These notes refer to the Pensions Act (Northern Ireland) 2015 (c.5) which received Royal Assent on 23 June 2015

Pensions Act (Northern Ireland) 2015

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 6 – Private Pensions

Section 48: Pension Protection Fund: increased compensation cap for long service

Schedule 20: Pension Protection Fund: increased compensation cap for long service

The PPF pays compensation to members of non-money purchase, occupational pension schemes where the employer becomes insolvent, leaving the scheme underfunded. Anyone under the scheme's normal pensionable age when the employer becomes insolvent is paid compensation based on 90 per cent of their expected scheme pension subject to a maximum cap- 'the compensation cap'.

Section 48 and Schedule 20 provide for a revised compensation cap dependent on a person's age and length of pensionable service when the person first becomes entitled to compensation.

Paragraphs 1 to 3 of Schedule 20 amend Schedule 6 to the 2005 Order to insert new paragraph 26A. The new paragraph 26A sets out how the compensation cap will be calculated for future compensation calculations. There will be a standard amount (which is expected to be calculated in the same way as the current compensation cap amount) for anyone with pensionable service of 20 years or less. For anyone with 21 years or more pensionable service, the cap will be increased by 3 per cent for each full year, to a maximum of double the standard amount. The new paragraph also makes provision for determining pensionable service in certain situations.

Paragraphs 4 to 7 make consequential amendments to the 2005 Order.

Paragraphs 8 to 13 of Schedule 20 make transitional provision for members who are entitled to PPF compensation when the increased compensation cap for long service is introduced. Under paragraph 8(2) the PPF will be required to recalculate the protected pension rate as if the increased compensation cap for long service had been in force when the member first became entitled to compensation. The amount of compensation payable depends on the amount of the protected pension rate and the PPF must therefore re-determine the compensation and change the payment. This applies to both members of the original scheme and any of their survivors and dependants who are in receipt of compensation when the long service cap legislation comes into operation. Any increase will be effective from the date the legislation is commenced except that members who have postponed payment of their compensation will have the increase applied when they take their postponed compensation.

Any indexation that had been awarded before the legislation comes into operation will be maintained by adding the amount of indexation on to the revised compensation amount (see paragraph 8(5) of the Schedule).

There will be no backdating of compensation for any increase due to the long service compensation cap and all other elements in calculating compensation payable will be unaffected by this change:

a) where a person commuted part of their original compensation as a lump sum, the commuted amount will be deducted as part of the redetermination;

b) where a person had their compensation actuarially reduced because they took their compensation early, the same reduction will be applied in the redetermination;

c) where a person had been awarded a postponement addition, that addition will not be recalculated or increased.

Paragraph 12 deals with those who received a terminal illness lump sum in the year prior to the long service cap legislation being commenced. Where the recipient is still alive when the legislation is commenced, the lump sum will be re-calculated as if the long service cap legislation had been in operation at the date of entitlement and arrears paid.

Part 3 of Schedule 20 makes transitional provision for schemes undergoing assessment or winding up on the date the increased compensation cap for long service comes into force.

Part 3 provides that, for schemes undergoing assessment for entry to the PPF when the long service cap legislation comes into operation, the valuation of the scheme's liabilities should be completed on the basis that the long service cap has not been introduced.

During an assessment period the scheme trustees continue to pay scheme pensions as they fall due but the payments must be reduced as necessary so as not to exceed the level of compensation the PPF would pay should the scheme enter the PPF. Paragraph 14(3) would require scheme trustees to increase pension payments during the assessment period to reflect the introduction of the long service cap, where appropriate.

A scheme can ask for the decision on whether or not they enter the PPF to be reconsidered. Where a scheme entered the assessment period before the long service cap legislation is commenced and subsequently asks for such a reconsideration, paragraph 14 would require this consideration to be done on the basis that the long service cap had not been introduced.

Part 3 also provides for how the increased long service cap would apply where a scheme began wind up, or was treated as having begun wind up, before the long service cap legislation comes into operation. This could be where a scheme began to wind up without having been through a PPF assessment period, or where a scheme had been in the assessment period and left it without transferring to the PPF. Schemes winding up are required to allocate assets in accordance with the statutory priority order in Article 73 of the 1995 Order and during wind up restrict payments of pension to the amounts which the scheme will be able to satisfy on wind up under Article 73A.

In general the priority order requires the asset allocation to begin with covering the compensation that the PPF would have paid had the scheme entered the PPF. Part 3 provides that where a scheme had begun wind up before the long service cap is introduced it should continue to allocate assets and restrict pension payments on the basis that the long service cap had not been introduced. However, whilst a scheme is in a PPF assessment period, paragraph 15(4) clarifies that pension payments should be increased to reflect the introduction of the long service cap. This would mean that, in this specific situation, Article 73A would not restrict payments to pre-long service cap levels.

Paragraphs 20-22 clarify that transitional provision can be made under section 53(5), particularly, in relation to pension compensation sharing and cases where a member has multiple benefits.