



# Child Support, Pensions and Social Security Act 2000

## 2000 CHAPTER 19

### PART II

#### PENSIONS

### CHAPTER II

#### OCCUPATIONAL AND PERSONAL PENSION SCHEMES

##### *Selection of trustees and of directors of corporate trustees*

#### **43 Member-nominated trustees**

- (1) Section 16 of the Pensions Act 1995 (requirements for trustees to be nominated and selected by members of the scheme) shall be amended in accordance with subsections (2) to (8) of this section.
- (2) In subsection (1) (duty of trustees to make arrangements for selection of member-nominated trustees)—
  - (a) the words “(subject to section 17)” and in paragraph (b), the words “, and the appropriate rules,” shall be omitted; and
  - (b) in paragraph (a), for “persons selected” there shall be substituted “the selection of persons nominated”.
- (3) In subsection (3)(a) (selected persons to be trustees), for “in accordance with the appropriate rules” there shall be substituted “as a member-nominated trustee”.
- (4) In subsection (4) (procedure for filling vacancies unfilled because of insufficient nominations), for “the appropriate rules” there shall be substituted “regulations”.

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- (5) In subsection (5) (period of service as a member-nominated trustee), after “six years” there shall be inserted “but for a member-nominated trustee to be eligible for selection again at the end of any period of service as such a trustee.”
- (6) After subsection (6) there shall be inserted—
- “(6A) The arrangements must provide that, where the employer so requires, a person who is not a qualifying member of the scheme must have the employer’s approval to qualify for selection as a member-nominated trustee.”
- (7) In subsection (8) (persons ceasing to be member-nominated trustees on ceasing to be qualifying members of the scheme)—
- (a) for “The arrangements must” there shall be substituted “The arrangements—
- (a) must”; and
- (b) at the end there shall be inserted “; and
- (b) may provide for a member-nominated trustee who—
- (i) is a qualifying member of one of the following descriptions, that is to say, an active, deferred or pensioner member, and
- (ii) ceases (without ceasing to be a qualifying member) to be a qualifying member of that description, to cease, by virtue of that fact, to be a trustee.”
- (8) After subsection (8) there shall be inserted—
- “(9) Regulations may make provision in relation to arrangements under this section—
- (a) supplementing the requirements of this section as to the matters to be contained in the arrangements; and
- (b) providing for the manner in which, and the time within which, persons are, for the purposes of the arrangements, to be nominated and selected as member-nominated trustees.
- (10) This section does not apply in the case of a 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) Section 17 of that Act (exceptions to section 16 where the employer’s alternative proposals are approved) shall cease to have effect.

#### **44 Corporate trustees**

- (1) Section 18 of the Pensions Act 1995 (requirements for member-nominated directors of trustee company) shall be amended in accordance with subsections (2) to (9) of this section.
- (2) In subsection (1) (duty of corporate trustee to make arrangements for selection of member-nominated directors)—
- (a) for the words from “and the employer” to “satisfied” there shall be substituted “and there is no trustee of the scheme who is not a company”;

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- (b) the words “, subject to section 19,” and in paragraph (b), the words “, and the appropriate rules,” shall be omitted; and
  - (c) in paragraph (a), for “persons selected” there shall be substituted “the selection of persons nominated”.
- (3) In subsection (3)(a) (selected persons to be directors), for “in accordance with the appropriate rules” there shall be substituted “as a member-nominated director”.
- (4) In subsection (4) (procedure for filling vacancies unfilled because of insufficient nominations), for “the appropriate rules” there shall be substituted “regulations”.
- (5) In subsection (5) (period of service as a member-nominated director), after “six years” there shall be inserted “but for a member-nominated director to be eligible for selection again at the end of any period of service as such a director.”
- (6) After subsection (6) there shall be inserted—
- “(6A) The arrangements must provide that, where the employer so requires, a person who is not a qualifying member of the scheme must have the employer’s approval to qualify for selection as a member-nominated director.”
- (7) In subsection (7) (persons ceasing to be member-nominated directors on ceasing to be qualifying members of the scheme)—
- (a) for “The arrangements must” there shall be substituted “The arrangements—
    - (a) must”; and
    - (b) at the end there shall be inserted “; and
      - (b) may provide for a member-nominated director who—
        - (i) is a qualifying member of one of the following descriptions, that is to say, an active, deferred or pensioner member, and
        - (ii) ceases (without ceasing to be a qualifying member) to be a qualifying member of that description, to cease, by virtue of that fact, to be a director.”
- (8) For subsection (8) (companies that are trustees of two or more different trust schemes) there shall be substituted—
- “(8) Where—
- (a) the same company is a trustee of two or more schemes by reference to each of which this section applies to the company, and
  - (b) the company does not, in the prescribed manner, elect that this subsection should not apply,
- the preceding provisions of this section and section 21(8) shall have effect as if those schemes were a single scheme and the members of each of the schemes were members of that single scheme.”
- (9) After subsection (8) there shall be inserted—
- “(9) Regulations may make provision in relation to arrangements under this section—
- (a) supplementing the requirements of this section as to the matters to be contained in the arrangements; and

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- (b) providing for the manner in which, and the time within which, persons are, for the purposes of the arrangements, to be nominated and selected as member-nominated directors.

(10) This section does not apply in the case of a trust scheme if the scheme is of a prescribed description.”

- (10) Sections 19 and 20 of that Act (exceptions to section 18 where the employer’s alternative proposals are approved and meaning of “appropriate rules”) shall cease to have effect.

#### **45 Employer’s proposals for selection of trustees or directors**

- (1) After section 18 of the Pensions Act 1995 there shall be inserted—

*“Further provisions about the selection of trustees and directors*

##### **18A Employer’s proposals for selection of trustees or directors**

- (1) Where, in the case of any trust scheme—
  - (a) the employer makes proposals for the adoption of arrangements for the nomination and selection of the trustees of the scheme,
  - (b) the proposed arrangements comply with all the requirements of section 16 and do not contain anything inconsistent with those requirements,
  - (c) the proposed arrangements comply with such other requirements as may be prescribed,
  - (d) the proposed arrangements are approved under such procedure for obtaining the views of members of the scheme as may be prescribed, and
  - (e) such other conditions are satisfied as may be prescribed,
 the trustees of the scheme shall secure that the proposed arrangements are made and implemented.
- (2) Where, in the case of any company which is trustee of a trust scheme of which there is no trustee who is not a company—
  - (a) the employer makes proposals for the adoption of arrangements for the nomination and selection of the directors of the company,
  - (b) the proposed arrangements comply with all the requirements of section 18 and do not contain anything inconsistent with those requirements,
  - (c) the proposed arrangements comply with such other requirements as may be prescribed,
  - (d) the proposed arrangements are approved under such procedure for obtaining the views of members of the scheme as may be prescribed, and
  - (e) such other conditions are satisfied as may be prescribed,
 the company shall secure that the proposed arrangements are made and implemented.

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- (3) Arrangements made and implemented under this section may include provision that is different from that for which provision is made by regulations under section 16(9) or 18(9).
  - (4) Regulations may make provision—
    - (a) as to the manner in which, and the time within which, arrangements proposed and approved for the purposes of this section are to be implemented by the trustees of a trust scheme or by a company which is a trustee of a trust scheme; and
    - (b) as to what is to happen where an approval for the purposes of this section of any arrangements ceases, in accordance with regulations, to have effect.
  - (5) Regulations about the manner in which anything is approved for the purposes of this section may provide—
    - (a) for it to be treated as approved in accordance with the prescribed procedure where the Authority determine that prescribed conditions have been satisfied in relation to any departures from that procedure that have occurred; and
    - (b) for persons who do not object to it to be treated as having approved it.
  - (6) Regulations may provide that, for the purposes of this section and any arrangements under this section, arrangements are to be taken as complying with the requirements of section 16 or 18, and as being consistent with those requirements, notwithstanding that nominations made for the purposes of the arrangements by a person or organisation which—
    - (a) represents for any particular purposes the interests of persons who are comprised in the membership of the scheme in question, and
    - (b) is of such a description as is specified in the regulations,are to be treated under the arrangements as nominations, or as the only nominations, made by qualifying members of the scheme.
  - (7) Provision made by or under the preceding provisions of this section with respect to member-nominated trustees does not apply in the case of a trust scheme if—
    - (a) every member of the scheme is a trustee of the scheme and no other person is such a trustee; or
    - (b) every trustee of the scheme is a company.
  - (8) Provision made by or under the preceding provisions of this section does not apply if the scheme is of a prescribed description.”
- (2) In section 68(2)(b) of that Act (power of trustee to modify scheme), for “17(2)” there shall be substituted “18A(1)”.
  - (3) In section 117(2)(c) of that Act (overriding requirements), for “17(2)” there shall be substituted “18A(1)”.

#### **46 Non-compliance in relation to arrangements or proposals**

- (1) In section 21 of the Pensions Act 1995 (consequences for trustees of failure to implement arrangements)—

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- (a) in subsections (1) and (2), the words “, or the appropriate rules,” shall be omitted;
  - (b) in subsections (1) and (3), for “17(2)”, in each place, there shall be substituted “18A(1)”;
  - (c) in subsection (2), for “19(2)”, in each place, there shall be substituted “18A(2)”;
  - (d) in subsection (3), the words “or rules” shall be omitted;
  - (e) in subsection (4), for “17(2), 18(1) or 19(2)” there shall be substituted “18(1) or 18A(1) or (2)” and the words “(or further arrangements)” in paragraph (a), paragraph (b) and the word “and” immediately preceding it shall be omitted;
  - (f) subsection (5) shall cease to have effect;
  - (g) in subsection (6), for “20” there shall be substituted “18A”;
  - (h) in subsection (7), for “16 to 20” there shall be substituted “16 and 18” and the words “and this section”, paragraph (b) and the word “and” immediately preceding paragraph (b) shall be omitted;
  - (i) in subsection (8)(a), for the words from “of the appropriate” to “given” there shall be substituted “for the purposes of section 18A of proposed arrangements must be given, in accordance with regulations under that section,”; and
  - (j) paragraph (b) of subsection (8) and the word “and” immediately preceding it shall be omitted.
- (2) In subsection (1) of that section, after paragraph (b) there shall be inserted “or  
(c) regulations under section 16(9)(b) have not been complied with,”.
- (3) In subsection (2) of that section, after paragraph (b) there shall be inserted “or  
(c) regulations under section 18(9)(b) have not been complied with,”.
- (4) After subsection (2) of that section there shall be inserted—  
“(2A) Section 10 applies to an employer who has made a proposal for the purposes of section 18A but who contravenes any requirements of any regulations under section 18A relating to the submission of that proposal for approval.”
- (5) After subsection (6) there shall be inserted—  
“(6A) In sections 16 to 18A “company” means a company within the meaning given by section 735(1) of the Companies Act 1985 or a company which may be wound up under Part V of the Insolvency Act 1986 (unregistered companies).”

### *Winding-up of schemes*

#### **47 Information to be given to the Authority**

- (1) In section 22(1) and (3) of the Pensions Act 1995 (circumstances in which provisions apply to a trust scheme the employer in relation to which has been subjected to an insolvency procedure), for “26”, in each case, there shall be substituted “26A”.
- (2) After section 26 of that Act there shall be inserted—

#### **“26A Information to be given to the Authority in a s. 22 case**

- (1) If at any time while section 22 applies in relation to a scheme—

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- (a) the trustees of the scheme do not include at least one person who the practitioner or official receiver has informed them is a person about whose independent status he is satisfied, and
- (b) the trustees have no other reasonable grounds for believing that their number includes at least one person about whose independent status the practitioner or official receiver is satisfied,

it shall be the duty of the trustees, as soon as reasonably practicable after it first appears to any one or more of them as mentioned in paragraphs (a) and (b), to give notice to the Authority that the scheme appears not to have an independent trustee.

- (2) If a trust scheme is without trustees at any time while section 22 applies to it, it shall be the duty of every person involved in the administration of the scheme, as soon as reasonably practicable after it first appears to him that the scheme is without trustees, to give notice to the Authority that the scheme has no trustees.
- (3) No person shall be required to give a notice under subsection (1) or (2) at any time when it appears to him on reasonable grounds—
  - (a) that it is the intention of the practitioner or official receiver, for the purpose of complying with his duty under section 23(1)(b), to make or secure the appointment of any person as a trustee of the scheme; and
  - (b) that the appointment will be made within the period specified by or under section 23(2) for the performance of that duty.
- (4) No person shall be required to give a notice under subsection (2) at any time when it appears to him, on reasonable grounds, that the Authority are already aware that the scheme has no trustees.
- (5) Where the practitioner or official receiver at any time informs the trustees of a trust scheme that he is not, or is no longer, satisfied about a person's independent status, no account shall be taken for the purposes of subsection (1)(a) of any information that he was so satisfied which was given by the practitioner or official receiver to the trustees before that time.
- (6) References in this section to the practitioner or official receiver being satisfied about a person's independent status are references to his being satisfied for the purposes of section 23 that that person is an independent person.
- (7) If subsection (1) is not complied with, section 10 applies to any trustee who has failed to take all such steps as are reasonable to secure compliance.
- (8) Section 10 applies to any person who fails to comply with a duty imposed on him by subsection (2).

### **26B Information to be given in cases where s. 22 disapplied**

- (1) Where, at any time—
  - (a) section 22 would apply in relation to a trust scheme but for regulations under section 118,
  - (b) the employer in relation to the scheme is the sole trustee of the scheme,
  - (c) there are persons involved in the administration of the scheme, and

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- (d) none of those persons has received an employer's assurance relating to the scheme,

it shall be the duty of every person who is involved in the administration of the scheme, as soon as reasonably practicable after it first appears to him as mentioned in paragraphs (a) and (b), to give notice to the Authority that the case is one falling within paragraphs (a) to (d).

- (2) For the purposes of this section a person has received an employer's assurance relating to a scheme if during the period while section 22 would have applied in relation to the scheme but for regulations under section 118—
  - (a) he has been informed by the person who is the employer in relation to the scheme that there is no reason why the employer should not continue to act as a trustee of the scheme;
  - (b) he has not subsequently been informed by the person who is the employer in relation to the scheme that that has ceased to be the case; and
  - (c) the trustees of the scheme have not changed since he was informed as mentioned in paragraph (a).
- (3) No person shall be required to give a notice under subsection (1)—
  - (a) at any time when it appears to him, on reasonable grounds, that the Authority are already aware that the case is one falling within paragraphs (a) to (d) of that subsection;
  - (b) if a period is prescribed for the purposes of this paragraph, at any time in the prescribed period after the event by virtue of which the scheme became a scheme in relation to which section 22 would apply but for regulations under section 118; or
  - (c) at any other time that is prescribed for the purposes of this subsection.
- (4) Section 10 applies to any person who fails to comply with any duty imposed on him by subsection (1).

### **26C Construction of ss. 26A and 26B**

- (1) In sections 26A and 26B references, in relation to a scheme, to a person involved in the administration of the scheme are (subject to subsection (2)) references to any person who is so involved otherwise than as—
  - (a) the employer in relation to that scheme;
  - (b) a trustee of the scheme;
  - (c) the auditor of the scheme or its actuary;
  - (d) a legal adviser of the trustees of the scheme;
  - (e) a fund manager for the scheme;
  - (f) a person acting on behalf of a person who is involved in the administration of the scheme;
  - (g) a person providing services to a person so involved;
  - (h) a person acting in his capacity as an employee of a person so involved;
  - (i) a person who would fall within any of paragraphs (f) to (h) if persons acting in relation to the scheme in any capacity mentioned in the preceding paragraphs were treated as involved in the administration of a scheme.



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- (2) In this section references, in relation to a scheme, to a person involved in the administration of the scheme do not include references to persons of a particular description if regulations provide for persons of that description to be excluded from those references.
- (3) If regulations so provide in relation to any provision of section 26A or 26B, so much of that provision as requires any notice to be given as soon as reasonably practicable after a particular time shall have effect as a requirement to give that notice within such period after that time as may be prescribed.”
- (3) In subsection (2) of section 118 of that Act (powers to provide for sections 22 to 26 not to apply in the case of certain schemes), for “sections 22 to 26” there shall be substituted “some or all of the provisions of sections 22 to 26C”.
- (4) After that subsection there shall be inserted—
  - “(3) Regulations may modify sections 26A and 26B for the purpose of requiring prescribed persons, in addition to or instead of the persons who (apart from the regulations) would be required to provide information to the Authority under those sections, to be subject to the duties imposed by those sections.”
- (5) In section 178(b) of the Pension Schemes Act 1993 (regulations providing for who is to be treated as a trustee of a scheme), at the end there shall be inserted “or sections 22 to 26C of the Pensions Act 1995”.

#### **48 Modification of scheme to secure winding-up**

After section 71 of the Pensions Act 1995 (effect of modification orders under section 69) there shall be inserted—

##### **“71A Modification by Authority to secure winding-up**

- (1) The Authority may at any time while—
  - (a) an occupational pension scheme is being wound up, and
  - (b) the employer in relation to the scheme is subject to an insolvency procedure,make an order modifying that scheme with a view to ensuring that it is properly wound up.
- (2) The Authority shall not make such an order except on an application made to them, at a time such as is mentioned in subsection (1), by the trustees or managers of the scheme.
- (3) Except in so far as regulations otherwise provide, an application for the purposes of this section must be made in writing.
- (4) Regulations may make provision—
  - (a) for the form and manner in which an application for the purposes of this section is to be made to the Authority;
  - (b) for the matters which are to be contained in such an application;
  - (c) for the documents which must be attached to an application for the purposes of this section or which must otherwise be delivered to the Authority with or in connection with any such application;

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- (d) for persons to be required, before such time as may be prescribed, to give such notifications of the making of an application for the purposes of this section as may be prescribed;
  - (e) for the matters which are to be contained in a notification of such an application;
  - (f) for persons to have the opportunity, for a prescribed period, to make representations to the Authority about the matters to which such an application relates;
  - (g) for the manner in which the Authority are to deal with any such application.
- (5) The power of the Authority to make an order under this section—
- (a) shall be limited to what they consider to be the minimum modification necessary to enable the scheme to be properly wound up; and
  - (b) shall not include power to make any modification that would have a significant adverse effect on—
    - (i) the accrued rights of any member of the scheme; or
    - (ii) any person’s entitlement under the scheme to receive any benefit.
- (6) A modification of an occupational pension scheme by an order of the Authority under this section shall be as effective in law as if—
- (a) it had been made under powers conferred by or under the scheme;
  - (b) the modification made by the order were capable of being made in exercise of such powers notwithstanding any enactment, rule of law or rule of the scheme that would have prevented their exercise for the making of that modification; and
  - (c) the exercise of such powers for the making of that modification would not have been subject to any enactment, rule of law or rule of the scheme requiring the implementation of any procedure or the obtaining of any consent in connection with the making of a modification.
- (7) Regulations may provide that, in prescribed circumstances, this section—
- (a) does not apply in the case of occupational pension schemes of a prescribed class or description; or
  - (b) in the case of occupational pension schemes of a prescribed class or description applies with prescribed modifications.
- (8) The times when an employer in relation to an occupational pension scheme shall be taken for the purposes of this section to be subject to an insolvency procedure are—
- (a) in the case of a trust scheme, while section 22 applies in relation to the scheme; and
  - (b) in the case of a scheme that is not a trust scheme, while section 22 would apply in relation to the scheme if it were a trust scheme;
- and for the purposes of this subsection no account shall be taken of modifications or exclusions contained in any regulations under section 118.
- (9) The Authority shall not be entitled to make an order under this section in relation to a public service pension scheme.”

## **49 Reports about winding-up**

(1) After section 72 of the Pensions Act 1995 there shall be inserted—

### *“Supervision of winding-up*

#### **72A Reports to Authority about winding-up**

- (1) Where—
- (a) an occupational pension scheme is being wound up, and
  - (b) the winding-up is one beginning at a time (whether before or after the passing of this Act) by reference to which regulations provide that it is to be a winding-up to which this section applies,
- it shall be the duty of the trustees or managers, in accordance with this section, to make periodic reports in writing to the Authority about the progress of the winding-up.
- (2) In the case of each winding-up, the first report to be made under this section shall be made—
- (a) except in a case to which paragraph (b) applies—
    - (i) after the end of the prescribed period beginning with the day on which the winding-up began; and
    - (ii) before the end of the prescribed period that begins with the end of the period that applies for the purposes of subparagraph (i);
  - and
  - (b) in a case where the winding-up began before the coming into force of the regulations which (for the purposes of subsection (1)(b)) prescribe the time by reference to which the winding-up is one to which this section applies, before such date as may be prescribed by those regulations.
- (3) Subject to subsection (4), each subsequent report made under this section in the case of a winding-up shall be made no more than twelve months after the date which (apart from any postponement under subsection (4)) was the latest date for the making of the previous report required to be made in the case of that winding-up.
- (4) If, in the case of any report required to be made under subsection (3), the Authority consider (whether on an application made for the purpose or otherwise) that it would be appropriate to do so, they may, at any time before the latest time for the making of that report, postpone that latest time by such period as they think fit.
- (5) The latest time for making a report shall not be postponed under subsection (4) by more than twelve months.
- (6) Subject to the application of the limit specified in subsection (5) to the cumulative period of the postponements, more than one postponement may be made under subsection (4) in the case of the same report.
- (7) A report under this section—

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- (a) must contain such information and statements as may be prescribed; and
  - (b) must be made in accordance with the prescribed requirements.
- (8) Regulations may—
- (a) provide that, in prescribed circumstances, there shall be no obligation to make a report that would otherwise fall to be made under this section;
  - (b) make provision for the period within which, and the manner in which, applications may be made for a postponement under subsection (4); and
  - (c) modify subsections (3) and (5) by substituting periods of different lengths for the periods for the time being specified in those subsections.
- (9) If there is any failure by the trustees or managers of any scheme to comply with their duty to make a report in accordance with the requirements imposed by or under this section—
- (a) section 3 applies, if the scheme is a trust scheme, to any trustee who has failed to take all such steps as are reasonable to secure compliance; and
  - (b) section 10 applies (irrespective of the description of scheme involved) to any trustee or manager who has failed to take all such steps.”
- (2) In section 124 of that Act (interpretation of Part I), after subsection (3) there shall be inserted—
- “(3A) In a case of the winding-up of an occupational pension scheme in pursuance of an order of the Authority under section 11 or of an order of a court, the winding-up shall (subject to subsection (3E)) be taken for the purposes of this Part to begin—
- (a) if the order provides for a time to be the time when the winding-up begins, at that time; and
  - (b) in any other case, at the time when the order comes into force.
- (3B) In a case of the winding-up of an occupational pension scheme in accordance with a requirement or power contained in the rules of the scheme, the winding-up shall (subject to subsections (3C) to (3E)) be taken for the purposes of this Part to begin—
- (a) at the time (if any) which under those rules is the time when the winding-up begins; and
  - (b) if paragraph (a) does not apply, at the earliest time which is a time fixed by the trustees or managers as the time from which steps for the purposes of the winding-up are to be taken.
- (3C) Subsection (3B) shall not require a winding-up of a scheme to be treated as having begun at any time before the end of any period during which effect is being given—
- (a) to a determination under section 38 that the scheme is not for the time being to be wound up; or
  - (b) to a determination in accordance with the rules of the scheme to postpone the commencement of a winding-up.

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- (3D) In subsection (3B)(b) the reference to the trustees or managers of the scheme shall have effect in relation to any scheme the rules of which provide for a determination that the scheme is to be wound up to be made by persons other than the trustees or managers as including a reference to those other persons.
- (3E) Subsections (3A) to (3D) above do not apply for such purposes as may be prescribed.”
- (3) After section 49 of that Act (other responsibilities of trustees employers etc.) there shall be inserted—

**“49A Record of winding-up decisions**

- (1) Except so far as regulations otherwise provide, the trustees or managers of an occupational pension scheme shall keep written records of—
- (a) any determination for the winding-up of the scheme in accordance with its rules;
  - (b) decisions as to the time from which steps for the purposes of the winding-up of the scheme are to be taken;
  - (c) determinations under section 38;
  - (d) determinations in accordance with the rules of the scheme to postpone the commencement of a winding-up of the scheme.
- (2) For the purpose of this section—
- (a) the determinations and decisions of which written records must be kept under this section include determinations and decisions by persons who—
    - (i) are not trustees or managers of a scheme, but
    - (ii) are entitled, in accordance with the rules of a scheme, to make a determination for its winding-up;
  - and
  - (b) regulations may, in relation to such determinations or decisions as are mentioned in paragraph (a), impose obligations to keep written records on the persons making the determinations or decisions (as well as, or instead of, on the trustees or managers).
- (3) Regulations may provide for the form and content of any records that are required to be kept under this section.
- (4) Section 3 applies to any trustee of a scheme who fails to take all such steps as are reasonable to secure compliance by the trustees of that scheme with the obligations imposed on them by this section.
- (5) Section 10 applies to any trustee or manager of a scheme who fails to take all such steps as are reasonable to secure compliance by the trustees or managers of that scheme with those obligations.”

**50 Directions for facilitating winding-up**

After the section 72A inserted in the Pensions Act 1995 by section 49 there shall be inserted—

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**“72B Directions by Authority for facilitating winding-up**

- (1) Subject to the following provisions of this section, the Authority shall have power, at any time after the winding-up of an occupational pension scheme has begun, to give directions under this section if they consider that the giving of the direction is appropriate on any of the grounds set out in subsection (2).
- (2) Those grounds are—
  - (a) that the trustees or managers of the scheme are not taking all the steps in connection with the winding-up that the Authority consider would be being taken if the trustees or managers were acting reasonably;
  - (b) that steps being taken by the trustees or managers for the purposes of the winding-up involve things being done with what the Authority consider to be unreasonable delay;
  - (c) that the winding-up is being obstructed or unreasonably delayed by the failure of any person—
    - (i) to provide information to the trustees or managers;
    - (ii) to provide information to a person involved in the administration of the scheme;
    - (iii) to provide information to a person of a prescribed description;
    - or
    - (iv) to take any step (other than the provision of information) that he has been asked to take by the trustees or managers;
  - (d) that the winding-up would be likely to be facilitated or accelerated by the taking by any person other than the trustees or managers of any other steps;
  - (e) that in any prescribed circumstances not falling within paragraphs (a) to (d)—
    - (i) the provision by any person of any information to the trustees or managers or to any other person, or
    - (ii) the taking of any other step by any person,
 would be likely to facilitate or accelerate the progress of the winding-up.
- (3) Except in prescribed circumstances, the power of the Authority to give a direction under this section in the case of a winding-up shall be exercisable only where—
  - (a) periodic reports about the progress of the winding-up are required to be made under section 72A; and
  - (b) the first report that has to be made for the purposes of that section in the case of that winding-up either has been made or should have been made.
- (4) Regulations may provide that, in prescribed circumstances, the Authority shall not give a direction on the ground set out in subsection (2)(e) except in response to an application made by the trustees or managers of the scheme for the giving of a direction on that ground.
- (5) A direction under this section is a direction in writing given to and imposing requirements on—

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- (a) any or all of the trustees or managers of the scheme;
  - (b) a person who is involved in its administration; or
  - (c) a person of a prescribed description.
- (6) The requirements that may be imposed by a direction under this section are any requirement for the person to whom it is given, within such period specified in the direction as the Authority may consider reasonable—
- (a) to provide the trustees or managers with all such information as may be specified or described in the direction;
  - (b) to provide a person involved in the administration of the scheme with all such information as may be so specified or described;
  - (c) to provide a person who is of a prescribed description with all such information as may be so specified or described;
  - (d) to take such steps (other than the provision of information) as may be so specified or described.
- (7) If, at any time before the end of a period within which any step is required by a direction under this section to be taken by any person, the Authority consider (whether on an application made for the purpose or otherwise) that it would be appropriate to do so, they may extend (or further extend) that period until such time as they think fit.
- (8) Regulations may—
- (a) impose limitations on the steps that a person may be required to take by a direction under this section;
  - (b) make provision for the period within which, and the manner in which, applications may be made for a period to be extended (or further extended) under subsection (7).
- (9) In this section references, in relation to a scheme, to a person involved in the administration of the scheme are (subject to subsection (10)) references to any person who is so involved otherwise than as—
- (a) the employer in relation to that scheme;
  - (b) a trustee or manager of the scheme;
  - (c) the auditor of the scheme or its actuary;
  - (d) a legal adviser of the trustees or managers of the scheme;
  - (e) a fund manager for the scheme;
  - (f) a person acting on behalf of a person who is involved in the administration of the scheme;
  - (g) a person providing services to a person so involved;
  - (h) a person acting in his capacity as an employee of a person so involved;
  - (i) a person who would fall within any of paragraphs (f) to (h) if persons acting in relation to the scheme in any capacity mentioned in the preceding paragraphs were treated as involved in the administration of a scheme.
- (10) In this section references, in relation to a scheme, to a person involved in the administration of the scheme do not include references to persons of a particular description if regulations provide for persons of that description to be excluded from those references.

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### **72C Duty to comply with directions under s. 72B**

- (1) It shall be the duty of any person to whom a direction is given under section 72B to comply with it.
- (2) Where a direction is given under section 72B to the trustees of a trust scheme, section 3 applies to any trustee who fails, without reasonable excuse, to take all such steps as are reasonable to secure compliance with it.
- (3) Section 10 applies to any trustee or manager of a scheme who fails, without reasonable excuse, to take all such steps as are reasonable to secure compliance by the trustees or managers of that scheme with any direction given to them under section 72B.
- (4) Section 10 applies to any person who—
  - (a) is a person to whom a direction under section 72B is given otherwise than in the capacity of a trustee or manager; and
  - (b) without reasonable excuse, fails to comply with that direction.
- (5) For the purposes of this section it shall not be a reasonable excuse in relation to any failure to provide information in pursuance of a direction under section 72B that the provision of that information would (but for the duty imposed by subsection (1) of this section) involve a breach by any person of a duty owed to another not to disclose that information.”

### *Other provisions*

## **51 Restriction on index-linking where annuity tied to investments**

- (1) In section 51(2) of the Pensions Act 1995 (annual increases in rate of pension), for “Subject to section 52” there shall be substituted “Subject to sections 51A and 52”.
- (2) After section 51 of that Act there shall be inserted—

### **“51A Restriction on increase where annuity tied to investments**

- (1) No increase under section 51 is required to be made, at any time on or after the relevant date, of so much of any pension under a money purchase scheme as—
  - (a) is payable by way of an annuity the amount of which for any year after the first year of payment is determined (whether under the terms of the scheme or under the terms of the annuity contract in pursuance of which it is payable) by reference to fluctuations in the value of, or the return from, particular investments;
  - (b) does not represent benefits payable in respect of the protected rights of any member of the scheme; and
  - (c) satisfies such other conditions (if any) as may be prescribed.
- (2) For the purposes of this section it shall be immaterial whether the annuity in question is payable out of the funds of the scheme in question or under an annuity contract entered into for the purposes of the scheme.



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- (3) In this section “the relevant date” means the date appointed for the coming into force of section 51 of the Child Support, Pensions and Social Security Act 2000.”

## **52 Information for members of schemes etc**

- (1) In subsection (1) of section 113 of the Pension Schemes Act 1993 (regulations as to information to be provided to scheme members etc.), for the word “and” at the end of paragraph (c) there shall be substituted—

“(ca) of the pensions and other benefits an entitlement to which would be likely to accrue to the member, or be capable of being secured by him, in respect of the rights that may arise under it; and”.

- (2) After subsection (3) of that section there shall be inserted—

“(3A) The regulations may provide for the information that must be given to be determined, in whole or part, by reference to guidance which—

- (a) is prepared and from time to time revised by a prescribed body; and
- (b) is for the time being approved by the Secretary of State.

(3B) The regulations may, in relation to cases where a scheme is being wound up, contain—

- (a) provision conferring power on the Regulatory Authority, at times before the period expires, to extend any period specified in the regulations as the period within which a requirement imposed by the regulations must be complied with; and
- (b) provision as to the contents of any application for the exercise of such a power and as to the form and manner in which, and the time within which, any such application must be made.”

## **53 Jurisdiction of the Pensions Ombudsman**

- (1) Section 146 of the Pension Schemes Act 1993 (functions of the Pensions Ombudsman) shall be amended as follows.

- (2) In subsection (1), after paragraph (b) there shall be inserted—

“(ba) a complaint made to him by or on behalf of an independent trustee of a trust scheme who, in connection with any act or omission which is an act or omission either—

- (i) of trustees of the scheme who are not independent trustees, or
- (ii) of former trustees of the scheme who were not independent trustees,

alleges maladministration of the scheme,”.

- (3) In that subsection, for the words after sub-paragraph (ii) of paragraph (d) there shall be substituted—

“and in a case falling within sub-paragraph (ii) references in this Part to the scheme to which the reference relates are references to each of the schemes,

- (e) any dispute not falling within paragraph (f) between different trustees of the same occupational pension scheme,

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- (f) any dispute, in relation to a time while section 22 of the Pensions Act 1995 (schemes subject to insolvency procedures) applies in relation to an occupational pension scheme, between an independent trustee of the scheme and either—
    - (i) trustees of the scheme who are not independent trustees, or
    - (ii) former trustees of the scheme who were not independent trustees, and
  - (g) any question relating, in the case of an occupational pension scheme with a sole trustee, to the carrying out of the functions of that trustee.”
- (4) After that subsection there shall be inserted—
- “(1A) The Pensions Ombudsman shall not investigate or determine any dispute or question falling within subsection (1)(c) to (g) unless it is referred to him—
- (a) in the case of a dispute falling within subsection (1)(c), by or on behalf of the actual or potential beneficiary who is a party to the dispute,
  - (b) in the case of a dispute falling within subsection (1)(d), by or on behalf of any of the parties to the dispute,
  - (c) in the case of a dispute falling within subsection (1)(e), by or on behalf of at least half the trustees of the scheme,
  - (d) in the case of a dispute falling within subsection (1)(f), by or on behalf of the independent trustee who is a party to the dispute,
  - (e) in the case of a question falling within subsection (1)(g), by or on behalf of the sole trustee.
- (1B) For the purposes of this Part, any reference to or determination by the Pensions Ombudsman of a question falling within subsection (1)(g) shall be taken to be the reference or determination of a dispute.”
- (5) In subsection (3) (persons responsible for the management of the scheme to be the trustees and managers and employer), after “occupational pension scheme” there shall be inserted “or a personal pension scheme”.
- (6) For paragraph (a) of subsection (6) (exclusion of the Ombudsman’s jurisdiction where court proceedings have been begun) there shall be substituted—
- “(a) if, before the making of the complaint or the reference of the dispute—
- (i) proceedings in respect of the matters which would be the subject of the investigation have been begun in any court or employment tribunal, and
  - (ii) those proceedings are proceedings which have not been discontinued or which have been discontinued on the basis of a settlement or compromise binding all the persons by or on whose behalf the complaint or reference is made;”.
- (7) In subsection (7) (persons who are actual or potential beneficiaries)—
- (a) after paragraph (b) there shall be inserted—
    - “(ba) a person who is entitled to a pension credit as against the trustees or managers of the scheme;” and
  - (b) in sub-paragraph (i) of paragraph (c), for “paragraph (a) or (b)” there shall be substituted “paragraph (a), (b) or (ba)”.
- (8) In subsection (8) (interpretation) after the definition of “employer” there shall be inserted—

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- ““independent trustee”, in relation to a scheme, means—
- (a) a trustee of the scheme appointed under section 23(1)(b) of the Pensions Act 1995 (appointment of independent trustee by insolvency practitioner or official receiver),
  - (b) a person appointed under section 7(1) of that Act to replace a trustee falling within paragraph (a) or this paragraph;”.
- (9) In subsection (1)—
- (a) for “complaints and disputes” there shall be substituted “matters”;
  - (b) in paragraph (b), for the words from “is to” to the end of the paragraph there shall be substituted “are references to the other scheme referred to in that sub-paragraph”; and
  - (c) in paragraphs (c) and (d), the words “which arises”, in each place where they occur, shall be omitted.
- (10) Subsection (6) does not have effect in relation to proceedings begun before the day appointed under section 86 for the coming into force of this section.

#### **54 Investigations by the Pensions Ombudsman**

- (1) The Pension Schemes Act 1993 shall be amended as follows.
- (2) In section 148(5) (meaning of parties to an investigation for the purposes of staying proceedings), after paragraph (b) there shall be inserted—
- “(ba) any actual or potential beneficiary of the scheme whose interests are or may be affected by the matters to which the complaint or dispute relates,
  - (bb) any actual or potential beneficiary of the scheme whose interests it is reasonable to suppose might be affected by—
    - (i) the Pensions Ombudsman’s determination of the complaint or dispute, or
    - (ii) directions that may be given by the Ombudsman in consequence of that determination.”.
- (3) For subsection (1) of section 149 (obligation to allow persons to comment on allegations in complaint or reference) there shall be substituted—
- “(1) Where the Pensions Ombudsman proposes to conduct an investigation into a complaint made or dispute referred under this Part, he shall—
- (a) give every person against whom allegations are made in the complaint or reference an opportunity to comment on those allegations,
  - (b) give every person responsible for the management of the scheme to which the complaint or reference relates an opportunity to make representations to him about the matters to which the complaint or dispute relates, and
  - (c) give every actual or potential beneficiary of that scheme whose interests are or may be affected by the matters to which the complaint or dispute relates, an opportunity to make representations about those matters.

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- (1A) Subject to subsection (1B), subsection (1) shall not require an opportunity to make comments or representations to be given to any person if the Pensions Ombudsman is satisfied that that person is—
- (a) a person who, as the person or one of the persons making the complaint or reference, has had his opportunity to make comments or representations about the matters in question; or
  - (b) a person whose interests in relation to the matters to which the complaint or dispute relates are being represented, in accordance with rules under this section, by a person who has been given an appropriate opportunity to make comments or representations.
- (1B) The Pensions Ombudsman shall, under subsection (1), give an opportunity to make comments and representations to a person falling within subsection (1A)
- (a) in any case in which that person is a person who, in accordance with rules, is appointed or otherwise determined, after the making of the complaint or reference, to represent the interests of other persons in relation to the matters to which the complaint or dispute relates.”
- (4) In subsection (3) of section 149 (matters as to which rules may be made), for “and” at the end of paragraph (b) there shall be substituted—
- “(ba) for the interests of all of a number of persons who—
- (i) are actual or potential beneficiaries of the scheme to which the complaint or reference relates, and
  - (ii) appear to have the same interest in relation to any of the matters to which the complaint or dispute relates,
- to be represented for the purposes of the investigation by such one or more of them, or such other person, as may be appointed by the Ombudsman or otherwise determined in accordance with the rules.”.
- (5) In that subsection, at the end of paragraph (c), there shall be inserted “and
- (d) for the payment of legal expenses incurred by a party to an investigation (as defined in section 148(5)) out of funds held for the purposes of the scheme to which the complaint or reference relates.”
- (6) After subsection (7) of section 149 there shall be inserted—
- “(8) References in this section to the matters to which a complaint or dispute relates include references to any matter which it is reasonable to suppose might form the subject of—
- (a) the Pensions Ombudsman’s determination of the complaint or dispute, or
  - (b) any directions that may be given by the Ombudsman in consequence of that determination.”
- (7) In subsection (1) of section 151 (persons to be given notice of a determination by the Ombudsman), at the end of paragraph (b) there shall be inserted “and
- (c) to every other person who was required under section 149 to be given an opportunity—
- (i) to comment on an allegation in the complaint or reference, or
  - (ii) to make representations about matters to which the complaint or reference relates.”.

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- (8) In subsection (3) of section 151 (persons bound by determinations), for “and” at the end of paragraph (b) there shall be substituted—
- “(ba) any person who under section 149 was given such an opportunity to make any such comment or representation as is mentioned in subsection (1)(c) of this section,
  - (bb) any person whose interests were represented by a person falling within any of the preceding paragraphs, and”;
- ( ) and, in paragraph (c) of that subsection for “paragraph (a) or (b)” there shall be substituted “any of paragraphs (a) to (bb)”;
- (9) Nothing in any provision made by this section shall—
- (a) apply in relation to any complaint or reference made to the Pensions Ombudsman before the day on which this section comes into force; or
  - (b) authorise the making of any provision applying in relation to any such complaint or reference.

## **55 Prohibition on different rules for overseas residents etc**

After section 66 of the Pensions Act 1995 there shall be inserted—

*“Treatment of overseas residents etc.*

### **66A Prohibition on different rules for overseas residents etc**

- (1) This section applies where an occupational pension scheme contains provisions contravening subsection (2) or (3).
- (2) Except so far as regulations otherwise provide, provisions of an occupational pension scheme contravene this subsection to the extent that they would (apart from this section) have an effect with respect to—
- (a) the entitlement of any person to benefits under the scheme, or
  - (b) the payment to any person of benefits under the scheme,
- which would be different according to whether or not a place outside the United Kingdom is specified by that person as the place to which he requires payments of benefits under the scheme to be made to him.
- (3) Except so far as regulations otherwise provide, provisions of an occupational pension scheme contravene this subsection to the extent that they would (apart from this section) have an effect with respect to—
- (a) the entitlement of any person to remain a member of the scheme,
  - (b) the eligibility of any person to remain a person by or in respect of whom contributions are made towards or under the scheme, or
  - (c) the making by or in respect of any person who is a member of the scheme of any contributions towards or under the scheme,
- which would be different according to whether that person works wholly in the United Kingdom or wholly or partly outside the United Kingdom.
- (4) Provisions contravening subsection (2) shall have effect, in relation to all times after the coming into force of section 55 of the Child Support, Pensions and Social Security Act 2000, as if they made the same provision in relation to a

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person who requires payments of benefits to be made to a place outside the United Kingdom as they make in relation to a person in whose case all payments of benefits fall to be made to a place in the United Kingdom.

- (5) Provisions contravening subsection (3) shall have effect, in relation to all times after the coming into force of section 55 of the Child Support, Pensions and Social Security Act 2000, as if they made the same provision in relation to persons working wholly or partly outside the United Kingdom as they make in relation to persons working wholly in the United Kingdom.
- (6) This section—
- (a) shall be without prejudice to any enactment under which any amount is to be or may be deducted, or treated as deducted, from amounts payable by way of benefits under the scheme or treated as so payable; and
  - (b) shall not apply in relation to so much of any provision of a scheme as is required for securing compliance with the conditions of any approval, exemption or relief given or available under the Tax Acts.”

## **56 Miscellaneous amendments and alternative to anti-franking rules**

Schedule 5 (which contains miscellaneous amendments of the Pension Schemes Act 1993 and the Pensions Act 1995 and makes provision for an alternative to the anti-franking rules in Part III of that Act of 1993) shall have effect.