

SCHEDULES

SCHEDULE 4

Section 17(1).

Regulatory oversight

1. The Pensions (Northern Ireland) Order 2005 is amended as follows.

2.—(1) Article 2 (general interpretation) is amended as follows.

(2) In paragraph (2), after the definition of “occupational pension scheme” insert—

““pension board” has the same meaning as in the Public Service Pensions Act (Northern Ireland) 2014 (see section 5 of that Act);”.

(3) After the definition of “professional adviser” in that paragraph insert—

““public service pension scheme” means, subject to paragraph (6A)—

(a) a scheme under section 1 of the Public Service Pensions Act (Northern Ireland) 2014 (new public service schemes);

(b) a new public body pension scheme (within the meaning of that Act);

(c) any statutory pension scheme which is connected with a scheme referred to in paragraph (a) or (b) (and for this purpose “statutory pension scheme” and “connected” have the meanings given in that Act);”.

(4) After the definition of “the Regulator” in that paragraph insert—

““scheme manager”, in relation to a public service pension scheme, has the same meaning as in the Public Service Pensions Act (Northern Ireland) 2014 (see section 4 of that Act);”.

(5) After paragraph (6) insert—

“(6A) A scheme which would otherwise fall within the definition of “public service pension scheme” in paragraph (2) does not fall within that definition if—

(a) it is an injury or compensation scheme (within the meaning of the Public Service Pensions Act (Northern Ireland) 2014), or

(b) it is specified in an order made by the Department after consulting the Department of Finance and Personnel.”.

3.—(1) Article 9 (improvement notices) is amended as follows.

(2) In paragraph (3)(a), after “85” insert “or 85A”.

(3) In paragraph (7)—

(a) in sub-paragraph (c), the final “or” is repealed;

(b) at the end insert “or

(e) section 5(5) (pension board: conflicts of interest), 6 (pension board: information), 14 (information about benefits) or 16 (records) of the Public Service Pensions Act (Northern Ireland) 2014.”.

4. After Article 10 insert—

“Appointment of skilled person to assist public service pension scheme

10A.—(1) The Regulator may, if it considers it desirable for the purpose of ensuring compliance with pensions legislation, appoint a person to assist the pension board of a public service pension scheme in the discharge of its functions.

(2) A person appointed under this Article may be any person appearing to the Regulator to have the necessary skills.

(3) The pension board of a public service pension scheme must have regard to the advice of a person appointed under this Article.

(4) The costs of a person appointed under this Article are to be met by the scheme manager of the scheme.

(5) In paragraph (1) “pensions legislation” has the same meaning as in Article 9.”.

5.—(1) In Article 13 (power of the Regulator to recover unpaid contributions), paragraph (3) is amended as follows.

(2) In the definition of “due date”—

(a) in paragraph (b), the final “and” is repealed;

(b) after paragraph (c) insert “and

(d) in relation to employer contributions payable under a public service pension scheme, the date on which the contributions are due under the scheme;”.

(3) In the definition of “employer contribution”—

(a) in paragraph (a)—

(i) after “occupational pension scheme” insert “other than a public service pension scheme”;

(ii) the final “and” is repealed;

(b) after paragraph (b) insert “and

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

(c) in relation to a public service pension scheme, means any contributions payable under the scheme by the employer.”.

6. In Article 65 (duty to report breaches of the law), in paragraph (1)—

(a) after sub-paragraph (a) insert—

“(aa) a member of the pension board of a public service pension scheme;”;

(b) in sub-paragraph (b), for “such a scheme” substitute “an occupational or personal pension scheme”.

7. After Article 65 insert—

“Reporting late payment of employer contributions

Duty to report late payment of employer contributions

65A.—(1) Where—

- (a) any amount payable under a public service pension scheme by or on behalf of an employer in relation to the scheme by way of contributions is not paid on or before the date on which it is due under the scheme, and
- (b) the scheme manager has reasonable cause to believe that the failure is likely to be of material significance to the Regulator in the exercise of any of its functions,

the scheme manager must give a written report of the matter to the Regulator as soon as reasonably practicable.

(2) Subject to Article 283 (protected items), no duty to which a person is subject is to be regarded as contravened merely because of any information or opinion contained in a written report under this Article.

(3) Article 10 of the 1995 Order (civil penalties) applies to any person who, without reasonable excuse, fails to comply with an obligation imposed on him by this Article.”.

8.—(1) Article 66 (reports by skilled persons) is amended as follows.

(2) In paragraph (1)—

(a) in sub-paragraph (b), the final “or” is repealed;

(b) after sub-paragraph (b) insert—

“(ba) in the case of a work-based scheme which is a public service pension scheme, a member of the pension board of the scheme, or”;

(c) in sub-paragraph (c), for “such a scheme” substitute “a work-based pension scheme”.

9. In Article 67 (provision of information), in paragraph (2), after sub-paragraph (a) insert—

“(aa) a member of the pension board of a public service pension scheme,”.

10. In Article 68 (inspection of premises), in paragraph (2)—

(a) after sub-paragraph (d) insert—

“(da) section 16 of the Public Service Pensions Act (Northern Ireland) 2014;”,

(b) in sub-paragraph (e), for “(d)” substitute “(da)”.

11. In Article 84 (reports), at the end insert—

“(4) Before making a report under this Article which relates to a public service pension scheme, the Regulator must notify the scheme manager.”.

12. After Article 84 insert—

“Reports about misappropriation, etc. in public service pension schemes

84A.—(1) If the Regulator has reasonable grounds to suspect or believe that a member of the pension board of a public service pension scheme—

(a) has misappropriated any assets of the scheme or is likely to do so,
or

(b) has a conflict of interest in relation to investment of assets of the scheme,

the Regulator must report the matter to the scheme manager.

(2) For the purposes of the law of defamation, the reporting of any matter by the Regulator under paragraph (1) is privileged unless the reporting is shown to be made with malice.

(3) For the purposes of paragraph (1)(b) a person does not have a conflict of interest in relation to investment of assets merely by virtue of membership of the scheme.”.

13.—(1) Article 85 (codes of practice) is amended as follows.

(2) In paragraph (4), after “provision of a code of practice” insert “issued under this Article”.

(3) In paragraph (7), at the end insert “under this Article”.

(4) At the end of the Article insert—

“(8) The Regulator may not issue codes of practice under this Article in relation to a public service pension scheme (but see Article 85A).”.

14. After Article 85 insert—

“Codes of practice: public service pension schemes

85A.—(1) The Regulator may, in relation to public service pension schemes, issue codes of practice—

- (a) containing practical guidance in relation to the exercise of functions under relevant pensions legislation, and
- (b) regarding the standards of conduct and practice expected from those who exercise such functions.

(2) The Regulator must issue one or more such codes of practice relating to the following matters—

- (a) the discharge of the duties imposed by Articles 65 and 65A (duties to report breaches of the law and late payment of employer contributions);
- (b) the obligations imposed by Article 225A (requirements for knowledge and understanding: pension boards of public service pension schemes);
- (c) the discharge of the duty imposed by Article 226B (internal controls);
- (d) the discharge of duties imposed under section 109 of the Pension Schemes Act (disclosure of information to members);
- (e) the discharge of the duty imposed by Article 49(9)(b) of the 1995 Order (duty of trustees or managers of occupational pension schemes to report material failures by employers to pay contributions deducted from employee’s earnings timeously);
- (f) the discharge of the duty imposed by Article 50 of the 1995 Order (internal dispute resolution);
- (g) the discharge of duties imposed under section 5(5) of the Public Service Pensions Act (Northern Ireland) 2014 (pension board: conflicts of interest and representation) and other duties relating to conflicts of interest;
- (h) the discharge of duties imposed by virtue of section 6 (pension board: information) of that Act and other duties relating to the publication of information about governance and administration;
- (i) the discharge of duties imposed under section 14 of that Act (information about benefits);

- (j) the discharge of duties imposed under section 16 (records) of that Act and other duties relating to record-keeping;
- (k) such other matters as may be prescribed for the purposes of this Article.

(3) The Regulator may from time to time revise the whole or any part of a code of practice issued under this Article and issue that revised code.

(4) Subject to Article 9(3)(a) and (8) (power for improvement notice to direct that person complies with code of practice and civil penalties for failure to comply), a failure on the part of any person to observe any provision of a code of practice issued under this Article does not of itself render that person liable to any legal proceedings.

(5) A code of practice issued under this Article is admissible in evidence in any legal proceedings (within the meaning of Article 85) and, if any provision of such a code appears to the court or tribunal concerned to be relevant to any question arising in the proceedings, it must be taken into account in determining that question.

(6) A code of practice issued under this Article may be—

- (a) combined with a code of practice issued under Article 85;
- (b) combined with one or more other codes of practice issued under this Article.

(7) A code of practice issued under this Article may relate to all public service pension schemes or any one or more of them.

(8) In this Article, “relevant pensions legislation” means—

- (a) the statutory provisions constituting “pensions legislation” within the meaning of Article 85, and
- (b) sections 5(5) (pension board: conflicts of interest and representation), 6 (pension board: information), 14 (information about benefits) and 16 (records) of the Public Service Pensions Act (Northern Ireland) 2014.

(9) Articles 86 and 87 make provision about the procedure to be followed when a code of practice is issued or revoked under this Article.”.

15.—(1) Article 86 (procedure for codes) is amended as follows.

(2) In paragraph (1), after “code of practice” insert “under Article 85 or 85A”.

(3) In paragraphs (4)(a) and (9), after “85” insert “or 85A”.

16. In Article 87 (revocation of codes), in paragraph (1), after “code of practice” insert “under Article 85 or 85A”.

17. In Article 88 (procedure for regulatory functions), in paragraph (2), after sub-paragraph (b) insert—

“(ba) the power to appoint a skilled person in relation to a public service pension scheme under Article 10A,”.

18. In Article 138 (requirement to wind up schemes with sufficient assets), in paragraph (14), after “public service pension scheme” insert “(within the meaning of the Pension Schemes Act)”.

19. After Article 225 insert—

“Requirement for knowledge and understanding: pension boards of public service pension schemes

225A.—(1) This Article applies to every individual who is a member of the pension board of a public service pension scheme.

(2) An individual to whom this Article applies must be conversant with—

- (a) the rules of the scheme, and
- (b) any document recording policy about the administration of the scheme which is for the time being adopted in relation to the scheme.

(3) An individual to whom this Article applies must have knowledge and understanding of—

- (a) the law relating to pensions, and
- (b) such other matters as may be prescribed.

(4) The degree of knowledge and understanding required by paragraph (3) is that appropriate for the purposes of enabling the individual properly to exercise the functions of a member of the pension board.”.

20. In Article 226A (requirement for internal controls), in paragraph (3)—

(a) before sub-paragraph (a) insert—

“(za) a public service pension scheme;”;

(b) in sub-paragraph (a) for “a scheme” substitute “any other scheme”.

21. After Article 226A insert—

“Requirement for internal controls: public service pension schemes

226B.—(1) The scheme manager of a public service pension scheme must establish and operate internal controls which are adequate for the purpose of securing that the scheme is administered and managed—

- (a) in accordance with the scheme rules, and
- (b) in accordance with the requirements of the law.

(2) Nothing in this Article affects any other obligations of the scheme manager to establish or operate internal controls, whether imposed by or by virtue of any statutory provision, the scheme rules or otherwise.

(3) In this Article “internal controls” has the same meaning as in Article 226A.”.