STATUTORY RULES OF NORTHERN IRELAND

2000 No. 262

The Stakeholder Pension Schemes Regulations (Northern Ireland) 2000

Part II

Conditions Applying to Stakeholder Pension Schemes

Manner of establishment

2.—(1) A stakeholder pension scheme may (where not established under a trust) be established by means of one or more instruments in writing which provide for one or more contracts to be entered into between the manager of the scheme and each member of the scheme, or a person acting on the member's behalf.

(2) The manager of the scheme must be a person who is mentioned in section 632(1) of the Taxes Act(**1**) (establishment of schemes approved as personal pension schemes under Chapter IV of Part XIV of that Act).

Requirements applying to all stakeholder pension schemes as regards instruments establishing such schemes

3.—(1) Subject to paragraph (2), the instruments establishing a stakeholder pension scheme (the "scheme instruments") must prohibit the acceptance of contributions, transfer payments and pension credits to the scheme before 6th April 2001.

(2) Paragraph (1) shall not apply to a scheme in respect of which an application for registration under Article 4 (registration of stakeholder pension schemes) is first made on or after 6th April 2001.

(3) The scheme instruments must require that no member is required to make any choice as regards the investment under the scheme of any payment made to it by him or on his behalf, any amount credited to the member's account in respect of a credit within the meaning of Article 26 (pension sharing: creation of pension debits and credits), or any income or capital gain arising from the investment of such a payment or credit.

(4) The scheme instruments must, except to the extent permitted under regulations 13 and 14 prohibit the use of—

(a) any payment made to the scheme by or on behalf of a member;

(b) any amount credited to a member's account in respect of a credit within the meaning of Article 26;

(c) any income or capital gain arising from the investment of such a payment or credit, or

(d) the value of his rights under the scheme,

in any way which does not result in the provision of benefits for, or in respect of, the member.

(**1**) Relevant amending instruments are S.I. 1988/993 and S.I. 1997/2388

(5) The scheme instruments must require that—

(a) if the scheme ceases to be registered under Article 4 the winding up of the scheme be commenced on the date on which it is notified in writing by the Authority that it is no longer so registered;

(b) if the trustees or manager fix a time for winding up a scheme for any reason other than because the scheme ceases to be registered under Article 4, the winding up of the scheme be commenced at the earliest time fixed by the trustees or manager as the time from which steps for the purposes of winding up are to be taken;

(c) within 2 weeks of the date of commencement of any winding up, the trustees or manager notify in writing any employers whom they know to have designated the scheme for the purposes of Article 5 (duty of employers to facilitate access to stakeholder pension schemes) of the fact of, and the reason for, the winding up including, where the scheme has ceased to be registered under Article 4, the reason for the cessation of registration;

(d) any contributions made to a scheme after the date of commencement of any winding up must be repaid—

(i) to the member, to the extent of his contributions, and

(ii) as to the remainder, to his employer;

(e) subject to paragraphs (8) and (9), on any winding up all rights under the scheme be discharged by the trustees or manager of the scheme within 12 months of the commencement of winding up or, as soon thereafter as is practicable, by the making of transfer payments—

(i) to other stakeholder pension schemes, or schemes registered under section 2 of the 1999 Act, or

(ii) in accordance with requests by one or more members or beneficiaries in respect of their rights, to the trustees or managers of pension schemes or pension arrangements which are not schemes mentioned in head (i),

in accordance with paragraphs (6) and (7) and regulation 6 or, where regulation 7 applies, with regulation 7, and

(f) if the scheme fails to complete winding up within 12 months of commencing winding up proceedings, the trustees or manager notify the Authority of that fact within one month of so failing to complete the winding up.

(6) A transfer payment referred to in paragraph (5)(*e*) must be of an amount not less than the cash equivalent of the member's rights under the scheme, as calculated and verified in a manner consistent with regulations made under section 93(**2**) (calculation of cash equivalents) on the date on which the payment is made.

(7) Where the member's rights include any protected rights within the meaning of section 6(**3**) (protected rights and money purchase benefits), the scheme must provide for any transfer payments to be made subject to the requirements of section 24(**4**) (ways of giving effect to protected rights).

(8) Paragraph (5)(*e*) does not apply to rights to which effect is given under the scheme by the payment of an annuity (not being a deferred annuity) or a lump sum either to the member or, on or after his death, to another person.

(**2**) Section 93 was amended by paragraph 6 of Schedule 4 to the Pensions (Northern Ireland) Order 1995

(**3**) Section 6 was amended by paragraph 18 of Schedule 3 to the Pensions (Northern Ireland) Order 1995 and paragraph 39 of Schedule 1 to the Social Security Contributions (Transfer of Functions, etc.) (Northern Ireland) Order 1999 and is amended by Article 29(2) of the Welfare Reform and Pensions (Northern Ireland) Order 1999

(**4**) Section 24 was amended by Articles 139 and 143(2) of, and paragraph 27 of Schedule 3 to, the Pensions (Northern Ireland) Order 1995

(9) For the purposes of paragraph (8) a deferred annuity is an annuity under the terms of which payment does not commence immediately but at a time in the future.

Additional requirements as regards instruments establishing a stakeholder pension scheme established under a trust

4.—(1) Subject to paragraph (2) and to regulation 17(1), except in so far as is necessary to ensure that the scheme has tax-exemption or tax-approval, the instruments establishing a stakeholder pension scheme established under a trust (the "trust instruments") must preclude any restriction on membership of the scheme by reference to financial status, the amount of contributions to be made to the scheme or the manner in which contributions may be made to the scheme.

(2) Paragraph (1) shall not preclude any restrictions on—

(a) membership by reference to employment with a particular employer or in a particular trade or profession or by reference to membership of a particular organisation, or

(b) the payment of contributions by means of cash or a credit card.

(3) The trust instruments must require that—

(a) unless sub-paragraph (*b*) applies, at least one trustee and at least one-third of the total number of trustees is neither connected with nor an associate of any person providing services to or otherwise managing the scheme (other than as a trustee);

(b) where a company is trustee of the scheme and there is no trustee of the scheme who is not a company, at least one of the directors of the company and at least one-third of the total number of its directors is neither connected with nor an associate of any person providing services to or otherwise managing the scheme (other than as a trustee).

(4) The trust instruments must not—

(a) enable any of the provisions required by regulation 3 or by this regulation to be modified or disapplied;

(b) have a condition that the trustees must obtain the consent of any person before making any decision about investments for the purposes of the scheme, or

(c) except in so far as otherwise required by or under any statutory provision, preclude the trustees from amending the trust instruments to provide for different investments to be held for the purposes of the scheme.

Additional requirements as regards instruments establishing a stakeholder pension scheme not established under a trust

5.—(1) Subject to paragraph (2) and regulation 17(1), except in so far as is necessary to ensure that the scheme has tax-exemption or tax-approval, the instruments establishing a stakeholder pension scheme established otherwise than under a trust must preclude any restriction on membership of the scheme by reference to—

(a) employment with a particular employer, or in a particular trade or profession or by reference to membership of a particular organisation, or

(b) financial status, the amount of contributions to be made to the scheme or the manner in which contributions may be made to the scheme.

(2) Paragraph (1) shall not preclude any restrictions on paying contributions by means of cash or a credit card.

Procedure for discharging rights on winding up

6.—(1) The scheme instruments must require that, where the winding up of a stakeholder pension scheme has commenced, the trustees or manager must, except in cases where regulation 7 applies, make transfer payments in respect of members' rights in accordance with the procedure set out in paragraphs (2) to (9).

(2) The trustees or manager shall no later than 4 months after the commencement of winding up give notice to each member stating—

(a) that they propose to make a transfer payment in respect of his rights under the scheme to their choice of a stakeholder pension scheme or a scheme registered under section 2 of the 1999 Act, that scheme to be named in the notice, unless the member applies for a transfer payment to be made to a pension scheme or pension arrangement of his choice;

(b) the value of the member's rights at the date that the scheme commenced winding up, being an amount not less than the cash equivalent of those rights on that date, as calculated and verified in a manner consistent with regulations made under section 93, and

(c) that, unless the member applies within 4 months of the date of the notice for a transfer payment to be made to a pension scheme or pension arrangement of his choice, a transfer payment may be made without his consent to the scheme named in the notice as the scheme of the trustees' or manager's choice.

(3) If any member makes an application for a transfer payment to be made to a pension scheme or pension arrangement of his choice (whether or not the application is made under section 91(**5**) (ways of taking right to cash equivalent)) the trustees or manager shall, unless paragraph (4) applies, do what is needed to carry out what the member requires within one month of receiving the member's application.

(4) This paragraph applies where—

(a) it is not possible for the trustees or manager to do what is needed to carry out what the member requires within 12 months of the date of commencement of winding up;

(b) it would contravene the terms of the scheme's tax-approval or tax-exemption, or any provision of the scheme required to be included as a condition of any such approval or exemption, were the trustees or manager to do what is needed to carry out what the member requires, or

(c) the member withdraws his application before the trustees have or the manager has done what is needed to carry out what he requires.

(5) Where paragraph (4)(*a*) or (*b*) applies in relation to the first application made by the member as is mentioned in paragraph (3), the trustees or manager shall as soon as practicable give notice to the member stating—

(a) that they cannot carry out what he requires and the reasons why not;

(b) that if he does not make a further application such as is mentioned in paragraph (3) they propose to make a transfer payment in respect of his rights as set out in the notice given in accordance with paragraph (2), and

(c) that, unless he makes such further application within one month of the date of the notice given in accordance with this paragraph, such a transfer payment may be made without his consent.

(6) In any case where—

(**5**) Section 91 was amended by paragraph 5 of Schedule 4 to the Pensions (Northern Ireland) Order 1995

(a) the trustees do not or the manager does not receive any such application as is mentioned in paragraph (3) within 4 months of the date of the notice given in accordance with paragraph (2);

(b) the member withdraws his application and no further such application by him is received by the trustees or manager within one month of the date of his withdrawing the application, or

(c) paragraph (4)(*a*) or (*b*) applied in respect of the first such application made by the member and—

(i) the trustees or manager, having given notice to the member in the terms set out in paragraph (5), do not receive any such further application as is mentioned in that paragraph within one month of the date of the notice, or

(ii) the trustees or manager, having given such notice, have received a further application such as is mentioned in paragraph (5) within one month of that date but paragraph (4) applies in respect of that further application,

the trustees or manager may make a transfer payment in respect of the member's rights to the pension scheme named in the notice mentioned in paragraph (2) as the scheme of their choice.

(7) The trustees or manager shall, within one month of making a transfer payment under paragraph (3) or (6), give notice to the member stating the amount of the payment, the name and address of the scheme to which it has been made and the date on which it was made.

(8) A notice given under this regulation shall be in writing and may be sent to the member's last known address.

(9) For the purposes of this regulation "member" includes "beneficiary".

Procedure for discharging on winding up rights of members with whom the trustees or manager have lost contact

7.—(1) This regulation applies in respect of any member whose address for the time being is not known to the trustees or manager and in respect of whom—

(a) correspondence sent by them to the member at his last address known to them has been returned undelivered, and

(b) no contribution has been made to the scheme by him or on his behalf during the 2 years preceding the commencement of winding up of the scheme.

(2) In cases where this regulation applies, the trustees or manager shall on the winding up of the scheme make a transfer payment in respect of the member's rights to their choice of a stakeholder pension scheme, or to a scheme registered under section 2 of the 1999 Act and need give no notice of the transfer payment to the member either before or after it is made.

Requirement applying to all stakeholder pension schemes as regards investments

8.—(1) For the purposes of Article 3(1)(*b*) (meaning of "stakeholder pension scheme"), it shall be a condition of a scheme being a stakeholder pension scheme that the requirements of this regulation are complied with.

(2) Except where monies are held temporarily on deposit in the course of dealing in assets for the purposes of the scheme, the trustees or manager must ensure that there is derived, from any part of the funds of the scheme that are held on deposit, a return accruing on a daily basis that is, net of any fees or charges, not less than the base rate minus 2 per cent. per annum.

(3) Where the base rate is increased, paragraph (2) shall apply as if the reference to the base rate in that paragraph were—

(a) within one calendar month of the date of the increase, a reference to the base rate immediately before the increase, and

(b) after that calendar month has elapsed, a reference to the base rate as increased.

(4) The trustees or manager shall not have scheme assets that are represented by units or shares in a collective investment scheme (within the meaning of section 75 of the Financial Services Act 1986(**6**) (interpretation: definition of "collective investment scheme")) unless it is a requirement of the collective investment scheme that the purchase and sale price of those units or shares shall, at any given time, not differ from each other.

(5) The trustees or manager shall not have scheme assets that are represented by rights under a contract of insurance which are expressed as units or shares in funds held by the insurance company unless it is a requirement of the contract of insurance that the purchase and sale price of those units or shares shall, at any given time, not differ from each other.

(6) In this regulation—

"base rate" means the rate for the time being quoted by the reference banks as applicable to sterling deposits or, where there is for the time being more than one such base rate, the rate which, when the base rate quoted by each bank is ranked in a descending sequence of seven, is fourth in the sequence;

"contract of insurance" means a pension fund management contract within Part VII of Schedule 1 to the Insurance Companies Act 1982 (classes of long term business) carried out by a person authorised to do so under that Act;

"deposit" has the meaning given to it in section 5 of the Banking Act 1987(**7**);

"reference banks" means the seven largest institutions for the time being which——

(a) are authorised by the Financial Services Authority under the Banking Act 1987(**8**);

(b) are incorporated in the United Kingdom and carrying on within it a deposit-taking business (as defined in section 6, but subject to any order under section 7, of that Act)(**9**), and

(c) quote a base rate applicable to sterling deposits,

and for the purpose of this definition the size of an institution at any time is to be determined by reference to the gross assets denominated in sterling of that institution, together with any subsidiary (as defined in Article 4 of the Companies (Northern Ireland) Order 1986(**10**), as shown in the audited end of year accounts last published before that time.

Requirement for statement of investment principles for schemes not established under a trust

9.—(1) Subject to paragraph (2), for the purposes of Article 3(1)(*b*), it shall be a condition of a scheme being a stakeholder pension scheme that the requirements of this regulation are complied with.

(2) This regulation does not apply to a scheme established under a trust.

(3) The manager of the scheme must secure that there is prepared, maintained and from time to time revised a written statement of the principles governing decisions about investments for the purposes of the scheme.

(**6**) 1986 c. 60; relevant amending instruments are S.I. 1988/803, S.I. 1990/349, S.I. 1995/3275, S.I. 1996/2996 and S.I. 1997/32
(**7**) 1987 c. 22
(**8**) 1987 c. 22; as amended by the Bank of England Act 1998 (c. 11)
(**9**) Section 7 was amended by paragraph 4 of Schedule 5 to the Bank of England Act 1998
(**10**) S.I. 1986/1032 (N.I. 6); Articles 4 and 4A were substituted for Article 4 by Article 62(1) of the Companies (No. 2) (Northern Ireland) Order 1990 (S.I. 1990/1504 (N.I. 10))

(4) The statement must cover the managers' policy about the following matters—

(a) the kinds of investments to be held;

(b) the balance between different kinds of investments;

(c) risk;

(d) the expected return on investments;

(e) the realisation of investments;

(f) the extent (if at all) to which social, environmental or ethical considerations are taken into account in the selection, retention and realisation of investments, and

(g) the exercise of the rights (including voting rights) attaching to investments.

(5) Subject to paragraph (6), where a copy of the latest statement mentioned in paragraph (3) is requested by a member, the statement shall, within 2 months of the request, be furnished to that member either—

(a) free of charge, or

(b) where a charge is made, at an amount that does not exceed the expense incurred in copying, posting and packing the statement.

(6) A copy of the statement mentioned in paragraph (3) need not be furnished to the same person within 12 months of the person being given such a copy unless the statement has changed during that 12 month period.

(7) In this regulation "member" includes "beneficiary".

Requirement for manager of schemes not established under a trust to have regard to certain matters, and to take advice, relating to investment

10.—(1) Subject to paragraph (2), for the purposes of Article 3(1)(*b*), it shall be a condition of a scheme being a stakeholder pension scheme that the requirements of this regulation are complied with.

(2) This regulation does not apply to a scheme established under a trust.

(3) The manager of the scheme, and any person managing funds held for the purposes of the scheme, must, in investing such funds or in selecting investment options offered to members of the scheme have regard to—

(a) the need for diversification of investments, in so far as appropriate to the circumstances of the scheme, and

(b) the suitability for the purposes of the scheme of any investment or investment option proposed.

(4) The manager of the scheme, and any person managing funds held for the purposes of the scheme, must, before making any investment or selecting any investment option for the purposes of the scheme, obtain and consider proper advice as to whether the investment is satisfactory having regard to the matters mentioned in paragraph (3) and the principles contained in the statement under regulation 9.

(5) For the purposes of paragraph (4), "proper advice" shall mean—

(a) where giving the advice constitutes carrying on investment business in the United Kingdom within the meaning of the Financial Services Act 1986(**11**), advice—

(i) given by a person authorised under Chapter III of Part I of that Act;

(**11**) Section 1 defines 'investment business' as the business of engaging in one or more of the activities falling within Part II of Schedule 1 to that Act if that business is not excluded by Part III of that Schedule

(ii) given by a person exempted under Chapter IV of that Part who, in giving the advice, is acting in the course of the business in respect of which he is exempt;

(iii) given by a person where, by virtue of paragraph 27 of Schedule 1 to that Act(**12**), paragraph 15 of that Schedule does not apply to the giving of the advice, or

(iv) given by a person who, by virtue of regulation 5 of the Banking Coordination (Second Council Directive) Regulations 1992(**13**), may give the advice though not authorised as mentioned in head (i);

(b) in any other case, the advice of a person whom the manager or person managing funds held for the purposes of the scheme reasonably believes to be qualified by his ability in, and practical experience of, financial matters and to have the appropriate knowledge and experience of the management of the investments of pension schemes.

(6) Paragraph (4) does not apply to the extent that the manager or the person managing the scheme's funds is a person who may himself give proper advice.

(7) To the extent that paragraph (4) is disapplied by virtue of paragraph (6), the manager or person managing the scheme's funds, being persons who may themselves give proper advice, must, before making any investment or selecting any investment option for the purposes of the scheme, consider whether the investment is satisfactory having regard to the matters mentioned in paragraph (3) and the principles contained in the statement under regulation 9, and must record in writing the reasons why they consider that any investment made or investment option chosen is satisfactory having regard to those matters.

(8) No person shall be treated as having complied with paragraph (4) unless the advice mentioned in that paragraph is given or confirmed in writing.

Requirement for manager of schemes not established under a trust to appoint a reporting accountant

11.—(1) Subject to paragraph (2), for the purposes of Article 3(1)(*b*), it shall be a condition of a scheme being a stakeholder pension scheme that the requirements of this regulation are complied with.

(2) This regulation does not apply to a scheme established under a trust.

(3) There shall be a person appointed by the manager of the scheme as reporting accountant for the scheme ("the reporting accountant").

(4) A person shall not be appointed as the reporting accountant where—

(a) he is a member of the scheme, or

(b) he is connected with or an associate of the manager of the scheme.

(5) The reporting accountant shall be appointed in writing and the notice of appointment shall specify—

(a) the date on which the appointment is due to take effect;

(b) to whom the reporting accountant is to report, and

(c) from whom the reporting accountant is to take instructions.

(6) The manager shall procure from the reporting accountant within one month of his receiving his notice of appointment a statement—

(a) acknowledging in writing his receipt of his notice of appointment, and

(**12**) Paragraph 27 was amended by Article 10 of S.I. 1996/2958 and Article 2(4) of S.I. 1996/1322

(**13**) S.I. 1992/3218; regulation 5 was amended by regulation 2(*e*) and (*f*) of S.I. 1993/3225 and paragraph 3 of Schedule 9 to S.I. 1995/3275

(b) confirming in writing that he will notify the manager of any conflict of interest to which he is subject in relation to the scheme immediately he becomes aware of its existence.

(7) It shall be a condition of the appointment of the reporting accountant that he agrees, in the event of his resignation to serve on the manager a written notice of resignation containing—

(i) a statement specifying any circumstances connected with the resignation which in his opinion significantly affect the interests of the members or prospective members of, or of beneficiaries under, the scheme, or

(ii) a declaration that he knows of no such circumstances.

(8) Where the reporting accountant is removed by the manager or resigns or dies, the manager shall appoint another reporting accountant within 3 months from the date of the removal, resignation or death.

Requirement for annual declaration

12.—(1) For the purposes of Article 3(1)(*b*), it shall be a condition of a scheme being a stakeholder pension scheme that the requirements of this regulation are complied with.

(2) The trustees or manager of the scheme shall, at least once a year, make a declaration in writing signed by the trustees or manager containing the following statements in relation to the period of 12 months ending on a date not earlier than 3 months prior to the date of the declaration—

(a) that regulations 13 and 14 have been complied with in relation to the scheme;

(b) that the scheme's systems and controls are designed and used in a way that ensures that transactions in securities, property or other assets occur at a fair market value;

(c) that the scheme's system of determining the value of members' rights are designed and used in a way that ensures that the value of members' rights has been determined in accordance with the provisions in the instruments establishing the scheme, and

(d) that adequate accounts and records have been maintained for the purposes of providing to members the statement required by regulation 18(2).

(3) The declaration mentioned in paragraph (2) shall also contain a statement which—

(a) explains that regulations 13 and 14 impose limits on the amount of charges which may be made by a stakeholder pension scheme and on the manner in which charges may be made by such a scheme, and

(b) explains that regulation 18(2) requires a stakeholder pension scheme to provide an annual benefit statement to each member.

(4) In the case of a scheme established under a trust, the trustees shall, within 3 months of the date of the declaration, obtain from the scheme auditor appointed by virtue of Article 47(1) of the 1995 Order (professional advisers) or the reporting accountant—

(a) a statement whether, in the auditor's or reporting accountant's opinion, it was or was not unreasonable for the trustees to make the statements contained in the declaration, or

(b) to the extent that the auditor or the reporting accountant is unable to express such an opinion, an explanation of why he is unable to do so.

(5) In the case of a scheme not established under a trust, the manager shall, within 3 months of the date of the declaration obtain from the reporting accountant—

(a) a statement whether, in the opinion of the reporting accountant, it was or was not unreasonable for the manager to make the statements contained in the declaration, or

(b) to the extent that the reporting accountant is unable to express such an opinion, an explanation of why he is unable to do so.

(6) The trustees or manager shall annex to the declaration mentioned in paragraph (2) the statement obtained in accordance with paragraph (4) or (5).

(7) The trustees or manager shall make available to members and beneficiaries of the scheme on request the declaration mentioned in paragraph (2) annexing the statement obtained in accordance with paragraph (4) or (5).

Expenses, commission etc.—principles

13.—(1) Except to the extent permitted by regulation 14—

(a) no payment made to a stakeholder pension scheme by, or on behalf of, any member;

(b) no income or capital gain arising from the investment of such a payment;

(c) no amount credited to a member's account in respect of a credit within the meaning of Article 26, and

(d) no amount representing the value of any rights of a member under the scheme,

shall be used in any way which does not result in the provision of benefits for or in respect of members.

(2) Paragraph (1) does not apply—

(a) to the extent that Article 28 (pension sharing: reduction of benefit), or any enactment in force in Great Britain corresponding to that Article, applies to reduce the benefits or future benefits to which a member may be entitled under the scheme, or

(b) to prevent the trustees or manager of a scheme from complying with their obligations under an order made by a court—

(i) under Article 25 of the Matrimonial Causes (Northern Ireland) Order 1978(**14**) (financial provision in connection with divorce proceedings, etc.) by virtue of Article 27B or 27C of that Order(**15**) (powers to include provision about pensions);

(ii) under section 23 of the Matrimonial Causes Act 1973(**16**) (financial provision in connection with divorce proceedings, etc.) by virtue of section 25B or 25C of that Act(**17**) (powers to include provision about pensions) (England and Wales powers corresponding to Articles 27B and 27C of the Matrimonial Causes (Northern Ireland) Order 1978), or

(iii) under section 12A(2) or (3) of the Family Law (Scotland) Act 1985(**18**) (powers in relation to pensions lump sums when making a capital sum order).

(3) In this regulation and in regulation 14 "member" includes "beneficiary".

Charges, etc.—permitted reductions in members' rights

14.—(1) The value of a member's rights under the scheme may be reduced in the circumstances, and to the extent, set out in paragraphs (2) to (5).

(2) To the extent that a member's rights are represented by a fund allocated to him to the exclusion of other members, the value of those rights may be reduced by the making of deductions from that

(**14**) S.I. 1978/1045 (N.I. 15)
(**15**) Articles 27B and 27C were inserted by Article 162(1) of the Pensions (Northern Ireland) Order 1995 and are amended by paragraphs 1 and 2 respectively of Schedule 4 to the Welfare Reform and Pensions (Northern Ireland) Order 1999
(**16**) 1973 c. 18
(**17**) Sections 25B and 25C were inserted by section 166 of the Pensions Act 1995 and are amended by paragraphs 1 and 2 of Schedule 4 to the Welfare Reform and Pensions Act 1999
(**18**) 1985 c. 37; section 12A was inserted by section 167(3) of the Pensions Act 1995 and is amended by paragraph 9 of Schedule 12 to the Welfare Reform and Pensions Act 1999

fund no greater than 1/365 per cent. of its value for each day on which it is held for the purposes of the scheme.

(3) To the extent that a member's rights are represented by a share of funds held for the purposes of the scheme, the amount of that share not being determined by reference to a discretion exercisable by any person, the value of those rights may be reduced by the making of deductions from that share no greater than 1/365 per cent. of its value for each day on which it is so held.

(4) To the extent that a member's rights are represented by rights in a with-profits fund, the value of those rights may be reduced by the making of deductions from the with-profits fund no greater than 1/365 per cent. of the value of the member's rights in the fund for each day on which it is held for the purposes of the scheme.

(5) The value of a member's rights under the scheme may be reduced—

(a) where administrative expenses are incurred by the trustees or manager in—

(i) the purchase or provision of an annuity for the member in accordance with the scheme, or

(ii) the making of payments of income (otherwise than by way of an annuity) to a member under arrangements made in accordance with the scheme,

by the amount of those expenses;

(b) by such amount, and in such manner, as is permitted by regulations under Article 22 (charges by pension arrangements in relation to earmarking orders) or 38 (charges in respect of pension sharing costs);

(c) where any stamp duty or other charges are incurred directly in the sale or purchase of securities or property held for the purposes of the scheme, by the amount of such of those charges as are attributable to the member's rights;

(d) where the member is the transferor for the purposes of Article 26 (pension sharing: creation of pension debits and credits), by the amount of any payment made to discharge the liability of the trustees or manager in respect of a credit within the meaning of that Article;

(e) by the amount of any payment made for the purpose of returning excessive contributions made in relation to the member, in accordance with the arrangements that the scheme must have in order to be approved under Chapter IV of Part XIV of the Taxes Act (pension schemes, social security benefits, life annuities, etc), and

(f) by the amount required to discharge any monetary obligation due from the member to the scheme which—

(i) arises out of a criminal, negligent or fraudulent act or omission by him, or

(ii) in the case of a trust scheme of which the person in question is a trustee, arises out of breach of trust by him,

and which is either not in dispute or, if there is a dispute, where the obligation in question has become enforceable under an order of a competent court or in consequence of an award of an arbitrator.

(6) When calculating the value of a member's rights for the purposes of paragraphs (2) to (4), where the trustees or manager have specified under paragraph (7) that such rights are to be valued weekly or monthly—

(a) where the rights are to be valued weekly, they are to be valued on such day of the week ("the specified day") as has been so specified by the trustees or manager (except that, where that day is not a working day, the rights are to be valued on the next working day), and the value of the rights on each subsequent day prior to the next specified day is to be taken to be the value of the rights on the previous specified day, and

(b) where the rights are to be valued monthly, they are to be valued on such date in each month ("the specified date") as has been so specified by the trustees or manager (except that, where that date is not a working day, the rights are to be valued on the next working day), and the value of the rights on each subsequent day prior to the next specified date is to be taken to be the value of the rights on the previous specified date.

(7) For the purposes of paragraph (6)—

(a) the frequency, which must be daily, weekly or monthly, with which rights are to be valued, and

(b) where valuation is to take place weekly or monthly, the day of the week or, as the case may be, the date in the month on which it is to take place,

must be specified in writing by the trustees or manager of the scheme; and the specification may not be amended during the period of 12 months after the date on which it is made.

(8) Where the value of any member's rights is reduced by reference to an amount of charges referred to in paragraph (5)(*c*), then, for the purposes of calculating any reduction under paragraph (2), (3) or (4), the funds held by the scheme are to be calculated after the deduction of any such amount.

Requirement for trustees or manager to satisfy certain conditions in relation to with-profits funds

15.—(1) Where all or any of a stakeholder pension scheme's assets are invested in a with-profits fund it shall, for the purposes of Article 3(1)(*b*), be a condition of the scheme being a stakeholder pension scheme that the requirements of this regulation are complied with.

(2) A stakeholder pension scheme shall not invest any assets in a with-profits fund that includes non-stakeholder pension scheme assets.

(3) Prior to entering into any agreement whereby any assets of the scheme will be invested in a with-profits fund, the trustees or manager of that scheme shall take such steps as are necessary to ensure that they obtain a written contract from the insurance company maintaining the with-profits fund which provides that the insurance company will, in respect of any period that the stakeholder pension scheme has assets invested in the with-profits fund—

(a) provide such information to the trustees or manager of the stakeholder pension scheme as is necessary to allow the trustees or manager to operate in compliance with the requirements of regulations 13 and 14;

(b) ensure that members of the stakeholder pension scheme will not be treated less favourably than any other members of stakeholder pension schemes who may have assets invested in the with-profits fund;

(c) provide to the trustees or manager of the stakeholder pension scheme any certificates from the auditor and actuary to the company that are necessary to allow the stakeholder pension scheme's auditor or reporting accountant to certify that the requirements of regulations 13 and 14 have been complied with;

(d) ensure that no investments are made in the fund other than the investment of stakeholder pension scheme assets, and

(e) take such steps as are necessary to comply with paragraph (4).

(4) The insurance company must, at least annually, provide the trustees or manager of the stakeholder pension scheme with a certificate from the auditor to the insurance company or the appointed actuary certifying that the insurance company has systems and controls that are designed and used so that—

(a) proper accounting records are maintained in respect of all income and expenditure relevant to regulations 13 and 14 and the terms of the contract referred to in paragraph (3);

(b) the records referred to in sub-paragraph (*a*) are provided at least annually to the auditor or reporting accountant, as the case may be, of the scheme;

(c) no expenditure is charged to the with-profits fund where that expenditure would be contrary to the requirements of regulations 13 and 14, and

(d) the terms of the contract referred to in paragraph (3) have been complied with.

(5) Where the insurance company does not comply with the agreement referred to in paragraph (3), the trustees or manager must take such steps as are necessary to ensure that the insurance company does so comply.

(6) In this regulation "appointed actuary" means a person appointed as actuary to the person responsible for managing the with-profits fund in which assets of the stakeholder pension scheme are invested.

Requirements as regards the provision of the other services

16. For the purposes of Article 3(1)(*b*), it shall be a condition of a scheme being a stakeholder pension scheme that—

(a) the scheme does not provide any service other than the management of the scheme and its funds unless—

(i) any such service is provided under a contract separate from any contract of membership of the scheme, is provided free of charge or is consistent with regulations 13 and 14, and

(ii) any contract for such service is in writing and sets out the amount of any charge for the service and the terms on which it is to be paid, and

(b) it is not a condition of membership of the scheme that any person enter into any contract, whether with the trustees or manager of the scheme or any other person, other than the contract of membership of the scheme.

Restrictions on contributions

17.—(1) Subject to paragraph (2), the rules of a stakeholder pension scheme may permit the trustees or manager to refuse to accept a payment to the scheme of less than £20.

(2) Paragraph (1) does not permit the trustees or manager to refuse to accept any payment made to the scheme by the Inland Revenue by way of tax relief, minimum contributions, minimum payments or any payment under section 38A(3)(**19**) (reduced rates of Class 1 contributions, and rebates).

(3) For the purposes of paragraph (1), amounts in respect of income tax deducted and retained by a member as permitted by section 639 of the Taxes Act (tax reliefs: member's contributions) shall not be treated as payments to the scheme.

(4) The trustees or manager of a stakeholder pension scheme may refuse to accept any contribution if its acceptance would contravene the terms of the scheme's tax-exemption or tax-approval under Chapter IV of Part XIV of the Taxes Act.

Disclosure of information to members

18.—(1) For the purposes of Article 3(1)(*b*), it shall be a condition of a scheme being a stakeholder pension scheme that the trustees or manager of the scheme comply with the requirements set out

(**19**) Section 38A was inserted by Article 134(4) of the Pensions (Northern Ireland) Order 1995 and subsection (3) was amended by paragraph 52 of Schedule 1 to the Social Security Contributions (Transfer of Functions, etc.) (Northern Ireland) Order 1999 in this regulation in addition to such requirements of regulations under section 109 (disclosure of information about schemes to members) as are applicable to the scheme.

(2) Where a person is a member for all or part of a statement year, there shall be provided to the person within 3 months of the end of the statement year to which it relates, a statement which contains the information mentioned in paragraph (5), in so far as the information relates to the statement year.

(3) For the purposes of this regulation "statement year" means the period of 12 months beginning on a date chosen by the trustees or manager which falls on or before the day that the scheme is registered under Article 4 (such date to be chosen on or before the day on which the scheme is so registered) and, subject to paragraph (4), each subsequent period ending on the anniversary of the ending of the first statement year.

(4) For the purposes of paragraph (3) the trustees or manager may choose a new date for the ending of the statement year if-—

(a) the date chosen—

(i) is specified in writing, and

(ii) falls before the end of the statement year during which the trustees or manager specify the new date, and

(b) no other date has been chosen by the trustees or manager under this paragraph during the previous period of 12 months,

and, if a new date is chosen under this paragraph, "statement year" shall mean the period of 12 months ending on the date chosen and each subsequent period ending on the anniversary of that date.

(5) The information to be provided under paragraph (2) is—

(a) the value of the member's rights under the scheme on the day before the first day of the statement year, being an amount which is not less than the cash equivalent of those rights on that date, as calculated and verified in a manner consistent with regulations made under section 93([20]) (calculation of cash equivalents);

(b) the value of the member's rights on the last day of the statement year, being an amount which is not less than the cash equivalent of those rights on that date, as calculated and verified in a manner consistent with regulations made under section 93;

(c) the amount of the value mentioned in sub-paragraph (*b*) that is attributable to investment gains or losses made or sustained by the scheme during that statement year;

(d) the amount of each contribution made by the member and the date on which it was received;

(e) the amount of each contribution made by any employer on behalf of the member and the date on which it was received;

(f) except where contributions referred to in sub-paragraphs (*d*) and (*e*) are increased by the trustees or manager in anticipation of a payment to the scheme by the Inland Revenue by way of tax relief in respect of the member, the amount of each such payment by the Inland Revenue and the date on which it was received;

(g) the amount of each payment to the scheme by way of minimum contributions in respect of the member and the date on which it was received;

(h) the amount of each payment made to the scheme by way of minimum payments in respect of the member and the date on which it was received;

(i) the amount of each payment made to the scheme under section 38A(3) in respect of the member and the date on which it was received;

([20]) Section 93 was amended by paragraph 6 of Schedule 4 to the Pensions (Northern Ireland) Order 1995 (S.I. 1995/3213 (N.I. 22))

(j) the amount of any transfer payment made to the scheme in respect of the member, the name of the scheme or arrangement from which the payment was made and the date on which it was made;

(k) any amount credited to the member's account in respect of a credit within the meaning of Article 26;

(l) any reduction under Article 28 or any enactment in force in Great Britain corresponding to that Article, in the benefits or future benefits to which the member is entitled under the scheme;

(m) any contributions refunded under the provisions of Chapter IV of Part XIV of the Taxes Act;

(n) any amount paid to the member in accordance with section 634A of the Taxes Act(**21**) (income withdrawals by member) or section 636A of that Act(**22**) (income withdrawal after death of member);

(o) any other amount deducted from the member's account, the nature of the deduction and the date on which it was made;

(p) the total amount of any part of any of the contributions and payments mentioned in sub-paragraphs (*d*) to (*k*) which has not been credited to the member's account and the manner in which that amount has been used;

(q) the member's date of birth used in determining the appropriate age-related percentage for the purposes of section 38A and the name and address of whom to contact should that date be incorrect, and

(r) where the whole or any part of the member's rights under the scheme is represented by rights in a with-profits fund—

(i) the principles adopted in allocating rights under that fund, including the extent of any smoothing of investment returns and the levels of any guarantees, and

(ii) the principles which will be adopted in allocating such rights if the member's rights under the scheme cease to be represented by rights in that fund.

(6) Each member must be provided with a statement setting out any change in the scheme's rules or practice as regards the extent to which or the circumstances in which—

(a) any payment made to the scheme by or on behalf of a member;

(b) any amount credited to the member's account in respect of a credit within the meaning of Article 26;

(c) any income or capital gain arising from the investment of such a payment, or

(d) the value of any rights under the scheme,

may, in accordance with regulations 13 and 14, be used otherwise than to provide benefits for or in respect of that member.

(7) The statement mentioned in paragraph (6) must be provided within one month of the change.

(8) The statements mentioned in paragraphs (2) and (6) may be provided by sending them to the member at his last address known to the trustees or manager.

(9) For the purposes of this regulation "member" shall not include any member whose present address is not known to the trustees or manager and in respect of whom—

(a) correspondence sent by them to the member at his last address known to them has been returned undelivered, and

(**21**) Section 634A was inserted by paragraphs 1 and 4 of Schedule 11 to the Finance Act 1995 (c. 4)
(**22**) Section 636A was inserted by paragraphs 1 and 7 of Schedule 11 to the Finance Act 1995

(b) no contribution has been made to the scheme by him or on his behalf during the 2 years preceding the most recent date on which they would, apart from this paragraph, be required to provide him with a statement under this regulation.

(9) For the purposes of this regulation "member" shall include a beneficiary making income withdrawals from the scheme in accordance with section 636A of the Taxes Act (income withdrawals after death of member).

Requirement for trustees of a stakeholder pension scheme established under a trust

19. For the purposes of Article 3(1)(*b*), it shall be a condition of a scheme which is established under a trust being a stakeholder pension scheme that the scheme comply with Articles 35 (investment principles) and 36 (choosing investments) of the 1995 Order except the reference to Article 56 (minimum funding requirement) in Article 35(2) and Article 35(5)(*b*) of that Order.