These notes refer to the Welfare Reform and Pensions Act 1999 (c.30) which received Royal Assent on 11 November 1999

WELFARE REFORM AND PENSIONS ACT 1999

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Commentary

Schedule 1: Application of the 1993 and 1995 Acts to stakeholder pension schemes

Paragraph 1

Sub-paragraph (1) enables certain provisions of the Pension Schemes Act 1993 and the Pensions Act 1995 to be applied to trust-based schemes which are registered as stakeholder pension schemes and which are not occupational pension schemes as defined by the 1993 Act.

This puts broadly similar requirements on the trustees of stakeholder pension schemes as apply to trustees of occupational pension schemes, and allows OPRA to supervise the conduct of stakeholder scheme trustees in much the same way as they supervise occupational pension scheme trustees.

Sub-paragraph (2)(a). Subsections (4) to (9) of section 175 of the Pension Schemes Act 1993 make provision for the Pensions Compensation Board to impose a levy on occupational pension schemes in order to meet the Board's expenditure. Sub-paragraph (2)(a) extends this power to all stakeholder pension schemes.

Sub-paragraph (2)(b) lists the provisions of the Pensions Act 1995 that will apply.

Some parts of the provisions are not relevant to stakeholder schemes which are not occupational schemes, because they will not operate on a salary-related basis and will not normally have a sponsoring employer.

The following provisions from the 1995 Act need to be applied:

Section 3allows OPRA to prohibit named individuals from acting as trustees of an occupational pension scheme.

Section 4 gives OPRA the power to suspend trustees in certain specified circumstances.

Section 5 requires OPRA to give notice of prohibition and suspension orders both to the person concerned and to the other trustees of a trust scheme.

Section 6 makes it an offence to act as trustee while suspended or removed, and sets out provisions for a person who continues to act as a trustee whilst suspended or prohibited.

Section 7 gives OPRA the power to appoint new trustees if an existing one has been prohibited or disqualified and in certain other specified circumstance.

Section 8 defines the scope of the powers of trustees appointed under section 7. Subsections (1) and (2) provide for payments made to trustees appointed by OPRA from scheme resources to be treated as a debt due from the employer; they are not relevant to stakeholder pension schemes as there will generally be no sponsoring employer.

Section 9 gives OPRA the same power as the High Court (Court of Session in Scotland) to vest property in or transfer property to trustees as a consequence of the appointment or removal of a trustee.

Section 10 gives OPRA the power to impose a civil penalty on any person who has committed a specified breach of duty.

Section 11 gives OPRA the power to direct or authorise the winding up of schemes in certain specified circumstances and on the application of certain specified persons. Subsection (3)(c) is not needed because it refers to applications to wind up schemes by employers and there will normally be no sponsoring employer in relation to a stakeholder pension schemes.

Section 13 enables OPRA to obtain injunctions (interdicts in Scotland) if the court is satisfied that it is reasonably likely that a person will misuse/misappropriate scheme assets.

Section 15gives OPRA the power to make certain directions. Subsection (1) is not relevant because it covers failure to comply with section 49(5) of the Pensions Act 1995, which does not apply to stakeholder pension schemes.

Section 27provides that a trustee may not act as scheme actuary or auditor.

Section 28 provides that a trustee of a trust scheme who also acts as a scheme actuary/ auditor in breach of section 27 is guilty of an offence.

Section 29gives OPRA the power to disqualify a person from being the trustee of any trust scheme in certain specified circumstances.

Section 30 contains a number of provisions covering persons who act as trustees while disqualified.

Section 31provides that trustees who are fined for an offence or who receive a civil penalty cannot be reimbursed from the assets of a trust scheme.

Section 32 provides that decisions taken by the trustees of a trust scheme may be taken by a majority of the trustees unless the scheme provides otherwise. The references to sections 16 and 25 of the Pensions Act 1995 do not apply to stakeholder schemes because those sections themselves are not relevant.

Section 33 provides that trustees cannot restrict their liability for a breach of an obligation under any rule of law to take care or exercise skill in carrying out investment function whether or not that function has been delegated to another person.

Section 34 gives trustees the power to make any investment of any kind as if they were absolutely entitled to the assets of the scheme, and to delegate investment decisions to a fund manager. It also provides that trustees are not responsible for any act or default of the fund manager in the exercise of the discretion delegated to him if they have taken reasonable steps to ensure that the fund manager has the appropriate knowledge and experience to manage the investments, and that he is carrying out the work competently and in accordance with section 36 of the Pensions Act 1995.

Section 35 requires trustees to maintain a written statement of the principles governing their decisions. As section 56 of the 1995 Act will not apply to stakeholder schemes, the reference to that section in subsection (2) is not relevant. The obligation to consult the employer in subsection (5) is also not relevant because of the different role of employers in relation to stakeholder schemes.

Section 36 governs the exercise of discretion by the trustees and the fund manager.

Section 39. The general rule that trustees may not benefit where there is a conflict of interest between their personal interest in the scheme and trustee duties is relaxed in relation to member trustees to allow them to benefit in the same way as other members.

Section 41 places a duty on trustees to provide certain documents for scheme members and other specified persons.

Section 47 relates to the appointment of professional advisers. It imposes a duty on scheme trustees to appoint professional advisers and a duty on scheme professionals and employers to make information available to professional advisers and on scheme trustees to disclose information to professional advisers.

Section 48 provides for "whistle-blowing". Scheme professionals requirement to inform OPRA if they have reasonable cause to believe that trustees/manager, employer or professional adviser is not complying with duties in relation to the scheme.

Section 49 relates to the keeping of accounts etc. Section 49(5) is not relevant to stakeholder schemes. Section 49(8) imposes a duty on employers to remit deductions from earning to scheme trustees within a prescribed period. This section, as amended by section 10, will apply to occupational pension schemes that are registered as stakeholder schemes. Section 9 amends the Pension Schemes Act and introduces similar provisions for personal pension schemes. These will apply to stakeholder schemes that are not occupational schemes.

Section 50 imposes a duty upon scheme trustees to set up and operate procedures for resolving internal disputes.

Section 68 confers power on trustees to modify a scheme for certain purposes. Subsection (3) is not relevant because of the different role of employers in relation to stakeholder pension schemes. *Sub-paragraph (4)* modifies this power in relation to stakeholder schemes.

Sections 81 to 86 relate to the Pensions Compensation Board and set out circumstances where compensation is payable. These will apply to stakeholder pensions schemes in the same way as they apply to money-purchase occupational schemes. However, the condition for the application of the compensation provisions in section 81(1)(b), that the employer must be insolvent, is not relevant because of the limited scope of employer involvement in stakeholder schemes.

Sections 91 to 94 relate to assignment, forfeiture, bankruptcy etc for occupational pension schemes. Section 91(4)(d) is not relevant because of the different role of employers in relation to stakeholder pension schemes.

Section 96(2)(c)deals with OPRA's powers to review any determination to disqualify a trustee.

Section 108 deals with the scope of OPRA's powers to disclose certain information in relation to the discharge of its functions

Sections 110 deals with provision of information in relation to the Compensation Board.

Section 117provides for particular requirements of the Pensions Act 1995 to override provisions of an occupational pension scheme. This will apply to stakeholder pension schemes to the extent that any provision of Part 1 which applies to stakeholder pension schemes conflicts with any scheme rule.

Section 124 and 125 provide interpretation of terms used in Part 1 of the Pensions Act 1995.

Sections 78 to 80, 97, 101 to 107, 109, 111 to 116, 120 and 123 of the 1995 Act are also relevant to stakeholder pension schemes but do not need to be expressly applied as they contain no specific reference to pension schemes.

Sub-paragraph (3) modifies the definition of employer in section 47(9) of the Pensions Act 1995 to reflect the different role of an employer in relation to stakeholder pension schemes.

This section contains provisions that require sponsoring employers to carry out certain functions in relation to their occupational scheme: for example, they must disclose information to the scheme's trustees and professional advisers. For stakeholder pension schemes, the requirement will apply to any person who is or has been subject to the employer access requirement, as defined in section 3 of this Act.

Sub-paragraph (4). Section 68 of the Pensions Act 1995 gives scheme trustees the power to modify scheme rules for certain purposes. This sub-paragraph extends this power in relation to stakeholder pension schemes to enable their trustees to ensure that schemes meet the conditions set out in section 1 of this Act.

Sub-paragraph (5). Sub-paragraph (2) applies section 124 (definitions) of the Pensions Act 1995 to stakeholder pension schemes which are not occupational pension schemes. This sub-paragraph omits the definition of a "member" of an occupational pension scheme from the list of defined terms as it not appropriate to stakeholder schemes which are not occupational schemes.

Paragraph 2

Sub-paragraph (1): applies sections 98 to 100 of the 1995 Act to stakeholder pension schemes which are not occupational pension schemes, including those which may be set up otherwise than on a trust basis:

Section 98 gives OPRA the power to demand the production of certain documents relating to their functions from trustees, professional advisers and employers. Section 98(3) defines what is meant by a "document" for the purposes of sections 98 and 99 to 101.

Sections 99 and 100: see sub-paragraphs (2) and (3) below.

Sub-paragraph (2): section 99 of the Pensions Act 1995 gives OPRA powers to inspect certain premises, require the production of documents and examine people for the purposes of investigating whether certain "regulatory provisions" of the 1995 Act are being complied with. This paragraph modifies the definition of regulatory provisions in relation to stakeholder schemes, so that the powers can be exercised by OPRA to investigate:

> whether the trustees or managers of a stakeholder pension scheme are complying with the applicable provisions of the 1995 Act;
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> whether their scheme complies with the conditions set out in section 1; and
>
> whether they have taken steps to ensure that those conditions are complied with.

OPRA is also given the power to investigate breaches of any corresponding legislation in Northern Ireland.

Sub-paragraph (3): section 100 of the 1995 Act enables a justice of the peace (or, in Scotland, a justice) to issue a warrant for OPRA to search premises in certain circumstances. This sub-paragraph extends this provision so that it applies also where OPRA have reasonable grounds for believing that an offence has been committed under section 2(5).

Sub-paragraph (4) ensures that OPRA can investigate in Great Britain possible breaches of rules relating to Northern Ireland stakeholder schemes under Northern Ireland legislation. OPRA is a UK-wide organisation and already has powers to investigate breaches of the Northern Ireland legislation corresponding to the 1993 and 1995 Acts.

Paragraph 3

Sub-paragraph (1) enables OPRA to use their powers under section 99 of the 1995 Act to investigate:

whether a stakeholder pension scheme which is an occupational pension scheme complies or has complied with the conditions set out in section 1; and

whether the scheme trustees have taken steps to ensure that the scheme complies or has complied with those conditions.

Sub-paragraph (2) enables OPRA to seek a warrant under section 100 of that Act where it believes that an offence under section 2(5) of this Act, or a corresponding offence under Northern Ireland legislation (see paragraph 2(4) of the Schedule), has been committed. (Paragraph 2 of the Schedule gives OPRA the same powers in respect of stakeholder schemes which are not occupational schemes – see note above.)

Northern Ireland stakeholder pension scheme legislation

Northern Ireland generally takes responsibility for its own pensions legislation. That will continue under the Northern Ireland Assembly. Section 90(3) extends the stakeholder pension provisions of the Act to England, Scotland and Wales only. Corresponding provisions for Northern Ireland will then be made under Northern Ireland legislation.

The two sets of legislation are likely to be similar. It should therefore be simple for schemes to register (with OPRA) under both sets of legislation if they should wish to do so.