

These notes refer to the Public Service Pensions Act (Northern Ireland) 2014 (c.2) which received Royal Assent on 11 March 2014

Public Service Pensions Act (Northern Ireland) 2014

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Final

Schedule 4: Regulatory oversight

Schedule 4 contains amendments to the Pensions (Northern Ireland) Order 2005 (“the 2005 Order”), in relation to the regulatory responsibility of the Pensions Regulator for public service pension schemes.

Paragraph 2 adds definitions to Article 2 of the 2005 Order.

Paragraph 3 amends Article 9 of the 2005 Order to allow the Pensions Regulator to issue an improvement notice by reference to a code of practice issued under new Article 85A (see below); and to ensure that certain provisions in this Act fall within the definition of “pensions legislation” so that improvement notices can be issued if they are breached.

Paragraph 4 inserts new Article 10A to allow the Pensions Regulator to appoint an appropriately skilled person to help a pension board carry out its functions. The pension board will be responsible for assisting the scheme manager in the administration and governance of the scheme. If the board is having difficulty in appropriately performing that role, expert help may be necessary. The pension board must have regard to the advice of the appropriately skilled person, and the skilled person’s costs are to be met by the scheme manager.

Paragraph 5 amends Article 13 to provide that the Pensions Regulator may intervene and help to recover unpaid contributions that are owed to a public service pension scheme by an employer under that scheme.

Paragraphs 6, 8 and 9 make consequential amendments to Articles 65, 66 and 68, inserting references to pension board members to reflect the new public service pension scheme pension board structure.

Paragraph 7 inserts a new Article 65A requiring the scheme manager of a public service pension scheme to notify the Pensions Regulator of an employer’s failure to pay pensions contributions on time if that failure is likely to be something that the Pensions Regulator would consider to be materially significant to the

Regulator in the exercise of its functions (for example, in considering whether the employer is fulfilling its obligations and being satisfied that the scheme is being managed properly). Failure to report can lead to a civil penalty.

Paragraph 10 amends Article 68 of the 2005 Order to add record keeping to the list of provisions in respect of which the Pensions Regulator may enter premises to investigate compliance.

Paragraph 11 amends Article 84 of the 2005 Order, requiring the Regulator to notify the scheme manager before making a report under that Article in respect of a public service pension scheme. This requirement will mean that the scheme manager is aware that the Regulator intends to issue a report about the scheme and can choose to take remedial action in advance if they wish. The scheme manager cannot prevent the Regulator from issuing a report.

Paragraph 12 inserts new Article 84A requiring the Regulator to report concerns to the scheme manager where the Regulator has reasonable grounds to suspect or believe that a member of the pension board has misappropriated any assets of the scheme, or has a conflict of interest in relation to the investment of assets in the scheme. Under the Order the Pensions Regulator does not have a formal role in relation to funding or investment for the funded schemes. However, in the course of undertaking oversight of administration and governance of the schemes it is possible that the Regulator may be made aware of inappropriate behaviour by a member of the pension board in relation to the scheme assets or investments. As the scheme manager is responsible for setting up and appointing the pension board, it is appropriate that any concerns are directed to the scheme manager to address. Privilege attaches to any such report, unless it is shown that it is maliciously motivated. The Article also makes clear that a conflict of interest in relation to investment of assets does not arise merely from any person being a member of the relevant scheme.

Paragraph 14 inserts new Article 85A, allowing and, in certain cases, requiring the Pensions Regulator to issue codes of practice for public service schemes. A list of matters that codes must cover is set out at new Article 85A(2). The requirement to issue codes of practice is at the core of the Pensions Regulator's new role in relation to public service schemes. To help ensure schemes meet good standards of administration and governance, those involved in administering them need to know what standards they should be aiming to achieve. This Article is similar to Article 85 of the 2005 Order and replicates the provisions of that Article regarding: revision of codes of practice; effect of failing to observe codes of practice; admissibility in evidence; the scope of codes of practice; and the procedures relating to them. The paragraph also contains a power for the Department for Social Development to prescribe other matters which must be covered by codes if in the future it is considered necessary to do so.

Paragraphs 15, 16, 17 and 18 apply to public service pension schemes provisions of the 2005 Order which relate to codes of practice, power to appoint a skilled person and requirements about winding up.

Paragraph 19 amends the 2005 Order by inserting a new Article 225A, which places a requirement on members of the pension board to have knowledge and understanding about the scheme and the law relating to pensions and any other prescribed matters. As the pension board is responsible for assisting the scheme manager in the administration of the scheme, it is appropriate that those individuals carrying out this role should have appropriate knowledge about the scheme they are helping to run. This provision is similar to Article 224 of the 2005 order which places requirements on trustees to have knowledge and understanding about the scheme which they are running and the law relating to pensions more generally.

Paragraph 20 amends Article 226A of the 2005 Order and paragraph 21 inserts a new Article 226B to place a requirement on the scheme manager of a public service pension scheme to have an adequate system of internal controls.