PENSIONS (NORTHERN IRELAND) ORDER 2005

S.I. 2005 255

EXPLANATORY MEMORANDUM

OVERVIEW

Part VI – Occupational and Personal Pension Schemes: Miscellaneous Provisions

35. This Part sets out a number of measures which will apply to occupational and personal pension schemes. These broadly fall into three groups: the first provides simplifications for the administration of pension schemes; the second deals with employers' and schemes' obligations; and finally, the third covers some clarifications and corrections where existing law has been found to be unclear.

36. *Articles 216* and *217* make provision in relation to definitions of occupational pension schemes and personal pension schemes in the Pension Schemes (Northern Ireland) Act 1993, and in relation to those treated as "employers" for the purposes of the Pensions (Northern Ireland) Order 1995.

37. *Articles 218* to *226* deal with member-nominated scheme trustees and (where every trustee of a scheme is a company) directors. One third of a scheme's trustees are to be member-nominated in a process involving all of the active members of a scheme. Employers will no longer be able to opt out of these arrangements but, if necessary, the employer may propose alternative arrangements that may be adopted if approved by the members through a statutory consultation procedure. Trustees of occupational pension schemes will be required to gain sufficient knowledge of the law as it relates to pensions and trusts and of the fundamental principles relating to funding and the investment of assets. In the same vein, trustees must prepare, review and maintain a written statement of the principles governing investment decisions.

38. *Articles 227* and *228* provide new rules governing payments to an employer from an actuarial surplus in an ongoing occupational pension scheme and how such a surplus should be determined.

39. *Articles 229* to *231* require an occupational pension scheme with its main administration in the United Kingdom not to accept a funding payment unless it is set up under irrevocable trusts. Where a scheme has its main administration outside the European Union (non-EU schemes), employers may not make contributions unless the scheme is established under trusts and has a trustee in the UK. Where the trustees of a non-EU scheme appoint someone to act on their behalf in the UK, that person may be treated as a trustee.

40. *Article 232* implements Article 7 of the EU directive on Institutions for Occupational Retirement Provision (Directive 2003/41/EC) ("the Directive"), by providing that, subject to prescribed exceptions, an occupational pension scheme in the UK must limit its activities to those relating to providing retirement benefit.

41. *Article 233* prohibits a scheme from indemnifying a trustee for any fine or penalty for a failure to comply with his duties.

42. *Articles 234* and *235* oblige employers to offer a minimum level of pension provision to employees transferred to them (provided they had access to an occupational pension scheme with the employer pre-transfer).

43. *Articles 236* to *238* provide that employers will be required to consult with scheme members when they are proposing to make prescribed decisions relating to their pension scheme arrangements.

44. *Article 239* substitutes Article 67 of the Pensions (Northern Ireland) Order 1995 (restriction on powers to alter schemes). This makes it possible for schemes to modify members' subsisting pension rights either by obtaining the members' consent to do so or by replacing their existing rights with other rights of actuarially equivalent value. This will provide schemes with greater flexibility to reduce administrative costs and complexity.

45. *Articles 240* and *241* make provision relating to employees who leave an occupational pension scheme within a vesting period (which currently may be up to two years). Under existing arrangements, such leavers do not build up any rights in the scheme. Instead, they are given a refund of contributions. *Article 241* provides that early leavers (employees who have been scheme members for at least three months, but who leave before their rights have vested) will be entitled to either a cash transfer or a refund of their contributions. This will allow people to build up pension rights from each employment where they have joined a pension scheme.

46. *Article 242* provides for the protection of pension rights during periods of paid paternity leave and adoption leave.

47. *Article 243* clarifies the existing law to ensure that the rules relating to the inalienablity of occupational pensions do not apply to payment of pension made in error.

48. *Article 244* removes the requirement for occupational pension schemes to accept voluntary contributions from scheme members.

49. *Articles 245* and *246* make provision in relation to payments made by employers to pension schemes and impose a duty on trustees and managers to monitor payment of contributions by employers and to report failure to pay contributions to the Regulator etc.

50. *Article 247* provides for a new priority order where a scheme is being wound up. The new priority order will ensure that members of schemes wound up due to employer insolvency, with sufficient funds to meet more than the benefits guaranteed by the PPF, do not find themselves in a worse position than if the scheme had less funds and was covered by the PPF. It also ensures that the same priority order is provided for the distribution of assets when a scheme starts to wind up and the employer is solvent.

51. *Articles 248* and *249* provide that, in situations where an employer is still solvent but chooses to wind up a pension scheme, the trustees will choose the date from which the assets and liabilities should be valued. If the liabilities turn out to be more than the assets, then the difference is a debt due from the employer to the trustees. If an employer becomes insolvent, and the assets are less than the liabilities immediately before it occurred, then the employer's debt is taken as arising immediately before the insolvency event.

52. *Article 250* makes provision relating to the resolution of disputes. Trustees or managers will have to ensure the implementation of dispute resolution systems that will provide procedures by which any person who has an interest in a scheme can approach them with a dispute and have it resolved within a reasonable period of time.

53. *Articles 251*to *253* make provision consequential on the new post of Deputy Pensions Ombudsman, which is created by the Act, and clarify the Ombudsman's jurisdiction in relation to those involved in scheme administration.

54. *Article 254* abolishes the restriction that the amount of compensation provided by the PCB must be less than the amount of the loss. Schemes with an insolvent employer may now be compensated for the full amount lost as a result of acts of dishonesty. It also allows the Board to review a determination without an application being made.

55. *Articles 255* to *257* deal with changes to the indexation requirements. Schemes will only be required to index pensions already in payment by inflation, capped at 2.5%, each year. This will ease funding liabilities for employers in the future and will avoid the serious effect on pensioners' incomes that could arise if indexation were to be removed entirely.

56. *Article 258* provides that the statutory revaluation requirement is satisfied if the total pension or benefit is revalued fully in line with the RPI.

57. *Articles 259* to *261* make provision relating to contracting out of the earnings-related part of State Pension; in particular they amend the definition of "working life" for the purposes of guaranteed minimum pension (GMP) and allow, in certain circumstances, for the payment of a lump sum instead of a GMP.

58. *Article 262* clarifies the law relating to stakeholder pensions by making clear that the cap on charges which may be levied applies to contributions made by the member and any contributions made on the member's behalf. It also makes clear that stakeholder schemes must be contracted out schemes.