



2016 CHAPTER 1

PART 1

CATEGORIES OF PENSION SCHEME

Introduction

- 1.—(1) This Part defines some key expressions used in pensions legislation—
 - (a) defined benefits scheme - see section 2;
 - (b) shared risk scheme (sometimes known as “defined ambition”) - see section 3;
 - (c) defined contributions scheme - see section 4.
- (2) The definitions—
 - (a) do not apply in any public service pensions legislation;
 - (b) apply in other legislation only where legislation expressly provides for the definitions to apply.

Defined benefits scheme

2. A pension scheme is a “defined benefits scheme” if—
 - (a) the scheme provides for all members to be paid retirement income beginning at normal pension age and continuing for life,
 - (b) there is a full pensions promise in relation to the retirement income and any other retirement benefits that may be provided to members,
 - (c) the normal pension age in relation to the retirement income and any other retirement benefits that may be provided to members is fixed, and
 - (d) such other requirements as may be specified in regulations are met.

Shared risk scheme (sometimes known as “defined ambition”)

3. A pension scheme is a “shared risk scheme” if—
- (a) there is a pensions promise in relation to at least some of the retirement benefits that may be provided to each member, but
 - (b) the scheme is not a defined benefits scheme.

Defined contributions scheme

4. A pension scheme is a “defined contributions scheme” if there is no pensions promise in relation to any of the retirement benefits that may be provided to the members.

Meaning of “pensions promise” etc

5.—(1) For the purposes of section 2 there is a “full pensions promise” in relation to a retirement benefit if—

- (a) the scheme provides for there to be a promise, at all times before the benefit comes into payment, about the level of the benefit, and
- (b) the level of the benefit is to be determined wholly by reference to that promise in all circumstances.

(2) For the purposes of sections 3 and 4 there is a “pensions promise” in relation to a retirement benefit if the scheme provides for there to be a promise, at a time before the benefit comes into payment, about the level of the benefit.

(3) A reference in this section to a promise about the level of a retirement benefit—

- (a) includes a promise about factors, other than longevity, that will be used to calculate the level of the benefit,
- (b) does not include a promise if, or to the extent that, it consists merely of a promise that the level of the benefit will be calculated by reference to an amount available for its provision, and
- (c) in the case of a benefit the level of which depends on the amount available for the provision of benefits to or in respect of the member and one or more other members collectively, does not include a promise about the factors used to determine what proportion of that amount is available for the provision of the particular benefit.

(4) A scheme provides for there to be a promise if the scheme—

- (a) sets out the promise, or
- (b) requires the promise to be obtained from a third party.

(5) A scheme also provides for there to be a promise for the purposes of subsection (2) if the scheme provides for the member to be given—

- (a) the option of a promise from the scheme, or
 - (b) the option of requiring a promise to be obtained from a third party, (whether or not the option is subject to conditions).
- (6) A benefit does not fail the test in subsection (1)(b) just because the scheme confers a discretion to vary the benefit so long as the discretion—
- (a) is capable of being used only for reasons related to a member’s individual circumstances and meets any other requirements that may be specified in regulations, or
 - (b) is of a description specified in regulations.
- (7) A promise about the level of retirement income is not to be treated as a pensions promise if—
- (a) the promise is conditional on the retirement income coming into payment by a particular date,
 - (b) the scheme provides for the member to be first given the promise during such period ending on that date as may be specified in regulations, and
 - (c) the promise is not of a description specified in regulations.
- (8) When working out for the purposes of sections 2 to 4 what benefits “may be provided” to a member, take into account—
- (a) benefits that may be provided only if the member has been a member for a certain length of time, and
 - (b) any other benefits that, at a future time, are benefits that may be provided to the member.

Treatment of a scheme as two or more separate schemes

6.—(1) Regulations must provide for a pension scheme that does not fit within any of the categories to be treated, for the purposes of this Part and any other specified legislation, as if it were two or more separate schemes each of which then fits within one of the categories.

(2) Regulations may provide for other circumstances in which a scheme is to be treated, for the purposes of this Part and any other specified legislation, as two or more separate schemes each of which fits within one of the categories.

(3) In this section “category” means a category of scheme defined by section 2, 3 or 4.

Interpretation of Part 1

7. In this Part—

“fixed”, in respect of normal pension age in relation to a benefit, means incapable of changing except by an amendment to the scheme rules;

“full pensions promise” has the meaning given by section 5;

“legislation” means a statutory provision as defined by section 1(f) of the Interpretation Act (Northern Ireland) 1954;

“level”, in relation to a retirement benefit, means—

- (a) in the case of retirement income, the rate of that income, and
- (b) in the case of a retirement lump sum, the amount of that lump sum;

“normal pension age”, in relation to a benefit for a member of a pension scheme, means—

- (a) the earliest age at which, or earliest occasion on which, the member is entitled to receive the benefit without adjustment for taking it early or late (disregarding any special provision as to early payment on the grounds of ill health or otherwise), or
- (b) if there is no such age or occasion, normal minimum pension age as defined by section 279(1) of the Finance Act 2004;

“pensions promise” has the meaning given by section 5;

“pension scheme” has the meaning given by section 1(5) of the Pension Schemes Act;

“public service pensions legislation” means—

- (a) the Public Service Pensions Act (Northern Ireland) 2014,
- (b) the Superannuation (Northern Ireland) Order 1972, and
- (c) any other provision by or under which a public service pension scheme is established;

“public service pension scheme” has the meaning given by section 1(1) of the Pension Schemes Act;

“retirement benefit”, in relation to a member of a pension scheme, means—

- (a) retirement income, or
- (b) a retirement lump sum;

“retirement income”, in relation to a member of a pension scheme, means a pension or annuity payable to the member on reaching normal pension age;

“retirement lump sum”, in relation to a member of a pension scheme, means a lump sum payable to the member on reaching normal pension age or available for the provision of other retirement benefits for the member on or after reaching normal pension age.

PART 2

COLLECTIVE BENEFITS

Introduction and nature of collective benefits

Introduction and definition

8.—(1) This Part is about pension schemes under which at least some of the benefits that may be provided are collective benefits.

(2) A benefit is a “collective benefit” if in all circumstances the rate or amount of the benefit depends entirely on—

- (a) the amount available for the provision of benefits to or in respect of the member and one or more other members collectively, and
- (b) factors used to determine what proportion of that amount is available for the provision of the particular benefit.

(3) But a benefit is not a collective benefit if—

- (a) it is a money purchase benefit, or
- (b) it is of a description specified in regulations.

Duty to set targets for collective benefits

9.—(1) Regulations may require the trustees or managers of a pension scheme to set targets in relation to any collective benefits that may be provided by the scheme.

(2) The regulations may, in particular—

- (a) impose requirements about the way that targets are expressed;
- (b) impose requirements about the recording or publication of targets;
- (c) require the trustees or managers to set initial targets at a level which ensures that the probability of meeting the targets falls within a range specified in the regulations;
- (d) require the trustees or managers to obtain a certificate from an actuary certifying that, in the opinion of the actuary, the initial targets have been set at a level that complies with regulations under paragraph (c).

(3) Regulations made in reliance on subsection (2)(d) may, in particular—

- (a) require the trustees or managers to obtain the certificate from an actuary who has specified qualifications or meets other specified requirements;
- (b) make provision about the content of the certificate;
- (c) set out matters to which the actuary must have regard;

(d) require the trustees or managers to provide a copy of the actuary's certificate to a specified person.

(4) In this section “target” means a target, relating to the rate or amount of a benefit, that is unenforceable.

Policy about factors used to determine each benefit

10.—(1) Regulations may require the trustees or managers of a pension scheme—

(a) to have a policy as to the factors to be used to determine what proportion of the amount available for the provision of any collective benefits by the scheme is to be available for the provision of a particular collective benefit, and

(b) to follow that policy in calculating any collective benefit.

(2) The regulations may, in particular—

(a) require the trustees or managers to consult about the policy;

(b) make provision about the content of the policy;

(c) set out matters that the trustees or managers must take into account, or principles they must follow, in formulating the policy;

(d) make provision about reviewing and revising the policy.

Power to impose requirements about factors used to determine each benefit

11. Regulations may make provision as to the factors to be used to determine what proportion of the amount available for the provision of any collective benefits by a pension scheme is to be available for the provision of a particular collective benefit.

Contributions

Payment schedule

12.—(1) Regulations may require the trustees or managers of a pension scheme to prepare a payment schedule showing—

(a) the contributions payable to the scheme in respect of any collective benefits under the scheme, and

(b) the dates on which the contributions are due.

(2) The regulations may require the payment schedule to include other amounts payable to the scheme and the dates on which they are due.

(3) The regulations may, in particular—

(a) make further provision about the content of the payment schedule;

(b) make provision about revising the payment schedule.

(4) The regulations may, in particular, make provision corresponding or similar to any provision made by Article 85 of the 1995 Order (payment schedules for certain kinds of scheme).

Overdue contributions and other payments

13.—(1) Regulations—

(a) may require the trustees or managers of a pension scheme to notify a specified person of any relevant payments that are overdue;

(b) may make provision for the recovery of those payments.

(2) In subsection (1) “relevant payment” means a payment shown in a payment schedule required by regulations under section 12.

(3) Regulations under subsection (1) may, in particular, make provision corresponding or similar to any provision made by Article 86 of the 1995 Order (failure to comply with payment schedule for certain kinds of scheme).

Investment

Statement of investment strategy

14.—(1) Regulations may require the trustees or managers of a pension scheme to prepare a statement of their investment strategy in connection with any collective benefit investments.

(2) The regulations may, in particular, make provision about—

(a) the content of the statement;

(b) reviewing and revising the statement.

(3) The regulations may, in particular—

(a) make provision corresponding or similar to any provision made by Article 35 of the 1995 Order (investment principles for occupational trust-based schemes);

(b) disapply that Article in relation to any investments to which the regulations apply.

Investment performance reports

15.—(1) Regulations may require the trustees or managers of a pension scheme to obtain reports about the performance of any collective benefit investments.

(2) The regulations may, in particular, make provision about—

(a) the content of reports;

- (b) how often reports must be obtained;
- (c) the person from whom reports must be obtained.

Investment powers

- 16.—**(1) Regulations may make provision about—
- (a) the investment powers of the trustees or managers of a pension scheme in connection with collective benefit investments;
 - (b) their powers to delegate decisions in connection with collective benefit investments (including provision as to liability for delegated decisions);
 - (c) the investment powers of any person to whom they have delegated decisions in connection with collective benefit investments.
- (2) The regulations may, in particular—
- (a) make provision corresponding or similar to any provision made by Article 34 or 36 of the 1995 Order (powers of investment and delegation and choice of investments for occupational trust-based schemes);
 - (b) disapply those Articles in relation to collective benefit investments.

Restriction on borrowing by trustees or managers

- 17.—**(1) Regulations may prohibit a person to whom this section applies from borrowing money or acting as a guarantor except in specified cases.
- (2) This section applies to—
- (a) the trustees or managers of a pension scheme under which any of the benefits that may be provided are collective benefits, and
 - (b) any person to whom they have delegated decisions in connection with collective benefit investments.

Investment powers: duty of care

- 18.—**(1) Regulations may make provision to prevent any instrument or agreement from excluding or restricting any liability of the trustees or managers of a pension scheme, or any person to whom they have delegated decisions, in respect of the performance of investment functions involving collective benefit investments.
- (2) The regulations may, in particular—
- (a) make provision corresponding or similar to any provision made by Article 33 of the 1995 Order (duty of care in respect of investment powers for occupational trust-based schemes);
 - (b) disapply that Article in relation to collective benefit investments.

Valuation

Valuation reports

19.—(1) Regulations may require the trustees or managers of a pension scheme to obtain a report prepared by an actuary—

- (a) valuing the assets held by the scheme for the purposes of providing collective benefits, and
- (b) assessing the probability of the scheme meeting the targets in relation to those benefits.

(2) A report required by regulations under this section is referred to in this Part as a “valuation report”.

(3) The regulations may, in particular—

- (a) require the trustees or managers to obtain the report from an actuary who has specified qualifications or meets other specified requirements;
- (b) require the actuary to certify whether, in the opinion of the actuary, the probability of the scheme meeting the targets falls within the required range or is above or below it;
- (c) make further provision about the content of valuation reports;
- (d) make provision about how often valuation reports must be obtained.

Valuation process

20.—(1) Regulations may make provision about the methods or assumptions to be used by an actuary valuing assets, or assessing the probability of a scheme meeting a target in relation to a collective benefit, for the purposes of a valuation report.

(2) Regulations under subsection (1) may, in particular—

- (a) require the trustees or managers of the scheme to determine the methods or assumptions to be used by the actuary;
- (b) set out matters that the trustees or managers must take into account, or principles they must follow, in determining methods or assumptions.

(3) Regulations may—

- (a) make provision about the assets to be taken into account for the purposes of a valuation report;
- (b) require the value attributed to the assets to be reduced by the amount of any liabilities in respect of administrative expenses or other specified matters.

(4) Regulations may require an actuary preparing a valuation report to certify that, in the opinion of the actuary, any specified requirements imposed by regulations under this section have been followed.

(5) Regulations—

- (a) may require an actuary to have regard to guidance issued from time to time by a specified person when preparing a valuation report;
- (b) may impose other requirements on an actuary when preparing a valuation report.

Dealing with deficits and surpluses

Policy for dealing with a deficit or surplus

21.—(1) Regulations may require the trustees or managers of a pension scheme—

- (a) to have a policy for dealing with a deficit or surplus in respect of any collective benefits that may be provided by the scheme, and
- (b) to follow that policy if a valuation report shows a deficit or surplus.

(2) For the purposes of this Part—

- (a) there is a “deficit” in respect of a collective benefit if the probability of the scheme meeting a target in relation to the benefit is below the required range, and
- (b) there is a “surplus” in respect of a collective benefit if the probability of the scheme meeting a target in relation to the benefit is above the required range.

(3) Regulations under subsection (1)(a) may, in particular—

- (a) require the trustees or managers to consult about the policy;
- (b) make provision about the content of the policy;
- (c) set out matters that the trustees or managers must take into account, or principles they must follow, in formulating the policy;
- (d) make provision about reviewing and revising the policy.

(4) The regulations may, in particular, require the policy—

- (a) to be formulated with a view to achieving results described in the regulations within a period or periods described in the regulations;
- (b) to contain provision for a deficit or surplus to be dealt with in one or more of a range of ways described in the regulations;
- (c) to contain an explanation of the possible effect of the policy, or any requirements imposed by regulations under section 22, on members in different circumstances.

Power to impose requirements about dealing with a deficit or surplus

22.—(1) Regulations may specify circumstances in which a deficit or surplus in respect of any collective benefits that may be provided by a pension scheme must be dealt with in a particular way.

(2) The regulations may, in particular, specify steps that must be taken by the trustees or managers and the period or periods within which any steps must be taken.

Deficits attributable to an offence or the imposition of a levy

23.—(1) Regulations may provide for an amount to be treated as a debt due from an employer to the trustees or managers of a pension scheme that provides collective benefits in cases where there is a deficit that is attributable to a specified offence or the imposition of a specified levy.

(2) The regulations may, in particular, make provision corresponding or similar to any provision made by Article 75 of the 1995 Order (amounts deemed to be debts due from an employer).

(3) For the purposes of this section—

“employer” has the meaning given by Article 2 of the 2005 Order;

“deficit” has the meaning given by the regulations (and the meaning need not be the same as in section 21).

Payment of amounts out of collective benefit funds

24.—(1) Regulations must prohibit the making of payments out of funds held for the purposes of providing collective benefits except for—

- (a) payments made for the purpose of providing those benefits, or
- (b) other specified payments.

(2) The regulations may, in particular, make provision corresponding or similar to any provision made by Article 37 of the 1995 Order (payment of surplus to employer in the case of an occupational trust-based scheme).

*Cash equivalents***Policy for calculating cash equivalent of benefits**

25.—(1) Regulations may require the trustees or managers of a pension scheme—

- (a) to have a policy about the calculation and verification of the cash equivalent of any collective benefit that may be provided by the scheme;
- (b) to follow that policy in calculating or verifying any cash equivalent.

(2) In this section “cash equivalent” means the cash equivalent mentioned in the following—

- (a) section 89A(3) of the Pension Schemes Act;
 - (b) section 97H(1) of that Act;
 - (c) Article 26(2) and (3) of the Welfare Reform and Pensions (Northern Ireland) Order 1999; and
 - (d) any other provision specified in regulations.
- (3) Regulations under subsection (1) may, in particular—
- (a) require the trustees or managers to consult about the policy;
 - (b) require the trustees or managers to ensure that the policy is consistent with any requirements imposed by regulations under section 93 or 97I of the Pension Schemes Act or Article 27 of the Welfare Reform and Pensions (Northern Ireland) Order 1999 or any other specified requirements;
 - (c) make other provision about the content of the policy;
 - (d) set out matters that the trustees or managers must take into account, or principles they must follow, in formulating the policy;
 - (e) make provision about reviewing and revising the policy.

Winding up

Winding up

26.—(1) Regulations may make provision about the winding up of a pension scheme under which collective benefits may be provided or part of such a scheme.

- (2) The regulations may, in particular, make provision about—
- (a) the distribution of assets (including any order of priority);
 - (b) the operation of the scheme during winding up;
 - (c) the discharge of liabilities;
 - (d) excess assets on winding up.
- (3) The regulations may, in particular—
- (a) disapply or amend or otherwise modify the application of any of Articles 38, 73, 73A, 73B, 74 and 76 of the 1995 Order (winding up);
 - (b) make provision corresponding or similar to any provision made by those Articles.

Requirement to wind up scheme in specified circumstances

27.—(1) Regulations may require the trustees or managers of a pension scheme under which collective benefits may be provided to wind up the whole or part of the scheme in specified circumstances.

(2) The regulations may, in particular—

- (a) provide for the winding up of the scheme or part to be as effective in law as if it had been made under powers conferred by or under the scheme;
- (b) require the scheme or part to be wound up in spite of any legislative provision, rule of law or provision of a scheme, which would otherwise operate to prevent the winding up;
- (c) require the scheme or part to be wound up without regard to any legislative provision, rule of law or provision of a scheme that 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.

Policies about winding up

28.—(1) Regulations may require the trustees or managers of a pension scheme under which collective benefits may be provided—

- (a) to have a policy about the winding up of the scheme or part of it;
- (b) to follow that policy.

(2) The regulations may, in particular—

- (a) require the trustees or managers to consult about the policy;
- (b) make provision about the content of the policy;
- (c) set out matters that the trustees or managers must take into account, or principles they must follow, in formulating the policy;
- (d) make provision about reviewing and revising the policy.

(3) The regulations may, in particular, require the policy—

- (a) to contain an explanation of the circumstances in which the trustees or managers are permitted or required to wind up the scheme or part and any requirements about the distribution of assets (including any order of priority);
- (b) to contain an explanation of how the trustees or managers intend to use any powers to wind up the scheme or part and how they intend to use any powers in relation to the distribution of assets (including any order of priority);
- (c) to contain an explanation of how the costs of winding up are required to be met or how the trustees or managers will use any powers to decide how those costs are to be met.

Identifying assets

Working out which assets are available for the provision of which benefits

29. Regulations may make provision, in relation to a pension scheme under which any of the benefits that may be provided are collective benefits, about how to work out—

- (a) which assets held by the scheme are held for the purposes of providing collective benefits;
- (b) which assets held by the scheme are held for the purposes of providing which collective benefits;
- (c) which assets held by the scheme are held for the purposes of providing any benefits other than collective benefits.

Regulations under Part 2: general

Requirement to obtain actuarial advice

30.—(1) Regulations may require the trustees or managers of a pension scheme to obtain advice from an actuary before making a specified decision or taking other specified steps.

(2) The regulations may, in particular, require the trustees or managers to obtain the advice from an actuary who has specified qualifications or meets other specified requirements.

(3) The regulations—

- (a) may require an actuary to have regard to guidance issued from time to time by a specified person when advising on matters in accordance with the regulations;
- (b) may impose other requirements on an actuary when advising on matters in accordance with the regulations.

Sub-delegation

31. Regulations under this Part may confer a discretion on a person.

Publication of documents etc

32. Regulations under this Part requiring the trustees or managers of a pension scheme to prepare or obtain any document or have a policy may impose requirements about—

- (a) the publication of the document or policy;
- (b) the sending of copies to persons specified in the regulations.

Enforcement

33. Regulations under this Part may provide for Article 10 of the 1995 Order (civil penalties) to apply to a person who fails to comply with the regulations.

Overriding requirements

34. Regulations under this Part may include provision for them to override the provisions of a pension scheme to the extent that there is a conflict.

*Interpretation of Part 2***Interpretation of Part 2**

35.—(1) In this Part—

“collective benefit” has the meaning given by section 8;

“collective benefit investments”, in relation to a scheme, means investments held for the purposes of the provision of any collective benefits under the scheme;

“deficit”, in respect of a collective benefit, has the meaning given by section 21 (but this definition does not apply in section 23, which contains its own definition);

“money purchase benefit” has the meaning given by section 176 of the Pension Schemes Act;

“pension scheme” has the meaning given by section 1(5) of the Pension Schemes Act;

“required range”, in relation to a level of probability, means the range specified in regulations under section 9(2)(c);

“surplus”, in respect of a collective benefit, has the meaning given by section 21;

“target” means a target required by regulations under section 9;

“trustees or managers” means—

- (a) in relation to a scheme established under a trust, the trustees, and
- (b) in relation to any other scheme, the managers;

“valuation report” has the meaning given by section 19.

(2) A power conferred by this Part to make provision corresponding or similar to any provision made by an Article of the 1995 Order includes a power to make provision corresponding or similar to any provision that may be made by regulations under that Article.

PART 3

GENERAL CHANGES TO LEGISLATION ABOUT PENSION SCHEMES

Administration and governance

Pensions promise obtained from third party

36.—(1) Regulations may provide that the trustees or managers of a defined benefits scheme or a shared risk scheme must not obtain a pensions promise from a third party unless conditions specified in the regulations are met.

(2) Regulations under this section—

- (a) may provide for a specified provision of the regulations to override a provision of a scheme to the extent that there is a conflict;
- (b) may provide for Article 10 of the 1995 Order (civil penalties) to apply to a person who fails to comply with the regulations.

(3) In this section—

“defined benefits scheme” has the meaning given by section 2;

“pensions promise” has the meaning given by section 5;

“shared risk scheme” has the meaning given by section 3;

“trustees or managers” means—

- (a) in relation to a scheme established under a trust, the trustees, and
- (b) in relation to any other scheme, the managers.

(4) In Article 34(7) of the 1995 Order (power of investment and delegation overrides other legislation etc), for the words from “other than” to the end substitute “other than an enactment contained in, or made under—

- (a) this Part,
- (b) the Pension Schemes Act, or
- (c) section 36 of the Pension Schemes Act (Northern Ireland) 2016.”.

Duty to act in the best interests of members

37.—(1) Regulations may impose a duty on the managers of a relevant non-trust based scheme to act in the best interests of members when taking decisions of a specified description.

(2) In this section “relevant non-trust based scheme” means a non-trust based scheme that is—

- (a) a shared risk scheme, or
- (b) a defined contributions scheme under which any of the benefits that may be provided are collective benefits.

- (3) Regulations under this section—
- (a) may provide for the duty to act in the best interests of members to override obligations that are inconsistent with that duty (including obligations imposed by any legislative provision, rule of law or provision of a scheme or other instrument), but
 - (b) do not otherwise affect any duty that might arise apart from this section.
- (4) Regulations under this section may provide for the consequences of a manager breaching (or threatening to breach) the duty to act in the best interests of members to be the same as the consequences of breaching (or threatening to breach) a fiduciary duty owed by the manager to the members and, accordingly, for the duty to be enforceable in the same way as a fiduciary duty.
- (5) In this section—
- “collective benefit” has the meaning given by section 8;
 - “defined contributions scheme” has the meaning given by section 4;
 - “non-trust based scheme” means a scheme that is not established under a trust;
 - “shared risk scheme” has the meaning given by section 3.

Disclosure of information about schemes

38.—(1) Section 109 of the Pension Schemes Act (disclosure of information about schemes to members etc) is amended as follows.

- (2) In subsection (1)—
- (a) in the opening words, for “the persons mentioned in subsection (2)” substitute “persons of prescribed descriptions”;
 - (b) in paragraph (ca), omit “to the member” and “by him”.
- (3) Omit subsection (2).
- (4) Before subsection (3) insert—
- “(2A) In complying with requirements specified in the regulations, a person must have regard to any guidance prepared from time to time by the Department.”.
- (5) For subsection (4) substitute—
- “(4) Where the regulations specify requirements to be complied with in the case of an occupational pension scheme with respect to keeping recognised trade unions informed, the regulations must make provision for referring to an industrial tribunal any question whether an organisation is a recognised trade union.
- (4A) For the purposes of subsection (4) a trade union is a recognised trade union in relation to an occupational pension scheme if it is an independent trade union recognised to any extent for the purposes of

collective bargaining in relation to members and to prospective members of the scheme.”.

(6) In subsection (5), for “some or all of the persons mentioned in subsection (2)” substitute “persons of a prescribed description”.

(7) Omit paragraph 13 of Schedule 10 to the 2005 Order, which is no longer needed given subsection (3).

Early leavers

Extension of preservation of benefit under occupational pension schemes

39.—(1) Part 4 of the Pension Schemes Act (protection for early leavers) is amended as follows.

(2) In section 67 (basic principle as to short service benefit)—

(a) in subsection (1), for paragraph (aa) (but not the “or” at the end) substitute—

“(aa) he has at least 30 days’ qualifying service and, if he were entitled to benefit because of this paragraph, all of it would necessarily be benefit falling within subsection (1A),”;

(b) after subsection (1) insert—

“(1A) The following fall within this subsection—

(a) collective benefits;

(b) benefits calculated otherwise than by reference to the member’s salary.”.

(3) In section 66 (interpretation of Chapter 1: preservation requirements), in subsection (1)—

(a) after the definition of “relevant employment” insert—

“benefits”, in relation to a member of a scheme, means—

(a) retirement benefit for the member at normal pension age,

(b) benefit for the member’s wife, husband, civil partner, widow, widower, surviving civil partner or dependants or others on the member’s attaining normal pension age or the member’s later death, or

(c) both such descriptions of benefit;”;

(b) in the definition of “long service benefit” omit the words from “and in this definition “benefits” means” to the end of the definition.

(4) In section 67, for subsections (7) to (11) substitute—

Status: This is the original version (as it was originally enacted).

“(7) In subsection (1), “2 years’ qualifying service” or (as the case may be) “30 days’ qualifying service” means a period of service of the relevant duration in which the member was at all times employed either—

- (a) in pensionable service under the scheme, or
- (b) in service in employment which was contracted-out by reference to the scheme, or
- (c) in linked qualifying service under another scheme.

(8) For the purposes of subsection (7)—

- (a) a period of service may consist of a single period or two or more periods, continuous or discontinuous;
- (b) no regard is to be had to whether or not the service was of the same description throughout the period of service.

(9) A period of service previously terminated is not to count towards the 2 years’ or (as the case may be) 30 days’ qualifying service unless it counts towards qualification for long service benefit, and need then count only to the same extent and in the same way.

(10) Subsection (1)(aa) does not apply in relation to a person’s membership of a scheme if—

- (a) in a case where the benefit would necessarily all be money purchase benefit, any period of relevant service began before the day on which section 35 of the Pensions Act (Northern Ireland) 2015 came into operation (whether or not it also ended before that date);
- (b) in any other case, any period of relevant service began before the day on which section 39 of the Pension Schemes Act (Northern Ireland) 2016 came into operation (whether or not it also ended before that date).

“Relevant service” means service that counts towards the 30 days’ qualifying service for the purposes of subsection (1)(aa).”

(5) In section 70 (computation of short service benefit), in subsections (3) and (4), after “so much of any benefit” insert “, other than collective benefit,”.

(6) In section 35 of the Pensions Act (Northern Ireland) 2015, omit subsections (2) and (3) which are no longer needed given the earlier provisions of this section.

Revaluation of accrued benefits

40. Schedule 1 contains amendments about the revaluation of benefits.

Indexation

Collective benefits exempt from indexation

41.—(1) In Article 51 of the 1995 Order (annual increase in rate of pension)—

(a) in paragraph (1), for “Subject to paragraphs (6) and (7)” substitute “Subject to paragraphs (6) to (7A)”;

(b) after paragraph (7) insert—

“(7A) This Article does not apply to any pension, or part of a pension, that is a collective benefit.”.

(2) Omit section 21(2) of the Pensions Act (Northern Ireland) 2012, which is no longer needed given subsection (1).

Regulatory own fund schemes exempt from indexation

42.—(1) Article 51 of the 1995 Order (annual increase in rate of pension) is amended as follows.

(2) In paragraph (1)(a)(ii) (scheme based exemption) after “public service pension scheme” insert “or a regulatory own fund scheme (see paragraph (9))”.

(3) After paragraph (8) insert—

“(9) In paragraph (1)(a)(ii) “regulatory own fund scheme” means a scheme in respect of which Article 17 of Council Directive [2003/41/EC](#) of 3 June 2003 on the activities and supervision of institutions for occupational retirement provision applies.

(10) Regulations may amend paragraph (9) to replace the reference to the Article mentioned there with a reference to any provision of an EU instrument that replaces it (with or without changes).”.

Power to create other exemptions from indexation

43.—(1) In Article 51 of the 1995 Order (annual increase in rate of pension), after paragraph (5) insert—

“(5A) Regulations may provide that this Article does not apply to a pension, or part of a pension, of a specified description.

(5B) But regulations under paragraph (5A) may not be made in respect of—

(a) a pension, or any part of a pension, under a defined benefits scheme,

(b) a pension, or any part of a pension, which came into payment before the day on which the regulations come into operation, or

(c) a pension, or any part of a pension, which is attributable to pensionable service before the day on which the regulations come into operation.

(5C) Regulations under paragraph (5A) may amend this Part.”.

(2) In Article 167(3) of that Order (Assembly, etc. control of orders and regulations), before sub-paragraph (b) insert—

“(aa) Article 51(5A),”.

Independent trustees

Removal of requirement to maintain register of independent trustees

44.—(1) Article 23 of the 1995 Order (power to appoint independent trustees) is amended as follows.

(2) In paragraph (1), omit sub-paragraph (b) (requirement for the trustee to be registered in a register maintained by the Authority) and the “and” before it.

(3) Omit paragraphs (4) to (6) (regulations to provide for there to be a register of independent trustees).

Rules about modification of schemes

Rules about modification of schemes

45.—(1) The 1995 Order is amended as follows.

(2) In Article 67 (the subsisting rights provisions)—

(a) in paragraph (3), omit sub-paragraph (b) and the “or” before it;

(b) after paragraph (3) insert—

“(3A) Regulations may provide for cases in which the subsisting rights provisions do not apply.”.

(3) In Article 67A (the subsisting rights provisions: interpretation), in paragraph (3) (meaning of “protected modification”), after sub-paragraph (a) insert—

“(aa) on taking effect would or might result in any subsisting right of a member of the scheme which is a right to benefits in respect of which there is a pensions promise becoming, or being replaced with, a right to benefits under the scheme rules in respect of which there is no pensions promise,

(ab) on taking effect would or might result in any subsisting right of a member of the scheme which is a right to retirement income in respect of which there is a pensions promise becoming, or being replaced with, a right to benefits other than retirement income,

- (ac) 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 collective benefits becoming, or being replaced with, a right or entitlement to collective benefits under the scheme rules.”.
- (4) In paragraph (3)(b) of that Article, after “rules” insert “, other than a pension that is a collective benefit”.
- (5) In paragraph (5)(a) of that Article, after “sub-paragraph (a)” insert “, (aa), (ab), (ac)”.
- (6) In paragraph (9) of that Article—
- (a) in sub-paragraph (a), after paragraph (ix) insert—
 - “(x) regulations made under Schedule 17 to the Pensions Act (Northern Ireland) 2015;
 - (xi) regulations made under Schedule 18 to the Pensions Act (Northern Ireland) 2015;
 - (xii) regulations made under Part 2 of the Pension Schemes Act (Northern Ireland) 2016;”;
 - (b) in sub-paragraph (b), after paragraph (vii) insert—
 - “(viii) regulations made under paragraph 16 of Schedule 17 to the Pensions Act (Northern Ireland) 2015;
 - (ix) regulations made under paragraph 6 of Schedule 18 to the Pensions Act (Northern Ireland) 2015;
 - (x) regulations made under section 34 of the Pension Schemes Act (Northern Ireland) 2016;”.
- (7) In Article 121 (interpretation), in paragraph (1), at the appropriate place insert—
- ““pensions promise” has the meaning given by section 5 of the Pension Schemes Act (Northern Ireland) 2016;”;
 - ““retirement income” has the meaning given by section 7 of the Pension Schemes Act (Northern Ireland) 2016;”.

Pension sharing

Pension sharing and normal benefit age

46.—(1) The Pension Schemes Act is amended as follows.

(2) In section 97B (interpretation) for the definition of “normal benefit age” substitute—

““normal benefit age”, in relation to a pension credit benefit for a member of a scheme, is the earliest age at which the member is entitled to receive the benefit without adjustment for taking it early or late (disregarding any special provision as to early payment on the grounds of ill-health or otherwise);

“normal pension age”, in relation to a benefit for a member of a scheme, means the earliest age at which the member is entitled to receive the benefit without adjustment for taking it early or late (disregarding any special provision as to early payment on the grounds of ill-health or otherwise);”.

(3) In section 97C (basic principle as to pension credit benefit), for subsection (1) substitute—

“(1) The normal benefit age in relation to a pension credit benefit for a member of a scheme—

(a) must not be lower than 60, and

(b) must not be higher than the permitted maximum.

(1A) The “permitted maximum” is 65 or, if higher, the highest normal pension age for any benefit that is payable under the scheme to or in respect of any of the members by virtue of rights which are not attributable (directly or indirectly) to a pension credit.”.

Other amendments

Other amendments to do with Parts 1 and 2

47. Schedule 2—

(a) contains amendments to do with Parts 1 and 2, and

(b) replaces references to “money purchase scheme” so as to limit the number of different ways of categorising pension schemes.

PART 4

GENERAL

Power to make consequential amendments

48.—(1) The Department may by regulations make provision that is consequential on any provision made by this Act.

(2) Regulations under this section may amend, repeal, revoke or otherwise modify any statutory provision (whenever passed or made).

Regulations

49.—(1) A power to make regulations under this Act is exercisable by the Department.

(2) Subject to the following provisions of this section, any regulations made under this Act are subject to negative resolution.

(3) The first regulations under section 8(3)(b), 9, 10, 11 or 21, or regulations under section 48 that amend, repeal or otherwise modify any relevant statutory provision (whether alone or with other provisions),—

- (a) must be laid before the Assembly after being made; and
- (b) take effect on such date as may be specified in the regulations, but (without prejudice to the validity of anything done thereunder or to the making of 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 regulations are approved by a resolution of the Assembly.

(4) In this section “relevant statutory provision” means a statutory provision contained in—

- (a) an Act of the Parliament of Northern Ireland;
- (b) an Order in Council under Schedule 1 to the Northern Ireland Act 1974 or the Schedule to the Northern Ireland Act 2000;
- (c) an Act of the Assembly; or
- (d) an Act of the Parliament of the United Kingdom.

(5) Regulations under this Act may include incidental, supplementary, consequential, transitional, transitory or saving provision.

Crown application

50.—(1) In this section “the relevant provisions” means—

- (a) Part 2,
- (b) section 36, and
- (c) section 37.

(2) The relevant provisions apply to a pension scheme managed by or on behalf of the Crown as they apply to other pension schemes.

(3) Accordingly, references in those provisions to a person in the person’s capacity as a trustee or manager of a pension scheme include the Crown, or a person acting on behalf of the Crown, in that capacity.

(4) References in the relevant provisions to a person in the person’s capacity as an employer include the Crown, or a person acting on behalf of the Crown, in that capacity.

(5) Nothing in the relevant provisions applies to Her Majesty in Her private capacity (within the meaning of the Crown Proceedings Act 1947).

Interpretation

51. In this Act—

“the 1995 Order” means the Pensions (Northern Ireland) Order 1995;

“the 2005 Order” means the Pensions (Northern Ireland) Order 2005;

“the Department” means the Department for Social Development;

“the Pension Schemes Act” means the Pension Schemes (Northern Ireland) Act 1993;

“statutory provision” has the meaning given by section 1(f) of the Interpretation Act (Northern Ireland) 1954.

Commencement

52.—(1) The following provisions come into operation on the day after this Act receives Royal Assent—

(a) section 46;

(b) this Part;

(c) paragraphs 22, 28, 31 and 33 of Schedule 2 (and section 47 so far as relating to those provisions).

(2) The other provisions of this Act come into operation on such day or days as the Department may by order appoint.

(3) The Department may by order make incidental, supplementary, consequential, transitional, transitory or saving provision in connection with the coming into operation of any provision of this Act.

Short title

53. This Act may be cited as the Pension Schemes Act (Northern Ireland) 2016.