the Regulator has notified the competent authority of the host member State under paragraph (2)(a)(i) of Article 265, and

(b) in pursuance of Article 20(5) of the Directive, the Regulator receives information from the competent authority as to requirements of the social and labour law of the host member State and as to the other matters referred to in Article 20(5) of the Directive,

the Regulator must as soon as reasonably practicable forward that information to the person who gave the notice of intention under Article 265.

(2) Where—

(a) the trustees or managers of an occupational pension scheme are approved under Article 265 in relation to a European employer, and

(b) in pursuance of Article 20(8) of the Directive, the Regulator receives information ("the new information") from the competent authority of the host member State as to changes affecting any information previously forwarded under paragraph (1),

the Regulator must as soon as reasonably practicable forward the new information to the trustees or managers.

Duty of trustees or managers to act consistently with law of host member State

267.—(1) Where the trustees or managers of an occupational pension scheme receive contributions to the scheme from a European employer, the trustees or managers must ensure that the scheme, so far as it relates to members who are or have been employed by the employer, is operated in a way which is consistent with the requirements of the social and labour law of the host member State.

(2) Regulations may modify any provision of pensions legislation in its application to members of an occupational pension scheme in respect of which the employer is a European employer.

(3) If the trustees or managers of a scheme fail to comply with paragraph (1), Article 10 of the 1995 Order (civil penalties) applies to any trustee or manager who has failed to take all reasonable steps to secure compliance.

(4) In this Article "pensions legislation" means—

(a) the Pension Schemes Act,

(b) Part II of the 1995 Order, other than Articles 62 to 66A of that Order (equal treatment),

(c) Part II or Article 30 of the 1999 Order, or

(d) this Order.

Power of Regulator to require ring-fencing of assets

268.—(1) Where the trustees or managers of an occupational pension scheme receive contributions to the scheme from a European employer, the Regulator may in prescribed

circumstances issue a notice ("a ring-fencing notice") to the trustees or managers of the scheme directing them to take, or refrain from taking, such steps of a prescribed description as are specified in the notice for the purpose of ring-fencing some or all of the assets or liabilities (or both) of the scheme.

(2) In paragraph (1), "ring-fencing" has the same meaning as in the Directive.

(3) If the trustees or managers of an occupational pension scheme fail to comply with a ring-fencing notice given to them, Article 10 of the 1995 Order (civil penalties) applies to any trustee or manager who has failed to take all reasonable steps to secure compliance.

European occupational pension scheme receiving contributions from UK employer

Functions of Regulator in relation to institutions administered in other member States

269.—(1) Where a UK employer makes (or proposes to make) contributions to a European pensions institution, any function which Article 20 of the Directive requires or authorises to be exercised by the competent authorities of the host member State is exercisable by the Regulator.

(2) If the Regulator receives a notification in pursuance of Article 20(4) of the Directive from the competent authority in another member State, the Regulator must within two months inform that authority of any relevant legal requirements.

(3) Where there is a significant change in any relevant legal requirements, the Regulator must as soon as reasonably practicable inform any competent authority in relation to which it has provided information under paragraph (2) of that change.

(4) Where a UK employer makes contributions to a European pensions institution, the Regulator must—

(a) monitor the compliance of that institution with the relevant legal requirements, and

(b) if the Regulator becomes aware of any contravention by the institution of any relevant legal requirements, inform the competent authority of the member State in which the institution has its main administration of the failure.

(5) If the Regulator is satisfied that a European pensions institution which receives contributions from a UK employer is contravening any relevant legal requirements, the Regulator may issue a notice to the UK employer directing him—

(a) to take or refrain from taking such steps as are specified in the notice in order to remedy the failure by the institution, or

(b) to cease to make further contributions to the institution.

(6) Regulations may make further provision about the effect of a notice under paragraph (5)(b), including provision conferring functions on the Regulator.

(7) Article 10 of the 1995 Order (civil penalties) applies to any UK employer who, without reasonable excuse, fails to comply with a notice under paragraph (5).

(8) In this Article—

"European pensions institution" means an institution for occupational retirement provision, as defined by Article 6(a) of the Directive, that has its main administration in a member State other than the United Kingdom;

"relevant legal requirements" means such requirements of the law relating to occupational pension schemes, as it applies in any part of the United Kingdom, as may be prescribed;

"UK employer" means an employer who—

(a) in the case of a body corporate, is incorporated under the law of the United Kingdom or any part of the United Kingdom, or

(b) in any other case, is resident in the United Kingdom.

Assistance for other European regulators

Stopping disposal of assets of institutions administered in other member States

270.—(1) This Article applies if the Regulator receives a request from the competent authority of a member State for assistance in prohibiting the free disposal of UK-held assets of a European pensions institution that has its main administration in that member State.

(2) The High Court may on an application made by the Regulator with respect to UK-held assets of the institution grant an injunction restraining a defendant from disposing of, or otherwise dealing with, assets to which the application relates.

(3) If the High Court grants an injunction under paragraph (2), it may by subsequent orders make provision for such incidental, consequential and supplementary matters as it considers necessary to enable the competent authority that sent the request to perform any of its functions in relation to assets subject to the injunction.

(4) If the institution is not a party to proceedings under paragraph (2) or (3), the institution—

(a) has the same rights to notice of the proceedings as a defendant, and

(b) may take part as a party in the proceedings.

(5) In deciding any question as to costs or expenses, a court before which any proceedings take place—

(a) may take account of any additional expense which it considers that any party to the proceedings has incurred as a result of the participation of the institution in pursuance of paragraph (4)(b), and

(b) may award the whole or part of the additional expense as costs or (as the case may be) expenses to the party who incurred it (whatever the outcome of the Regulator's application).

(6) For the purposes of this Article—

"European pensions institution" has the meaning given by Article 269;

"UK-held assets" of a European pensions institution are assets of the institution held by a depositary or custodian located in the United Kingdom, and here "assets", "depositary", "custodian" and "located" have the same meaning as in Article 19(3) of the Directive.

Interpretation

Interpretation of Part

271. In this Part—

"competent authority", in relation to a member State other than the United Kingdom, means a national authority designated in accordance with the law of that State to carry out the duties provided for in the Directive;

"the Directive" means Directive 2003/41/EC of the European Parliament and of the Council on the activities and supervision of institutions for occupational retirement provision;

"European employer" has the meaning given by Article 263(6);

"host member State", in relation to a European employer, has the meaning given by Article 263(6);

"social and labour law", in relation to a member State other than the United Kingdom, means the social and labour law (within the meaning of Article 20 of the Directive) of that State relevant to occupational pension schemes (within the meaning of that Article).

PART VIII

STATE PENSIONS

Entitlement to more than one pension

Persons entitled to more than one Category B retirement pension

272. In section 43(3) of the Contributions and Benefits Act (persons entitled to more than one retirement pension)—

(a) for paragraph (a) substitute—

"(a) to both a Category A retirement pension and one or more Category B retirement pensions under this Part for the same period,

(aa) to more than one Category B retirement pension (but not a Category A retirement pension) under this Part for the same period, or" , and

(b) for the words from "paragraph (a)" to "above" substitute " paragraph (a), (aa) or (b) (as the case may be) ".

Deferral of state pension

Deferral of retirement pensions and shared additional pensions

273.—(1) For section 55 of the Contributions and Benefits Act (increase of retirement pension where entitlement is deferred) substitute—

"**55 Pension increase or lump sum where entitlement to retirement pension is deferred**

(1) Where a person's entitlement to a Category A or Category B retirement pension is deferred, Schedule 5 to this Act has effect.

(2) In that Schedule—

paragraph A1 makes provision enabling an election to be made where the pensioner's entitlement is deferred

paragraphs 1 to 3 make provision about increasing pension where the pensioner's entitlement is deferred

paragraphs 3A and 3B make provision about lump sum payments where the pensioner's entitlement is deferred

paragraph 3C makes provision enabling an election to be made where the pensioner's deceased spouse has deferred entitlement

paragraphs 4 to 7 make provision about increasing pension where the pensioner's deceased spouse has deferred entitlement

paragraphs 7A and 7B make provision about lump sum payments where the pensioner's deceased spouse has deferred entitlement

paragraphs 7C to 9 make supplementary provision.

(3) For the purposes of this Act a person's entitlement to a Category A or Category B retirement pension is deferred if and so long as that person—

(a) does not become entitled to that pension by reason only—

(i) of not satisfying the conditions of section 1 of the Administration Act (entitlement to benefit dependent on claim), or

(ii) in the case of a Category B retirement pension payable by virtue of a spouse's contributions, of the spouse not satisfying those conditions with respect to his Category A retirement pension, or

(b) in consequence of an election under section 54(1) above, falls to be treated as not having become entitled to that pension,

and, in relation to any such pension, "period of deferment" shall be construed accordingly." .

(2) For section 55C of that Act (increase of shared additional pension where entitlement is deferred) substitute—

"**55C Pension increase or lump sum where entitlement to shared additional pension is deferred**

(1) Where a person's entitlement to a shared additional pension is deferred, Schedule 5A to this Act has effect.

(2) In that Schedule—

paragraph 1 makes provision enabling an election to be made where the person's entitlement is deferred

paragraphs 2 and 3 make provision about increasing pension where the person's entitlement is deferred

paragraphs 4 and 5 make provision about lump sum payments where the person's entitlement is deferred.

(3) For the purposes of this Act, a person's entitlement to a shared additional pension is deferred—

(a) where he would be entitled to a Category A or Category B retirement pension but for the fact that his entitlement is deferred, if and so long as his entitlement to such a pension is deferred, and

(b) otherwise, if and so long as he does not become entitled to the shared additional pension by reason only of not satisfying the conditions of section 1 of the Administration Act (entitlement to benefit dependent on claim),

and, in relation to a shared additional pension, "period of deferment" shall be construed accordingly." .

(3) In paragraph 6 of Schedule 2 to the 1995 Order (which, with effect from 6th April 2010, amends the existing law regarding the deferment of pensions), for sub-paragraph (5) (commencement) substitute—

"(5) The preceding sub-paragraphs shall come into operation as follows—

(a) sub-paragraphs (1) and (4) shall come into operation on 6th April 2005;

(b) sub-paragraphs (2) and (3) shall have effect in relation to incremental periods (within the meaning of Schedule 5 to the Contributions and Benefits Act) beginning on or after that date." .

Para. 4— Amendments

Miscellaneous

Disclosure of state pension information

274.—(1) Section 38 of the 2000 Act (disclosure of state pension information) is amended as follows.

(2) In subsection (2), for the words from the beginning to "information", substitute " The Department may, in the prescribed manner, disclose or authorise the disclosure of any information ".

(3) After subsection (3) insert—

"(3A) For the purposes of this section and of any regulations made under it, anything done by or in relation to a person who—

(a) provides, or proposes to provide, relevant services to a person falling within subsection (3) ("the qualifying person"), and

(b) is authorised in writing by the qualifying person to act for the purposes of this section,

is treated as done by or in relation to the qualifying person.

In paragraph (a) "relevant services" means services that may involve the giving of advice or forecasts to which information to which this section applies may be relevant." .

(4) In subsection (7)—

(a) omit the word "and" at the end of paragraph (c), and

(b) after paragraph (d) add—

"and

(e) a projection of the amount of any lump sum to which that individual is likely to become entitled, or might become entitled in particular circumstances." .

(5) In subsection (11)—

(a) for the definitions of "basic retirement pension" and "additional retirement pension", substitute—

""additional retirement pension" means any additional pension or shared additional pension under the Contributions and Benefits Act, or any graduated retirement benefit under sections 35 and 36 of the National Insurance Act (Northern Ireland) 1966;

"basic retirement pension" means any basic pension under the Contributions and Benefits Act;" ,

(b) after the definition of "employer", insert—

""lump sum" means a lump sum under Schedule 5 or 5A to the Contributions and Benefits Act;" , and

(c) for the definitions of "trustee" and "manager", substitute—

""trustee or manager", in relation to an occupational or personal pension scheme, means—

(a) in the case of a scheme established under a trust, the trustee or trustees of the scheme, and

(b) in any other case, the person or persons responsible for the management of the scheme." .

PART IX

MISCELLANEOUS AND SUPPLEMENTARY

Dissolution of existing bodies – information

Information obtained by the Regulator

275.—(1) Subject to paragraph (2), information obtained by the Regulator by virtue of section 300(2) of the Pensions Act 2004 (c. 35) is to be treated for the purposes of Articles 77 to 82 (disclosure of information) as having been obtained by the Regulator in the exercise of its functions from the person from whom the Occupational Pensions Regulatory Authority ("OPRA") obtained it.

(2) Information obtained by the Regulator by virtue of section 300(2) of the Pensions Act 2004 which was supplied to OPRA for the purposes of its functions by an authority exercising functions corresponding to the functions of OPRA in a country or territory outside the United Kingdom (the "overseas authority") is to be treated for the purposes mentioned in paragraph (1) as having been supplied to the Regulator for the purposes of its functions by the overseas authority.

(3) Where tax information disclosed to OPRA is obtained by the Regulator by virtue of section 300(2) of the Pensions Act 2004, paragraph (1) does not apply and paragraphs (3) and (4) of Article 83 apply as if that information had been disclosed to the Regulator by virtue of paragraph (2) of that Article.
For this purpose "tax information" has the same meaning as in that Article.

Information obtained by the Board

276.—(1) Information obtained by the Board by virtue of section 302(2) of the Pensions Act 2004 (c. 35) is to be treated for the purposes of Articles 179 to 183 and 185 (disclosure of information) as having been obtained by the Board in the exercise of its functions from the person from whom the Pensions Compensation Board obtained it.

(2) Where tax information disclosed to the Pensions Compensation Board is obtained by the Board by virtue of section 302(2) of the Pensions Act 2004, paragraph (1) does not apply and paragraphs (3) and (4) of Article 184 apply as if that information had been disclosed to the Board by virtue of paragraph (2) of that Article.
For this purpose, "tax information" has the same meaning as in that Article.

(3) Where the Pensions Compensation Board's disclosure under Article 112(3) of the 1995 Order of information to which paragraph (1) applies was subject to any express restriction, the Board's powers of disclosure under Articles 180 to 183 and 185, in relation to that information, are subject to the same restriction.

Electronic working

Notification and documents in electronic form

277.—(1) This Article applies where —

(a) section 24 of the Interpretation Act (Northern Ireland) 1954 (c. 33) authorises the giving or sending of a notification or other document by its delivery to a particular person ("the recipient"), and

(b) the notification or other document is transmitted to the recipient—

(i) by means of an electronic communications network, or

(ii) by other means but in a form that nevertheless requires the use of apparatus by the recipient to render it intelligible.

(2) The transmission has effect for the purposes of this Order as a delivery of the notification or other document to the recipient, but only if the requirements imposed by or under this Article are complied with.

(3) Where the recipient is a relevant authority—

(a) it must have indicated its willingness to receive the notification or other document in a manner mentioned in paragraph (1)(b),

(b) the transmission must be made in such manner, and satisfy such other conditions, as it may require, and

(c) the notification or other document must take such form as it may require.

(4) Where the person making the transmission is a relevant authority, it may (subject to paragraph (5)) determine—

(a) the manner in which the transmission is made, and

(b) the form in which the notification or other document is transmitted.

(5) Where the recipient is a person other than a relevant authority—

(a) the recipient, or

(b) the person on whose behalf the recipient receives the notification or other document,

must have indicated to the person making the transmission the recipient's willingness to receive notifications or documents transmitted in the form and manner used.

(6) An indication given to any person for the purposes of paragraph (5)—

(a) must be given to that person in such manner as he may require,

(b) may be a general indication or one that is limited to notifications or documents of a particular description,

(c) must state the address to be used and must be accompanied by such other information as that person requires for the making of the transmission, and

(d) may be modified or withdrawn at any time by a notice given to that person in such manner as he may require.

(7) An indication, requirement or determination given, imposed or made by a relevant authority for the purposes of this Article is to be given, imposed or made by being published in such manner as it considers appropriate for bringing it to the attention of the persons who, in its opinion, are likely to be affected by it.

(8) Where both the recipient and the person making the transmission are relevant authorities—

(a) paragraphs (3) and (4) do not apply, and

(b) the recipient must have indicated to the person making the transmission the recipient's willingness to receive notifications or documents transmitted in the form and manner used.

(9) In this Article “notification” includes notice; and references in this Article to sending a document to a person include references to making an application to him.

(10) In this Article, “relevant authority” means the Regulator, the Board or the Department.

(11) In this Article and Article 278, “electronic communications network” has the same meaning as in the Communications Act 2003 (c. 21).

Timing and location of things done electronically

278.—(1) The Department may by order make provision specifying, for the purposes of any statutory provision contained in, or made under, this Order, the manner of determining—

(a) the times at which things done under that statutory provision by means of electronic communications networks are done, and

(b) the places at which such things are so done, and at which things transmitted by means of such networks are received.

(2) The provision made under paragraph (1) may include provision as to the country or territory in which an electronic address is to be treated as located.

(3) An order made by the Department may also make provision about the manner of proving in any legal proceedings—

(a) that something done by means of an electronic communications network satisfies the requirements of a statutory provision contained in, or made under, this Order for the doing of that thing, and

(b) the matters mentioned in paragraph (1)(a) and (b).

(4) An order under this Article may provide for such presumptions to apply (whether conclusive or not) as the Department considers appropriate.

General

Overriding requirements

279.—(1) Where any provision mentioned in paragraph (2) conflicts with the provisions of an occupational or personal 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) any order made by the Regulator under Part II;

(b) any regulations made under Article 15(7);

(c) any regulations made under Article 17(4);

(d) any regulations made under Article 20(7);

(e) any direction issued by the Regulator under Article 37(4);

(f) any direction issued by the Regulator under Article 46(4);

(g) Part III (other than Chapter 1), any orders or regulations made under that Part and any direction given under Article 118 or 138;

(h) Part IV and any orders or regulations made under that Part;

(i) any regulations made under Article 214;

(j) Articles 218 and 219, any regulations made under Articles 218 to 220 and any arrangements under Articles 218 and 219;

(k) Articles 224 and 225 and any regulations made under Articles 224 to 226;

(l) Articles 233 and 235;

(m) any ring-fencing notice issued by the Regulator under Article 268;

(n) any regulations made under Article 2(5) or (6), 280, 281 or 287(4) and any order made under Article 1(6).

(3) Paragraph (1) is without prejudice to Article 28(1) (overriding effect of freezing orders made by the Regulator) and Article 138(12) (overriding effect of requirement to wind up pension scheme under Part III).

(4) In the case of a company to which Article 219 (requirement for member-nominated directors of corporate trustees) applies, where any provision mentioned in paragraph (5) conflicts with the provisions of the company's memorandum or articles of association—

(a) the provision mentioned in paragraph (5), to the extent that it conflicts, overrides the provisions of the memorandum or articles, and

(b) the memorandum or articles have effect with such modifications as may be required in consequence of sub-paragraph (a).

(5) The provisions referred to in paragraph (4) are those of—

(a) Article 219;

(b) any regulations made under Article 219 or 220;

(c) any arrangements under Article 219.

Commencement Information

I23 Art. 279 partly in operation; art. 279 not in operation at date of making see art. 1(2); art. 279(1)(2)(a)-(g)(l)(n)(3) in operation at 1.9.2005 by S.R. 2005/411, art. 2(4), Sch. Pt. 1; art. 279(2)(h)(m) in operation for certain purposes at 6.12.2005 and wholly in operation at 30.12.2005 by S.R. 2005/543, art. 2(1), Sch. Pt. 1; art. 279(2)(j)(k)(4)(5) in operation at 6.4.2006 by S.R. 2006/95, **art. 2(c)**, Sch. Pt. 3

Modification of this Order in relation to certain categories of schemes

280.—(1) Regulations may modify any of the provisions mentioned in paragraph (2) as it applies in relation to—

(a) hybrid schemes;

(b) multi-employer schemes;

(c) any case where a partnership is the employer, or one of the employers, in relation to an occupational pension scheme.

(2) The provisions referred to in paragraph (1) are those of—

(a) Part II (the Pensions Regulator),

(b) Part III (the Board of the Pension Protection Fund), other than Chapter 1,

(c) Articles 234 and 235 (pension protection),

(d) Articles 236 and 238 (consultation by employers), and

(e) Part VII (cross-border activities within European Union).

(3) Regulations may also modify any of the provisions of Part III as it applies in relation to an eligible scheme in respect of which a relevant public authority has—

(a) given a guarantee in relation to any part of the scheme, any benefits payable under the scheme rules or any member of the scheme, or

(b) made any other arrangements for the purpose of securing that the assets of the scheme are sufficient to meet any part of its liabilities.

(4) In this Article—

"eligible scheme" has the meaning given in Article 110;

"hybrid scheme" means an occupational pension scheme—

(a) which is not a money purchase scheme, but

(b) where some of the benefits that may be provided are—

(i) money purchase benefits attributable to voluntary contributions of the members, or

(ii) other money purchase benefits;

"multi-employer scheme" means an occupational pension scheme in relation to which there is more than one employer;

"relevant public authority" means—

(a) a Minister of the Crown (within the meaning of the Ministers of the Crown Act 1975 (c. 26)); or

(b) a government department (including any body or authority exercising statutory functions on behalf of the Crown).

Modification of pensions legislation that refers to employers

281.—(1) Regulations may modify any provision of pensions legislation for the purpose of ensuring that it, or another provision of pensions legislation, does not purport to refer to the employer of a self-employed person.

(2) Where a provision of pensions legislation contains a reference to an employer in connection with an occupational pension scheme, regulations may modify the provision, or another provision of pensions legislation, for the purpose of excluding from the reference an employer who is a person—

(a) who does not participate in the scheme as regards people employed by him, or

(b) who, as regards people employed by him, participates in the scheme only to a limited extent.

(3) For the purposes of this Article—

(a) "pensions legislation" means any statutory provision contained in or made by virtue of—

(i) the Pension Schemes Act,

(ii) Part II of the 1995 Order other than Articles 62 to 66A of that Order (equal treatment),

(iii) Part II of the 1999 Order, or

(iv) this Order;

(b) a person is "self-employed" if he is in an employment but is not employed in it by someone else;

(c) a person who holds an office (including an elective office), and is entitled to remuneration for holding it, shall be taken to be employed by the person responsible for paying the remuneration.

(4) In paragraph (3)(b) "employment" includes any trade, business, profession, office or vocation.

Admissibility of statements

282.—(1) A statement made by a person in compliance with an information requirement is admissible in evidence in any proceedings, so long as it also complies with any requirements governing the admissibility of evidence in the circumstances in question.

(2) But in proceedings to which this paragraph applies—

(a) no evidence relating to the statement may be adduced, and

(b) no question relating to it may be asked,

by or on behalf of the prosecution or (as the case may be) the Regulator, unless evidence relating to it is adduced, or a question relating to it is asked, in the proceedings by or on behalf of that person.

(3) Paragraph (2) applies to—

(a) criminal proceedings in which that person is charged with a relevant offence, or

(b) proceedings as a result of which that person may be required to pay a financial penalty under or by virtue of—

(i) section 164 of the Pension Schemes Act (breach of regulations) or Article 10 of the 1995 Order (civil penalties), or

(ii) any provision in force in Great Britain corresponding to a provision mentioned in head (i).

(4) In this Article—

"information requirement" means any statement made in compliance with any duty imposed by or by virtue of—

(a) Article 59 (duty of trustees or managers to provide scheme return);

(b) Article 65 (duty to report breaches of the law);

(c) Article 67 (requirement to provide information to the Regulator);

(d) Article 70 (inspection of premises: powers of inspectors to examine etc.);

(e) Article 73(2)(d) (power of inspector entering under warrant to require a person to provide an explanation of a document);

(f) Article 172 (information to be provided to the Board);

(g) Article 173 (notices requiring provision of information to the Board);

(h) Article 174 (entry of premises: powers of appointed persons to examine etc.);

(i) Article 176(2)(d) (power of inspector entering under warrant to require a person to provide an explanation of a document);

(j) Article 191 (power to make order enabling PPF Ombudsman to obtain information, documents etc.);

(k) Article 192 or 193 (disclosure of information on references made to PPF Ombudsman);

(l) Article 207 (failure to make payments in accordance with schedule of contributions);

(m) paragraph 19 of Schedule 1 to the Pensions Act 2004 (power to make regulations enabling Regulator to summon persons to give evidence before it);

(n) paragraph 11 of Schedule 4 to that Act (the Pensions Regulator Tribunal: evidence);

"relevant offence" means any offence other than one under—

(a) Article 72 (neglect or refusal to provide information etc. to the Regulator);

(b) Article 75 (providing false or misleading information to the Regulator);

(c) Article 175 (neglect or refusal to provide information etc. to the Board);

(d) Article 177 (providing false or misleading information to the Board);

(e) any provision in force in Great Britain corresponding to a provision mentioned in paragraphs (a) to (d);

(f) Article 10 of the Perjury (Northern Ireland) Order 1979 (NI 19) (false statements made otherwise than on oath);

(g) section 5 of the Perjury Act 1911 (c. 6) (false statements made otherwise than on oath);

(h) section 44(2) of the Criminal Law (Consolidation) (Scotland) Act 1995 (c. 39) (false statements made otherwise than on oath).

Protected items

283.—(1) A person may not be required under or by virtue of this Order to produce, disclose or permit the inspection of protected items.

(2) For this purpose "protected items" means—

(a) communications between a professional legal adviser and his client or any person representing his client which fall within paragraph (3);

(b) communications between a professional legal adviser, his client or any person representing his client and any other person which fall within paragraph (3) (as a result of sub-paragraph (b) of that paragraph);

(c) items which—

(i) are enclosed with, or referred to in, such communications,

(ii) fall within paragraph (3), and

(iii) are in the possession of a person entitled to possession of them.

(3) A communication or item falls within this paragraph if it is made—

(a) in connection with the giving of legal advice to the client, or

(b) in connection with, or in contemplation of, legal proceedings and for the purpose of those proceedings.

(4) A communication or item is not a protected item if it is held with the intention of furthering a criminal purpose.

Liens

284. If a person claims a lien on a document, its production under any provision made by or by virtue of this Order does not affect the lien.

Crown application

285.—(1) In this Article "the relevant provisions" means—

(a) Parts II to VI,

(b) Articles 1(6), 2(5) and (6), 279, 280, 282, 283, 284, 286 and 287.

(2) The relevant provisions apply to a pension scheme managed by or on behalf of the Crown as they apply to other pension schemes; and, accordingly, references in those provisions to a person in his capacity as a trustee or manager of, or person prescribed in relation to, a pension scheme include the Crown, or a person acting on behalf of the Crown, in that capacity.

(3) The relevant provisions apply to persons employed by or under the Crown in like manner as if such persons were employed by a private person; and references in those provisions to a person in his capacity as an employer include the Crown, or a person acting on behalf of the Crown in that capacity.

(4) This Article does not apply to any of the relevant provisions under or by virtue of 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.

(5) Nothing in the relevant provisions applies to Her Majesty in Her private capacity (within the meaning of the Crown Proceedings Act 1947 (c. 44)).

Regulations and orders

Breach of regulations

286. The following provisions of the 1995 Order apply to regulations under this Order as if they were regulations made by virtue of Part II of that Order—

(a) Article 10(3) to (9) (power to impose civil penalties for contravention of regulations under Part II of that Order);

(b) Article 113 (power to provide for contravention of regulations under that Part to be criminal offence).

Orders and regulations (general provisions)

287.—(1) Any power conferred by this Order to make regulations or an order—

(a) if it is expressed to be exercisable for alternative purposes, may be exercised in relation to the same case for any or all of those purposes, and

(b) if it is conferred for the purposes of any one provision of this Order, is without prejudice to any power to make regulations or an order for the purposes of any other provision.

(2) A power conferred by this Order to make regulations or an order includes power to provide for a person to exercise a discretion in dealing with any matter.

(3) Any power conferred by this Order to make regulations or an order also includes power to make such incidental, supplementary, consequential or transitional provision as appears to the authority making the regulations or order to be expedient.

(4) Regulations may, for the purposes of or in connection with the coming into operation of any provisions of this Order, make any such provision as could be made by virtue of Article 1(6) by an order bringing those provisions into operation.

Assembly etc. control of orders and regulations

288.—(1) Subject to the following provisions of this Article—

(a) any orders made under this Order by a Northern Ireland department, and

(b) any regulations made under this Order,

are subject to negative resolution.

(2) Orders and regulations to which this paragraph applies—

(a) must be laid before the Assembly after being made; and

(b) take effect on such date as may be specified in the order or regulations, but (without prejudice to the validity of anything done thereunder or to the making of a new order or new regulations) cease to have effect upon the expiration of a period of six months from that date unless at some time before the expiration of that period the order or regulations are approved by a resolution of the Assembly.

(3) Paragraph (2) applies to—

(a) regulations under Article 2(5)(b) (power to extend meaning of employer);

(b) regulations under Article 103(1) or (3) (administration levy in respect of expenditure relating to the Board);

(c) regulations under Article 151 (modification of Chapter 3 of Part III where liabilities discharged during the assessment period);

(d) regulations under Article 157 (the initial levy);

(e) regulations under Article 158 (pension protection levies);

(f) an order or regulations under Article 191 (the PPF Ombudsman);

(g) regulations under Article 192 (reference of reviewable matter to the PPF Ombudsman);

(h) regulations under Article 193 (investigation by PPF Ombudsman of complaints of maladministration);

(i) regulations under Article 214 (combined pension forecasts);

(j) regulations under Article 215 (information and advice to employees);

(k) an order under Article 220(1) (power to provide for minimum fraction of member-nominated trustees or directors to be one-half);

(l) regulations which make provision by virtue of Article 238(2)(f) (power to make amendments etc. to certain statutory provisions);

(m) regulations which make provision by virtue of Article 286(b) (power to provide for contravention of regulations to be criminal offence);

(n) an order under Article 290(2) (power to make consequential amendments to statutory provisions);

(o) an order under paragraph 24(8) of Schedule 6 (power to vary percentage of periodic compensation that can be commuted); or

(p) an order under paragraph 30(1) of that Schedule (power to vary percentage paid as compensation from the Pension Protection Fund).

(4) Paragraph (1) does not apply to—

(a) an order under Article 1 (title and commencement);

(b) an order under Article 86(7) (commencement of code of practice);

(c) an order under Article 110(2) (schemes winding up before day appointed by order not eligible schemes for purposes of Part III); or

(d) an order under Article 165(10) (order appointing day after which losses of non-trust schemes are relevant for fraud compensation purposes).

(5) This paragraph applies to any regulations or orders made under this Order which—

(a) but for paragraph (6), would be subject to negative resolution, and

(b) are contained in a statutory rule which includes any regulations or order subject to the confirmatory procedure.

(6) Any regulations or orders to which paragraph (5) applies shall not be subject to negative resolution, but shall be subject to the confirmatory procedure.

(7) Orders made under this Order by a Minister of the Crown are subject to annulment in pursuance of a resolution of either House of Parliament and section 5 of the Statutory Instruments Act 1946 (c. 36) applies accordingly.

(8) In this Article “the confirmatory procedure” means the procedure described in paragraph (2).

Consultations about regulations

289.—(1) Before the Department makes any regulations by virtue of this Order (other than Part VIII), the Department 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 those regulations,

(b) in a case where it appears to the Department that by reason of urgency consultation is inexpedient,

(c) to regulations made before the end of the period of six months beginning with the coming into operation of the provision of this Order by virtue of which the regulations are made,

(d) to regulations which—

(i) state that they only make provision consequential upon a specified statutory provision, and

(ii) are made before the end of the period of six months beginning with the coming into operation of that statutory provision, or

(e) to regulations making only provision corresponding to provision contained in regulations made by the Secretary of State in relation to Great Britain.

Miscellaneous and supplementary

Minor and consequential amendments

Para. (1)— Amendments

(2) The Department may by order make provision consequential on this Order or the Pensions Act 2004 (c. 35) amending, repealing or revoking (with or without savings) any statutory provision.

Article 291— Repeals

Transitional adaptations etc.: section 322(1) of the Pensions Act 2004

292. The Department may by order—

(a) make transitional adaptations or modifications, in connection with any provisions brought into force by an order under section 322(1) of the Pensions Act 2004 (c. 35), of any provision of Parts II to VII of this Order, the Pension Schemes Act, the 1995 Order, Parts II, III or V of the 1999 Order or Chapter 2 of Part II of the 2000 Act; or

(b) save the effect of any of the repealed provisions of any of those statutory provisions, or those provisions as adapted or modified by the order,

as it appears to the Department expedient, including different adaptations or modifications for different periods.

Power to make further provision in connection with civil partnership

293. An order under section 259 of the Civil Partnership Act 2004 (c. 33) may amend or repeal any provision contained in this Order notwithstanding anything in subsection (3)(b) of that section.

Pre-consolidation amendments

294. The Department may by order make such modifications of—

(a) this Order,

(b) the Pension Schemes Act,

(c) the 1995 Order,

(d) Parts II to V of the 1999 Order, and

(e) Chapter 2 of Part II of the 2000 Act,

as in its opinion facilitate, or are otherwise desirable in connection with, the consolidation of those statutory provisions or any of them.

Status:
Point in time view as at 06/04/2006. This version of this Order contains provisions that are not valid for this point in time.

Changes to legislation:
The Pensions (Northern Ireland) Order 2005 is up to date with all changes known to be in force on or before 03 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations.