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STATUTORY INSTRUMENTS

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**1995 No. 3213**

**The Pensions (Northern Ireland) Order 1995**

**PART II**

**OCCUPATIONAL PENSIONS**

*Modification of schemes*

**[<sup>F1</sup>The subsisting rights provisions**

**67.—(1)** The subsisting rights provisions apply to any power conferred on any person by an occupational pension scheme to modify the scheme other than a power conferred by—

- (a) a public service pension scheme, or
- (b) a prescribed scheme or a scheme of a prescribed description.

(2) Any exercise of such a power to make a regulated modification is voidable in accordance with Article 67G unless the following are satisfied in respect of the modification—

- (a) in the case of each affected member—
  - (i) if the modification is a protected modification, the consent requirements (see Article 67B),
  - (ii) if it is not, either the consent requirements or the actuarial equivalence requirements (see Article 67C),
- (b) the trustee approval requirement (see Article 67E), and
- (c) the reporting requirement (see Article 67F).

(3) The subsisting rights provisions do not apply in relation to the exercise of a power—

- (a) for a purpose connected with debits under Article 26(1) of the Welfare Reform and Pensions (Northern Ireland) Order 1999, or
- (b) in a prescribed manner.

(4) References in this Article and Articles 67A to 67I to “the subsisting rights provisions” are to this Article and those Articles.

(5) Paragraph (6) applies in relation to the exercise of a power to which the subsisting rights provisions apply to make a regulated modification where a member of the scheme dies before the requirements mentioned in paragraph (2), so far as they apply in his case, have been complied with in respect of the modification if—

- (a) before he died he had given his consent to the modification in accordance with Article 67B(4)(b), or
- (b) before he died, or before the trustees of the scheme had become aware that he had died, the trustees had complied with Article 67C(4)(a), (b) and (d) in respect of the modification in his case.

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(6) Any of the requirements mentioned in paragraph (2), as it applies in respect of the modification—

- (a) which is satisfied in the case of the member, or
- (b) which would have been satisfied in his case had he not died before it was satisfied,

is to be taken to be satisfied in the case of any survivor of the member in respect of the modification.]

**F1** Arts. 67, 67A-67I substituted (1.11.2005 for certain purposes, otherwise 6.4.2006) for art. 67 by Pensions (Northern Ireland) Order 2005 (S.I. 2005/255 (N.I. 1)), arts. 1(2), 239; S.R. 2005/411, art. 2(5), Sch. Pt. 2

## [<sup>F2</sup>The subsisting rights provisions: interpretation

**67A.—**(1) In the subsisting rights provisions, each of the following expressions has the meaning given to it by the following provisions of this Article—

- “regulated modification”
- “protected modification”
- “detrimental modification”
- “affected member”
- “subsisting right”
- “scheme rules”.

(2) “Regulated modification” means a modification which is—

- (a) a protected modification, or
- (b) a detrimental modification,

or is both.

(3) “Protected modification” means a modification of an occupational pension scheme which—

- (a) 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 money purchase benefits becoming, or being replaced with, a right or entitlement to money purchase benefits under the scheme rules,

- (b) would or might result in a reduction in the prevailing rate of any pension in payment under the scheme rules, or
- (c) is of a prescribed description.

For the purposes of sub-paragraph (a), the reference in the definition of “money purchase benefits” in section 176(1) of the Pension Schemes Act to the widow or widower of a member of an occupational pension scheme is to be read as including any other survivor of the member.

(4) “Detrimental modification” means a modification of an occupational pension scheme which on taking effect would or might adversely affect any subsisting right of—

- (a) any member of the scheme, or
- (b) any survivor of a member of the scheme.

(5) A person is an “affected member”

- (a) in relation to a protected modification within sub-paragraph (a) or (b) of paragraph (3), if, at the time the modification takes effect, he is—

- (i) a member of the scheme, or
    - (ii) a survivor of a member of the scheme,and, on taking effect, the modification would or might affect any of his subsisting rights as mentioned in that sub-paragraph,
  - (b) in relation to a protected modification within sub-paragraph (c) of that paragraph, if he is of a prescribed description, and
  - (c) in relation to a detrimental modification which is not a protected modification if, at the time the modification takes effect, he is—
    - (i) a member of the scheme, or
    - (ii) a survivor of a member of the scheme,and, on taking effect, the modification would or might adversely affect any of his subsisting rights.
- (6) “Subsisting right” means—
- (a) in relation to a member of an occupational pension scheme, at any time—
    - (i) any right which at that time has accrued to or in respect of him to future benefits under the scheme rules, or
    - (ii) any entitlement to the present payment of a pension or other benefit which he has at that time, under the scheme rules, and
  - (b) in relation to the survivor of a member of an occupational pension scheme, at any time, any entitlement to benefits, or right to future benefits, which he has at that time under the scheme rules in respect of the member.
- For this purpose, “right” includes a pension credit right.
- (7) At any time when the pensionable service of a member of an occupational pension scheme is continuing, his subsisting rights are to be determined as if he had opted, immediately before that time, to terminate that service.
- (8) “Scheme rules”, in relation to a scheme, means—
- (a) the rules of the scheme, except so far as overridden by a relevant legislative provision,
  - (b) the relevant legislative provisions, to the extent that they have effect in relation to the scheme and are not reflected in the rules of the scheme, and
  - (c) any provision which the rules of the scheme do not contain but which the scheme must contain if it is to conform with the requirements of Chapter 1 of Part IV of the Pension Schemes Act (preservation of benefit under occupational pension schemes).
- (9) For the purposes of paragraph (8)—
- (a) “relevant legislative provision” means any provision contained in any of the following provisions—
    - (i) Schedule 5 to the Social Security (Northern Ireland) Order 1989 (equal treatment for men and women);
    - (ii) Chapters 2 to 5 of Part IV of the Pension Schemes Act (certain protection for early leavers) or regulations made under any of those Chapters;
    - (iii) Part IVA of that Act (requirements relating to pension credit benefit) or regulations made under that Part;
    - (iv) section 106(1) of that Act (requirement as to resources for annual increase of guaranteed minimum pensions);

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- (v) this Part (occupational pensions) or orders or regulations made or having effect as if made under this Part;
  - (vi) Article 28 of the Welfare Reform and Pensions (Northern Ireland) Order 1999 (pension debits: reduction of benefit);
  - (vii) any provision mentioned in Article 279(2) of the Pensions (Northern Ireland) Order 2005;
- (b) a relevant legislative provision is to be taken to override any of the provisions of the scheme if, and only if, it does so by virtue of any of the following provisions—
- (i) paragraph 3 of Schedule 5 to the Social Security (Northern Ireland) Order 1989;
  - (ii) section 125(1) of the Pension Schemes Act;
  - (iii) Article 114(1);
  - (iv) Article 28(4) of the Welfare Reform and Pensions (Northern Ireland) Order 1999;
  - (v) Article 279(1) of the Pensions (Northern Ireland) Order 2005.
- (10) For the purposes of this Article—
- (a) “survivor”, in relation to a member of an occupational pension scheme, means a person who—
    - (i) is the widow or widower of the member, or
    - (ii) has survived the member and has any entitlement to benefit, or right to future benefits, under the scheme rules in respect of the member, and
  - (b) a modification would or might adversely affect a person's subsisting right if it would alter the nature or extent of the entitlement or right so that the benefits, or future benefits, to which the entitlement or right relates would or might be less generous.
- (11) In the subsisting rights provisions, in relation to—
- (a) the exercise of a power to modify an occupational pension scheme to which the subsisting rights provisions apply, or
  - (b) a modification made, or to be made, in exercise of such a power,
- references to “the scheme” are to be read as references to the scheme mentioned in subparagraph (a).]

**F2** Arts. 67, 67A-67I substituted (1.11.2005 for certain purposes, otherwise 6.4.2006) for art. 67 by Pensions (Northern Ireland) Order 2005 (S.I. 2005/255 (N.I. 1)), **arts. 1(2)**, 239; S.R. 2005/411, art. 2(5), **Sch. Pt. 2**

**Modifications etc. (not altering text)**

- C1** Art. 67A(6)(7) modified by S.I. 2005/255 (N.I. 1), art. 34A(8)(b) (as inserted (15.12.2008 for certain purposes, otherwise 29.6.2009) by Pensions (No. 2) Act (Northern Ireland) 2008 (c. 13), ss. 103, 118(3)(a)(ii)(b), **Sch. 8 para. 2(2)**); S.R. 2009/249, **art. 2(b)(ii)**
- C2** Art. 67A(6)(7) modified by S.I. 2005/255 (N.I. 1), art. 35B(4)(b) (as inserted (15.12.2008) by Pensions (No. 2) Act (Northern Ireland) 2008 (c. 13), ss. 103, 118(3)(a)(v)(b), **Sch. 8 para. 9**)
- C3** Art. 67A(6)(7) modified by S.I. 2005/255 (N.I. 1), art. 39B(4)(b) (as inserted (15.12.2008) by Pensions (No. 2) Act (Northern Ireland) 2008 (c. 13), ss. 103, 118(3)(a)(v)(b), **Sch. 8 para. 10**)

### [<sup>F3</sup>The consent requirements

**67B.**—(1) References in the subsisting rights provisions to the consent requirements, in respect of a regulated modification, are to be read in accordance with this Article.

- (2) The consent requirements apply in the case of an affected member—
  - (a) if the modification is a protected modification;
  - (b) if it is not a protected modification, unless the actuarial equivalence requirements apply in his case.
- (3) The consent requirements consist of—
  - (a) the informed consent requirement (see paragraph (4)), and
  - (b) the timing requirement (see paragraph (6)).
- (4) The informed consent requirement is satisfied in the case of an affected member if before the modification is made—
  - (a) the trustees have—
    - (i) given him information in writing adequate to explain the nature of the modification and its effect on him,
    - (ii) notified him in writing that he may make representations to the trustees about the modification,
    - (iii) afforded him a reasonable opportunity to make such representations, and
    - (iv) notified him in writing that the consent requirements apply in his case in respect of the modification, and
  - (b) after the trustees have complied with sub-paragraph (a)(i), (ii) and (iv), the affected member has given his consent in writing to the modification.
- (5) If—
  - (a) the modification is not a protected modification, and
  - (b) before the modification is made the trustees notify an affected member in writing that—
    - (i) if he gives his consent to the modification for the purposes of the consent requirements, those requirements apply in his case in respect of the modification, but
    - (ii) otherwise, the actuarial equivalence requirements apply in his case in respect of the modification,

the trustees are to be taken to have complied with paragraph (4)(a)(iv) in respect of him.
- (6) The timing requirement is satisfied in the case of an affected member if the modification takes effect within a reasonable period after the member has given his consent to the modification in accordance with paragraph (4)(b).]

**F3** Arts. 67, 67A-67I substituted (1.11.2005 for certain purposes, otherwise 6.4.2006) for art. 67 by Pensions (Northern Ireland) Order 2005 (S.I. 2005/255 (N.I. 1)), arts. 1(2), 239; S.R. 2005/411, art. 2(5), Sch. Pt. 2

### [<sup>F4</sup>The actuarial equivalence requirements

**67C.**—(1) References in the subsisting rights provisions to the actuarial equivalence requirements, in respect of a detrimental modification which is not a protected modification, are to be read in accordance with this Article and Article 67D.

- (2) The actuarial equivalence requirements apply in the case of an affected member only if—

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- (a) the modification is not a protected modification, and
  - (b) the trustees of the scheme determine that they are to apply in his case.
- (3) The actuarial equivalence requirements consist of—
- (a) the information requirement (see paragraph (4)),
  - (b) the actuarial value requirement (see paragraph (5)), and
  - (c) the actuarial equivalence statement requirement (see paragraph (6)).
- (4) The information requirement is satisfied in the case of an affected member if before the modification is made the trustees have taken all reasonable steps to—
- (a) give him information in writing adequate to explain the nature of the modification and its effect on him,
  - (b) notify him in writing that he may make representations to the trustees about the modification,
  - (c) afford him a reasonable opportunity to make such representations, and
  - (d) notify him in writing that the actuarial equivalence requirements apply in his case in respect of the modification.
- (5) The actuarial value requirement is satisfied in the case of an affected member if before the modification is made the trustees have made such arrangements, or taken such steps, as are adequate to secure that actuarial value will be maintained.
- (6) The actuarial equivalence statement requirement is satisfied in the case of an affected member if the trustees have, within a reasonable period beginning with the date on which the modification takes effect, obtained an actuarial equivalence statement relating to the affected member in respect of the modification.
- (7) For the purposes of paragraph (6) “actuarial equivalence statement” means a statement in writing which—
- (a) is given by—
    - (i) the actuary appointed in relation to the scheme under Article 47(1)(b), or
    - (ii) a person with prescribed qualifications or experience or who is approved by the Department, and
  - (b) certifies that actuarial value has been maintained.
- (8) For the purposes of paragraphs (5) and (7) as they apply in relation to an affected member, actuarial value is maintained if the actuarial value, immediately after the time at which the modification takes effect, of the affected member's subsisting rights is equal to or greater than the actuarial value of his subsisting rights immediately before that time.]

**F4** Arts. 67, 67A-67I substituted (1.11.2005 for certain purposes, otherwise 6.4.2006) for art. 67 by Pensions (Northern Ireland) Order 2005 (S.I. 2005/255 (N.I. 1)), arts. 1(2), 239; S.R. 2005/411, art. 2(5), Sch. Pt. 2

**[<sup>F5</sup>The actuarial equivalence requirements: further provisions**

**67D.**—(1) This Article applies for the purposes of Article 67C.

(2) Where—

- (a) the information requirement has been satisfied in the case of an affected member in respect of a proposed modification (“the original modification”),

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- (b) before the trustees have made a determination, or given their consent, for the purposes of Article 67E(1) in relation to the original modification, the original modification has been revised, and
- (c) the modification as so revised ( “the revised modification”) does not differ from the original modification in any material respect,

the information requirement is to be taken to have been satisfied in relation to the revised modification.

(3) The trustees are to be regarded as having taken all reasonable steps to notify an affected member as mentioned in Article 67C(4)(d) in respect of a modification if they have taken all reasonable steps to notify him in writing that—

- (a) if he gives his consent to the modification for the purposes of the consent requirements, those requirements apply in his case in respect of the modification, but
- (b) otherwise, the actuarial equivalence requirements apply in his case in respect of the modification.

(4) Any calculation for the purposes of Article 67C of the actuarial value of an affected member's subsisting rights at any time must conform with such requirements as may be prescribed.

(5) Requirements prescribed by regulations under paragraph (4) may include requirements for any such calculation to be made in accordance with guidance that<sup>[F6]</sup> is prepared and from time to time revised by a prescribed body.]

(6) Nothing in paragraphs (6) and (7) of Article 67C precludes actuarial equivalence statements relating to—

- (a) two or more affected members, or
- (b) affected members of any particular description,

in respect of a modification being given in a single document.]

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| <p><b>F5</b> Arts. 67, 67A-67I substituted (1.11.2005 for certain purposes, otherwise 6.4.2006) for art. 67 by Pensions (Northern Ireland) Order 2005 (S.I. 2005/255 (N.I. 1)), <b>arts. 1(2), 239</b>; S.R. 2005/411, art. 2(5), <b>Sch. Pt. 2</b></p> <p><b>F6</b> Words in art. 67D(5) substituted (29.2.2008) by Pensions Act (Northern Ireland) 2008 (c. 1), ss. 15, 21(1)(c), <b>Sch. 5 para. 5</b>; S.R. 2008/65, <b>art. 2(b)</b></p> |
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### <sup>[F7]</sup>The trustee approval requirement

**67E.—**(1) For the purposes of Article 67(2)(b), the trustee approval requirement is satisfied in relation to the exercise of a power to make a regulated modification if—

- (a) the trustees of the scheme have determined to exercise the power to make the modification, or
- (b) if the power is exercised by another person, the trustees have consented to the exercise of the power to make the modification,

and the making of the determination, or giving of consent, complies with paragraphs (2) and (3).

(2) The trustees must not make a determination, or give their consent, for the purposes of paragraph (1) unless, in the case of each affected member—

- (a) if the modification is a protected modification, the informed consent requirement is satisfied (within the meaning of Article 67B), or
- (b) if it is not a protected modification—
  - (i) the informed consent requirement is satisfied, or

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(ii) the information and actuarial value requirements are satisfied (within the meaning of Article 67C),

in respect of the modification.

(3) The trustees must not make a determination, or give their consent, for the purposes of paragraph (1) more than a reasonable period after the first consent given by an affected member under Article 67B(4)(b) in respect of the modification was given.]

**F7** Arts. 67, 67A-67I substituted (1.11.2005 for certain purposes, otherwise 6.4.2006) for art. 67 by Pensions (Northern Ireland) Order 2005 (S.I. 2005/255 (N.I. 1)), arts. 1(2), 239; S.R. 2005/411, art. 2(5), Sch. Pt. 2

### [<sup>F8</sup>The reporting requirement

**67F.**—(1) For the purposes of Article 67(2)(c), the reporting requirement is satisfied in relation to the exercise of a power to which the subsisting rights provisions apply to make a regulated modification if the trustees have, in accordance with paragraph (2)—

- (a) notified each affected member in whose case the consent requirements apply in respect of the modification, and
- (b) taken all reasonable steps to notify each affected member in whose case the actuarial equivalence requirements apply in respect of the modification,

that they have made a determination, or given their consent, for the purposes of Article 67E(1) in relation to the exercise of the power to make the modification.

(2) The trustees must give (or, where the actuarial equivalence requirements apply, take all reasonable steps to give) the notification—

- (a) within a reasonable period beginning with the date of the determination or giving of consent mentioned in paragraph (1), and
- (b) before the date on which the modification takes effect.]

**F8** Arts. 67, 67A-67I substituted (1.11.2005 for certain purposes, otherwise 6.4.2006) for art. 67 by Pensions (Northern Ireland) Order 2005 (S.I. 2005/255 (N.I. 1)), arts. 1(2), 239; S.R. 2005/411, art. 2(5), Sch. Pt. 2

### [<sup>F9</sup>Powers of the Authority: voidable modifications

**67G.**—(1) Paragraph (2) applies in relation to a regulated modification made in exercise of a power to which the subsisting rights provisions apply which is voidable by virtue of—

- (a) Article 67(2), or
- (b) Article 67H(3).

(2) The Authority may make an order declaring that paragraph (6) applies in relation to the regulated modification.

(3) An order under paragraph (2) relating to a regulated modification may also declare that paragraph (6) applies in relation to—

- (a) any other modification of the scheme made by the exercise of the power mentioned in paragraph (1), or
- (b) the grant of any rights under the scheme (whether by virtue of the attribution of notional periods as pensionable service or otherwise) in connection with the regulated modification.



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(4) An order under paragraph (2) relating to a regulated modification must specify the affected member or affected members or description of affected members in respect of whom paragraph (6) applies (“the specified persons”).

(5) An order under paragraph (2) relating to a regulated modification may also—

- (a) require the trustees to take, within the time specified in the order, such steps as are so specified for the purpose of giving effect to the order;
- (b) declare that paragraph (7) applies in relation to anything done by the trustees after the time at which the modification would, disregarding the order, have taken effect which—
  - (i) would not have contravened any provision of the scheme rules if the modification had taken effect at that time, but
  - (ii) as a result of the modification being void to any extent by virtue of the order, would (but for that paragraph) contravene such a provision.

This is without prejudice to Article 166(3).

(6) Where the Authority make an order declaring that this paragraph applies in relation to a modification of a scheme, or the grant of any rights under the scheme, the modification or grant is void to the extent specified in the order, and in respect of the specified persons, as from the time when it would, disregarding the order, have taken effect.

(7) Where, by virtue of paragraph (5)(b), the Authority make an order under paragraph (2) declaring that this paragraph applies in relation to anything done by the trustees, that thing is to be taken, for such purposes as are specified in the order, not to have contravened any provision of the trust deed or scheme rules.

(8) An order under paragraph (2) relating to a regulated modification, or other modification, of a scheme or the grant of any rights under the scheme may be made before or after the time at which the modification or grant would, disregarding the order, have taken effect.]

**F9** Arts. 67, 67A-67I substituted (1.11.2005 for certain purposes, otherwise 6.4.2006) for art. 67 by Pensions (Northern Ireland) Order 2005 (S.I. 2005/255 (N.I. 1)), arts. 1(2), 239; S.R. 2005/411, art. 2(5), Sch. Pt. 2

## [<sup>F10</sup>Powers of the Authority to intervene

**67H.**—(1) Paragraph (2) applies where the Authority have reasonable grounds to believe that a power to which the subsisting rights provisions apply—

- (a) will be exercised, or
- (b) has been exercised,

to make a regulated modification in circumstances where the modification will be voidable by virtue of Article 67(2).

(2) The Authority may by order—

- (a) in a case within paragraph (1)(a), direct the person on whom the power is conferred not to exercise the power to make the regulated modification;
- (b) require the trustees to take, within the time specified in the order, such steps as are so specified for the purpose of securing that any of the requirements mentioned in Article 67(2) is satisfied.

(3) A regulated modification made in exercise of a power to which the subsisting rights provisions apply is voidable in accordance with Article 67G if—

- (a) the exercise of the power contravened an order under sub-paragraph (a) of paragraph (2), or

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- (b) the trustees fail to comply with a requirement imposed by an order under sub-paragraph (b) of that paragraph relating to any exercise of the power to make the modification.]

**F10** Arts. 67, 67A-67I substituted (1.11.2005 for certain purposes, otherwise 6.4.2006) for art. 67 by Pensions (Northern Ireland) Order 2005 (S.I. 2005/255 (N.I. 1)), arts. 1(2), 239; S.R. 2005/411, art. 2(5), Sch. Pt. 2

### [<sup>F11</sup>Subsisting rights provisions: civil penalties

**67I.**—(1) Paragraphs (2) and (3) apply where a regulated modification is voidable by virtue of Article 67(2).

(2) Where the modification was made by the exercise of a power—

- (a) by the trustees of the scheme, or  
(b) by any other person in circumstances which do not fall within paragraph (3),

Article 10 applies to any trustee who has failed to take all reasonable steps to secure that the modification is not so voidable.

(3) Article 10 applies to any person other than the trustees of the scheme who, without reasonable excuse, exercises a power to make the modification if—

- (a) the trustees have not given their consent, for the purposes of Article 67E(1), to the exercise of the power to make the modification, or  
(b) in the case of any affected member, the timing requirement is not satisfied (within the meaning of Article 67B) in respect of the modification.

(4) Where the trustees fail to comply with any requirement imposed, by virtue of paragraph (5) (a) of Article 67G, by an order under paragraph (2) of that Article, Article 10 applies to any trustee who has failed to take all reasonable steps to secure such compliance.

(5) Where a regulated modification is made by the exercise of a power in contravention of an order under Article 67H(2)(a)—

- (a) if the power is exercised by the trustees, Article 10 applies to any trustee who has failed to take all reasonable steps to secure that the order was not contravened,  
(b) Article 10 applies to any other person who without reasonable excuse exercises the power in contravention of the order.

(6) Where the trustees fail to comply with any requirement specified in an order under Article 67H(2)(b), Article 10 applies to any trustee who has failed to take all reasonable steps to secure such compliance.]

**F11** Arts. 67, 67A-67I substituted (1.11.2005 for certain purposes, otherwise 6.4.2006) for art. 67 by Pensions (Northern Ireland) Order 2005 (S.I. 2005/255 (N.I. 1)), arts. 1(2), 239; S.R. 2005/411, art. 2(5), Sch. Pt. 2

### Power of trustees to modify schemes by resolution

**68.**—(1) The trustees of a trust scheme may by resolution modify the scheme with a view to achieving any of the purposes specified in paragraph (2).

(2) The purposes referred to in paragraph (1) are—

- (a) to extend the class of persons who may receive benefits under the scheme in respect of the death of a member of the scheme,

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- (b) to enable the scheme to conform with such arrangements as are required by<sup>[F12]</sup> Article 218 of the Pensions (Northern Ireland) Order 2005],
  - <sup>[F13]</sup>(c) to enable the scheme to comply with such terms and conditions as may be imposed by the Board of the Pension Protection Fund in relation to any payment made by it under Article 168 or 169 of the Pensions (Northern Ireland) Order 2005,]
  - (d) to enable the scheme to conform with Article 37(2), 76(2), 89 or 90,
  - <sup>[F14]</sup>(da) to enable the scheme to accommodate persons with pension credits or pension credit rights, and]
  - (e) prescribed purposes.
- (3) No modification may be made by virtue of paragraph (2)(a) without the consent of the employer.
- (4) Modifications made by virtue of paragraph (2)(b) may include in particular—
- (a) modification of any limit on the number of, or of any category of, trustees, or
  - (b) provision for the transfer or vesting of property.
- (5) Regulations may provide that this Article does not apply to trust schemes falling within a prescribed class or description.

<b>F12</b>	Words in art. 68(2)(b) substituted (6.4.2006) by <a href="#">Pensions (Northern Ireland) Order 2005 (S.I. 2005/255 (N.I. 1))</a> , arts. 1(2), 290(1), <b>Sch. 10 para. 50(a)</b> ; S.R. 2005/543, art. 2(6), <b>Sch. Pt. 6</b>
<b>F13</b>	<a href="#">2005 NI 1</a>
<b>F14</b>	<a href="#">1999 NI 11</a>

**Grounds for applying for modifications**

- 69.**—(1) The Authority may, on an application made to them by persons competent to do so, make an order in respect of an occupational pension scheme (other than a public service pension scheme)—
- (a) authorising the modification of the scheme with a view to achieving any of the purposes mentioned in paragraph (3), or
  - (b) modifying the scheme with a view to achieving any such purpose.
- (2) Regulations may make provision<sup>[F15]</sup>requiring applications under this Article to meet prescribed requirements].
- (3) The purposes referred to in paragraph (1) are—
- (a) <sup>F16</sup> .....
  - (b) in the case of <sup>[F17]</sup>a registered pension scheme under section 153 of the Finance Act 2004] which is being wound up, to enable assets remaining after the liabilities of the scheme have been fully discharged to be distributed to the employer, where prescribed requirements in relation to the distribution are satisfied, or
  - (c) to enable the scheme to be so treated during a prescribed period that an employment to which the scheme applies may be contracted-out employment by reference to it.
- (4) The persons competent to make an application under this Article are—
- (a) in the case of the purposes referred to in sub-paragraph<sup>F18</sup> . . . (b) of paragraph (3), the trustees of the scheme, and
  - (b) in the case of the purposes referred to in sub-paragraph (c) of that paragraph—
    - (i) the trustees or managers of the scheme,

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- (ii) the employer, or
  - (iii) any person other than the trustees or managers who has power to alter the rules of the scheme.
- (5) An order under paragraph (1)(a) must be framed—
- (a) if made with a view to achieving<sup>F19</sup> . . . the purposes referred to in<sup>F20</sup> paragraph (3)<sup>F21</sup> . . . (b), so as to confer the power of modification on the trustees, and
  - (b) if made with a view to achieving the purposes referred to in paragraph (3)(c), so as to confer the power of modification on such persons (who may include persons who were not parties to the application made to the Authority) as the Authority think appropriate.
- (6) Regulations may provide that in prescribed circumstances this Article does not apply to occupational pension schemes falling within a prescribed class or description or applies to them with prescribed modifications.

- F15** Words in art. 69(2) substituted (6.4.2006) by Pensions (Northern Ireland) Order 2005 (S.I. 2005/255 (N.I. 1)), arts. 1(2), 290(1), Sch. 10 para. 51(a); S.R. 2006/95, art. 2(c), Sch. Pt. 3
- F16** Art. 69(3)(a) repealed (6.4.2006) by Pensions (Northern Ireland) Order 2005 (S.I. 2005/255 (N.I. 1)), arts. 1(2), 290(1), 291, Sch. 10 para. 51(b), Sch. 11; S.R. 2006/95, art. 2(c), Sch. Pt. 3
- F17** Words in art. 69(3)(b) substituted (6.4.2006) by Taxation of Pension Schemes (Consequential Amendments) Order 2006 (S.I. 2006/745), art. 11(4)(b)
- F18** Words in art. 69(4)(a) repealed (6.4.2006) by Pensions (Northern Ireland) Order 2005 (S.I. 2005/255 (N.I. 1)), arts. 1(2), 290(1), 291, Sch. 10 para. 51(c), Sch. 11; S.R. 2006/95, art. 2(c), Sch. Pt. 3
- F19** Words in art. 69(5)(a) repealed (6.4.2006) by Pensions (Northern Ireland) Order 2005 (S.I. 2005/255 (N.I. 1)), arts. 1(2), 290(1), 291, Sch. 10 para. 51(d), Sch. 11; S.R. 2006/95, art. 2(c), Sch. Pt. 3
- F20** Words in art. 69(5)(a) substituted (prosp.) by virtue of Pensions (Northern Ireland) Order 1995 (S.I. 1995/255 (N.I. 1)), arts. 1(2), 290(1), Sch. 10 para. 51(d)
- F21** Words in art. 69(5)(a) repealed (6.4.2006) by Pensions (Northern Ireland) Order 2005 (S.I. 2005/255 (N.I. 1)), arts. 1(2), 291, Sch. 11; S.R. 2006/95, art. 2(c), Sch. Pt. 3

### Article 69: supplementary

**70.**—(1) The Authority may not make an order under Article 69 unless they are satisfied that the purposes for which the application for the order was made—

- (a) cannot be achieved otherwise than by means of such an order, or
- (b) can only be achieved in accordance with a procedure which—
  - (i) is liable to be unduly complex or protracted, or
  - (ii) involves the obtaining of consents which cannot be obtained, or can only be obtained with undue delay or difficulty.

(2) The extent of the Authority's powers to make such an order is not limited, in relation to any purposes for which they are exercisable, to the minimum necessary to achieve those purposes.

(3) The Authority may not make an order under Article 69 with a view to achieving the purpose referred to in paragraph (3)(c) of that Article unless they are satisfied that it is reasonable in all the circumstances to make it.

### Effect of orders under Article 69

**71.**—(1) An order under sub-paragraph (a) of paragraph (1) of Article 69 may enable those exercising any power conferred by the order to exercise it retrospectively (whether or not the power

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could otherwise be so exercised) and an order under sub-paragraph (b) of that paragraph may modify a scheme retrospectively.

(2) Any modification of a scheme made in pursuance of an order of the Authority under Article 69 is as effective in law as if it had been made under powers conferred by or under the scheme.

(3) An order under Article 69 may be made and complied with in relation to a scheme—

- (a) in spite of any enactment or rule of law, or any rule of the scheme, which would otherwise operate to prevent the modification being made, or
- (b) without regard to any such enactment, rule of law or rule of the scheme as 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 making of the modification.

(4) In this Article, “retrospectively” means with effect from a date before that on which the power is exercised or, as the case may be, the order is made.

**[F22]Modification by Authority to secure winding-up**

**71A.—**(1) The Authority may at any time while—

- (a) an occupational pension scheme is being wound up, and
- (b) the employer in relation to the scheme is subject to an insolvency procedure,

make an order modifying that scheme with a view to ensuring that it is properly wound up.

(2) The Authority shall not make such an order except on an application made to them, at a time such as is mentioned in paragraph (1), by the trustees or managers of the scheme.

(3) Except in so far as regulations otherwise provide, an application for the purposes of this Article must be made in writing.

(4) Regulations may make provision—

- (a) for the form and manner in which an application for the purposes of this Article is to be made to the Authority,
- (b) for the matters which are to be contained in such an application,
- (c) for the documents which must be attached to an application for the purposes of this Article or which must otherwise be delivered to the Authority with or in connection with any such application,
- (d) for persons to be required, [F23]before an application is made for the purposes of this Article], to give such notifications of the making of [F24]the application] as may be prescribed,
- (e) for the matters which are to be contained in a notification of such an application,
- (f) F25 .....
- (g) F25 .....

(5) The power of the Authority to make an order under this Article—

- (a) shall be limited to what they consider to be the minimum modification necessary to enable the scheme to be properly wound up, and
- (b) shall not include power to make any modification that would have a significant adverse effect on—
  - (i) the accrued rights of any member of the scheme, or
  - (ii) any person's entitlement under the scheme to receive any benefit.

(6) A modification of an occupational pension scheme by an order of the Authority under this Article shall be as effective in law as if—

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- (a) it had been made under powers conferred by or under the scheme,
  - (b) the modification made by the order were capable of being made in exercise of such powers notwithstanding any enactment, rule of law or rule of the scheme that would have prevented their exercise for the making of that modification, and
  - (c) the exercise of such powers for the making of that modification would not have been subject to any enactment, rule of law or rule of the scheme requiring the implementation of any procedure or the obtaining of any consent in connection with the making of a modification.
- (7) Regulations may provide that, in prescribed circumstances, this Article—
- (a) does not apply in the case of occupational pension schemes of a prescribed class or description, or
  - (b) in the case of occupational pension schemes of a prescribed class or description applies with prescribed modifications.
- (8) The times when an employer in relation to an occupational pension scheme shall be taken for the purposes of this Article to be subject to an insolvency procedure are—
- (a) in the case of a trust scheme, while Article 22 applies in relation to the scheme, and
  - (b) in the case of a scheme that is not a trust scheme, while Article 22 would apply in relation to the scheme if it were a trust scheme,

and for the purposes of this paragraph no account shall be taken of modifications or exclusions contained in any regulations under Article 115.

(9) The Authority shall not be entitled to make an order under this Article in relation to a public service pension scheme.]

**F22** 2000 c. 4 (NI)

**F23** Words in art. 71A(4)(d) substituted (6.4.2006) by Pensions (Northern Ireland) Order 2005 (S.I. 2005/255 (N.I. 1)), arts. 1(2), 290(1), Sch. 10 para. 52(a); S.R. 2006/95, art. 2(c), Sch. Pt. 3

**F24** Words in art. 71A(4)(d) substituted (6.4.2006) by Pensions (Northern Ireland) Order 2005 (S.I. 2005/255 (N.I. 1)), arts. 1(2), 290(1), Sch. 10 para. 52(b); S.R. 2006/95, art. 2(c), Sch. Pt. 3

**F25** Art. 71A(4)(f)(g) repealed (6.4.2006) by Pensions (Northern Ireland) Order 2005 (S.I. 2005/255 (N.I. 1)), arts. 1(2), 291, Sch. 11; S.R. 2006/95, art. 2(c), Sch. Pt. 3

### Modification of public service pension schemes

**72.—**(1) The appropriate authority may make such provision for the modification of a public service pension scheme as could be made in respect of a scheme, other than a public service pension scheme, by an order of the Authority under Article 69(1)(b).

(2) In this Article, “the appropriate authority”, in relation to a scheme, means such Minister of the Crown or government department as may be designated by the Treasury or the Department of Finance and Personnel as having responsibility for the particular scheme.

(3) The powers of the appropriate authority under this Article are exercisable by means of an order—

- (a) directly modifying the scheme (without regard, in the case of a scheme contained in or made under powers conferred by an enactment, to the terms of the enactment or any of its restrictions), or
- (b) modifying an enactment under which the scheme was made or by virtue of which it has effect.

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(4) Any such order may adapt, amend or repeal any such enactment as is referred to in paragraph (3)(a) or(b) as the appropriate authority thinks appropriate.

**Status:**

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**Changes to legislation:**

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