



# Pensions Act 2008

## 2008 CHAPTER 30

### PART 1

#### PENSION SCHEME MEMBERSHIP FOR JOBHOLDERS

### CHAPTER 5

#### DUTY TO ESTABLISH A PENSION SCHEME

##### *Pension scheme*

#### **67 Duty to establish a pension scheme**

- (1) The Secretary of State must establish a pension scheme and make provision for its administration and management.
- (2) A scheme established under this section is to be treated for all purposes as established under an irrevocable trust.
- (3) It must be a scheme that is able to be registered under Chapter 2 of Part 4 of the Finance Act 2004 (c. 12).
- (4) It must when registered under that Chapter be a scheme such that a jobholder's employer, if a participating employer, may comply with an enrolment duty by arranging for the jobholder to become an active member of the scheme.
- (5) It must be a scheme that complies with any provision of Northern Ireland legislation corresponding to subsection (4).
- (6) The scheme administrator must ensure that the scheme is and remains registered under Chapter 2 of Part 4 of the Finance Act 2004.
- (7) "Scheme administrator" has the same meaning here as in that Part.
- (8) The power to make provision in pursuance of subsection (1) is exercisable by order.

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- (9) If an order establishes a scheme, any further provision that may be made by order in relation to the scheme may also be made by rules (and rules may be made so as to come into force at the same time as the establishing order).
- (10) That is subject to subsections (11) and (12).
- (11) Rules are subject to any provision made by order.
- (12) No provision may be made by rules about—
  - (a) the purpose or object of the scheme;
  - (b) the appointment or removal of trustees;
  - (c) (as regards trustees, or members of any corporate trustee) meetings, committees or delegation of functions;
  - (d) any exclusion of liability on the part of trustees, or the provision of any indemnity or insurance out of the funds of the scheme.
- (13) Except as expressly provided, nothing in this Act limits the generality of the powers conferred by this section.

## **68 Scheme orders: general**

- (1) An order under section 67 establishing a scheme must provide for the trustee corporation (the body established by section 75) to be a trustee on the coming into force of the scheme.
- (2) An order under section 67 may provide for any provision of the Trustee Act 2000 (c. 29) to apply as if an order or rules under section 67 were a trust instrument.
- (3) An order under section 67 may provide for the trustees to have power to make rules under that section.
- (4) Where the trustees have power to make rules, an order under section 67 may provide—
  - (a) that they may not exercise the power in specified circumstances;
  - (b) that they may exercise it subject to conditions;
  - (c) that they must comply with requirements for consultation or publication or other procedural requirements when exercising the power.
- (5) An order under section 67 may make provision for the exclusion of, or indemnity against, liability of a trustee, or an officer or employee of a trustee, arising out of the administration or management of a scheme.

## **69 Consultation of members and employers**

- (1) If an order under section 67 establishes a scheme, the Secretary of State must by order under that section require the trustees to make and maintain arrangements for consulting the members of the scheme and participating employers about the operation, development and amendment of the scheme.
- (2) The arrangements must include establishment and maintenance of—
  - (a) a panel of persons to represent members (“the members' panel”), and
  - (b) a panel of persons to represent employers (“the employers' panel”).
- (3) The composition and functions of the panels are to be determined by order under section 67, or by the trustees under an order.

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- (4) The functions of the members' panel may include nominating individuals to be members of the trustee corporation.
- (5) An order under section 67 may provide for payments to panel members out of scheme funds.

## **70 Contribution limits**

- (1) An order under section 67 must prescribe the maximum amount of contributions that may be made by or in respect of a member in any tax year.
- (2) For the purposes of provision under subsection (1) an order may in particular make provision as to—
  - (a) what is a contribution;
  - (b) when a contribution is to be treated as made;
  - (c) how contributions are to be treated if the maximum is exceeded;
  - (d) circumstances in which a payment is to be made to any person in respect of an excess contribution;
  - (e) who is to make any such payment and how it is to be calculated.
- (3) An order may prescribe a maximum amount for payments that may be made by a member and that are not contributions for the purposes of provision under subsection (1).
- (4) The Secretary of State may by order repeal this section.

## **71 Procedure for scheme orders**

- (1) Subsection (2) applies to any order under section 67 relating to a scheme, except the order establishing the scheme and an order taking effect at the same time as that order.
- (2) The Secretary of State may not make the order without the consent of the trustees.
- (3) But the trustees may not withhold their consent without giving reasons.
- (4) The trustees must consult the members' panel and the employers' panel before deciding whether to give consent.

## **72 Procedure for rules**

- (1) A person who proposes to make rules under section 67 must publish a draft of the rules and invite comments.
- (2) They must have regard to any comments made in accordance with the invitation.
- (3) If they make the rules they must publish an account in general terms of those comments and their response to them.
- (4) If the rules they make differ from the draft published under subsection (1), they must publish details of any differences that they think are significant.
- (5) Subsection (6) applies to any rules made by the Secretary of State under section 67 relating to a scheme, except rules taking effect at the same time as the order establishing the scheme.

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- (6) The Secretary of State may not make the rules without the consent of the trustees.
- (7) But the trustees may not withhold their consent without giving reasons.
- (8) The trustees must consult the members' panel and the employers' panel—
  - (a) before making rules under section 67;
  - (b) before deciding whether to give consent under subsection (6).
- (9) If the Secretary of State or the trustees make rules under section 67 they must publish them.
- (10) Anything published under this section must be published in a way designed to bring it to the attention of the persons likely to be interested or affected.
- (11) The publication must not be limited to electronic publication.

### **73 Application of enactments**

- (1) The Interpretation Act 1978 (c. 30) applies in relation to rules under section 67 as if they were contained in a deed not made under an enactment.
- (2) A scheme established under section 67 is not to be treated as a public service pension scheme for the purposes of any enactment.

### **74 Review**

- (1) The Secretary of State must appoint a person to review in relation to a scheme established under section 67—
  - (a) the effect of provision made under section 70 (maximum amount of contributions),
  - (b) the effect of any restrictions on rights to transfer into the scheme or transfer out to another pension scheme, and
  - (c) such other matters as the Secretary of State may direct.
- (2) The appointment under subsection (1) must be made on or after the later of—
  - (a) 1 January 2017;
  - (b) the end of five years beginning with the first day on which contributions are paid to the scheme by or in respect of members.
- (3) The person appointed under subsection (1) must—
  - (a) prepare a report of the review, and
  - (b) send a copy of the report to the Secretary of State.
- (4) The Secretary of State must lay before Parliament a copy of the report.
- (5) The Secretary of State may pay to the person appointed under subsection (1) such remuneration and expenses as the Secretary of State may determine.

### *Trustee corporation*

### **75 Trustee corporation**

- (1) There is to be a body corporate, referred to in this Chapter as the trustee corporation.

- (2) The name of the body is to be determined by order made by the Secretary of State.
- (3) The trustee corporation is not to be regarded as the servant or agent of the Crown or as enjoying any status, immunity or privilege of the Crown.
- (4) Property held by the corporation is not to be regarded as property of, or property held on behalf of, the Crown.
- (5) Schedule 1 makes provision about the trustee corporation.

## **76 Functions**

- (1) The functions of the trustee corporation are—
  - (a) to act as a trustee of any scheme established under section 67, and
  - (b) any other functions it is given by or under an enactment in connection with the scheme.
- (2) The corporation may do anything calculated to facilitate, or incidental or conducive to, the carrying out of any of its functions.
- (3) In particular the corporation may—
  - (a) enter into agreements;
  - (b) borrow money;
  - (c) invest money.
- (4) The corporation’s powers within subsection (3)(b) and (c) are exercisable only with the consent of the Secretary of State.
- (5) Subsections (3) and (4) are without prejudice to the exercise by the trustee corporation of any power vested in it as a trustee of a scheme established under section 67.

## **77 Application of pension trustee legislation**

- (1) The Secretary of State may by regulations provide that legislation applying in relation to a person as trustee of a pension scheme, or as director of a company which is a trustee of a pension scheme, applies in relation to the trustee corporation, or its members, with any modifications prescribed in the regulations.
- (2) In this section “legislation” means any provision of an Act or subordinate legislation (and “subordinate legislation” has the same meaning as in the Interpretation Act 1978 (c. 30)).

### *Interpretation*

## **78 Interpretation of Chapter**

In this Chapter—

- “employers’ panel” has the meaning given by section 69(2)(b);
- “members’ panel” has the meaning given by section 69(2)(a);
- “trustees”, in relation to a scheme established under section 67, means the trustee or trustees of the scheme.