

These notes refer to the Pensions (No. 2) Act (Northern Ireland) 2008 (c.13) which received Royal Assent on 15 December 2008

Pensions (No. 2) Act (Northern Ireland) 2008

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

PART 5 - Miscellaneous

Section 103: Amendments of provisions of the 2005 Order relating to contribution notices or financial support directions.

Section 103 gives effect to Schedule 8 which amends the Pensions (Northern Ireland) Order 2005 in relation to contribution notices and financial support directions.

Section 104: Interest on late payment of levies

This section gives effect to *Schedule 9* which provides the Department with a power to make regulations allowing for a prescribed rate of interest to be charged on late payment of a range of levies.

Section 105: Payments to employers

This section amends Article 37 of the Pensions (Northern Ireland) Order 1995, which imposes conditions which must be satisfied before trustees can authorise a payment to the sponsoring employer from the funds of a trust-based occupational pension scheme. Article 37 was amended by the Pensions (Northern Ireland) Order 2005, but that amendment inadvertently did not carry forward an exemption from the strict conditions of Article 37 which previously existed for certain administrative and other payments.

Article 37 is primarily intended to ensure that funds cannot be removed from a defined benefit scheme unless it is sufficiently well funded, and the trustees are satisfied that a payment is in the interests of the scheme's members. The exemption introduced by this section broadly replicates the payments which were previously exempt from Article 37 before it was revised by the Pensions (Northern Ireland) Order 2005. The exemption covers payments which are exempt from the tax charge which normally applies to authorised surplus payments to an employer from the funds of a scheme (for example, the payment of wages to the people who administer the scheme).

Section 106: Appointment of trustees

Article 7 of the Pensions (Northern Ireland) Order 1995 allows the Pensions Regulator to take action to appoint trustees where it is satisfied that this is necessary and only in certain specific circumstances. Where appropriate these trustees can be independent, that is, professional trustees that are fully independent of the employer or any other interest in the scheme. Examples of the circumstances in which this can be done are if the Regulator is of the opinion that the existing trustees of a scheme do not have the necessary knowledge for proper administration or if there isn't a sufficient number of trustees.

This section extends this power to allow the Regulator to appoint trustees in circumstances where it is reasonable to do so, instead of necessary. The "necessary test" means that the Regulator may only appoint a trustee if it is satisfied that there is no other option available and it must act almost as a last resort. A "reasonable test" would enable the Regulator to appoint a trustee where there are a range of options available but the appointment is the most appropriate action for the scheme.

It also amends Article 7(3) of the Pensions (Northern Ireland) Order 1995 to extend the circumstances in which this power may be exercised, to enable the Regulator to appoint trustees in order to protect the interest of the generality of scheme members. It also makes a change consequential on the addition of a further sub-paragraph to Article 7(3).

Section 107: Intervention by the Regulator where scheme's technical provisions improperly determined

Article 201(4)(c) of the Pensions (Northern Ireland) Order 2005 requires trustees to follow prescribed principles when determining the actuarial methods and assumptions to be used in the calculation of a scheme's technical provisions. These are prescribed in regulation 5(4) of the [Occupational Pension Schemes \(Scheme Funding\) Regulations \(Northern Ireland\) 2005 \(SR 2005/568\)](#). of the principles is that the methods and assumptions must be chosen prudently by the trustees. The requirement for prudence implements obligations under the European occupational pensions directive (Directive [2003/41/EC](#)).

Article 201(4)(c) of the Pensions (Northern Ireland) Order 2005 is not currently included in the circumstances, set out in Article 210(1), in which the Pensions Regulator can exercise its powers (set out in Article 210(2)) in respect of the scheme funding provisions. The Regulator cannot therefore make use of the powers in Article 210(2) if the sole ground of concern is that the actuarial methods or assumptions used in the calculation of the technical provisions do not appear to have been chosen prudently.

The actuarial assumptions used in a valuation of a pension scheme are critical in establishing a scheme's correct funding position and, therefore, an appropriate level of contributions to the scheme. This section ensures that the Regulator can use the powers in Article 210(2) (such as issuing directions on the scheme's

actuarial calculations or imposing a schedule of contributions) where the sole ground of concern is that the actuarial methods or assumptions do not appear to be prudent.

Section 108: Delegation of powers by the Regulator

Section 108 amends the Pensions (Northern Ireland) Order 2005 to extend the power of the Pensions Regulator to contract out its functions. Paragraph 2 of Schedule 1 to the Pensions (Northern Ireland) Order 2005 enables regulations to be made permitting the Regulator to contract out its functions. This section enables the Regulator to delegate both the power to determine whether to exercise its functions and its power to exercise them. It also limits the functions to be contracted-out to those specified – that is functions which relate to the compliance regime – or such other functions that may be prescribed.

Section 109: Exclusion of transfers out in certain cases

This section will enable the Department to make regulations preventing individuals, in prescribed circumstances, from taking advantage of a right under existing legislation to transfer funds from a prescribed pension scheme to another scheme.

The power in this section can be used in particular to prevent transfers out of the Personal Accounts scheme. Certain transfers out of the scheme may be allowed (because the Regulations do not have to ban all transfers out). For example, small ‘stranded pots’ and where someone is over 55 and wants to aggregate all of their pension pots in different schemes into one pension fund in order to purchase an annuity.

Section 110: Official pensions: adjustment of increases in survivors’ pensions

Article 69 of the Social Security Pensions (Northern Ireland) Order 1975 deals with the index-linking of public service pensions. Paragraph (5ZA) was inserted in 1990 to prevent an element of “double indexation” arising in relation to the guaranteed minimum pension payable to survivors of members of public service pension schemes. Double indexation of the guaranteed minimum pension might occur if it is increased by both legislation relating to public service pension schemes and by legislation which provides for index-linking of State Pensions.

A guaranteed minimum pension arises where a pension scheme member was contracted out of the additional State Pension for service between tax years 1978/79 and 1996/97. When a public service pension scheme member dies, a member’s widow is entitled to half of a member’s guaranteed minimum pension accrued since 1978/79, and the member’s widower is entitled to half of the member’s guaranteed minimum pension accrued since 1988/89.

Article 69(5ZA) fails to take account of the difference in guaranteed minimum pension entitlement between widows and widowers and it does not cover civil partners.

This section amends Article 69(5ZA) so that it reflects the different guaranteed minimum pension entitlements of widowers when compared to widows. It also extends the operation of Article 69(5ZA) so that it will apply to future payments of pensions to surviving civil partners.

Section 111: Disclosure of information relating to state pension credit recipients

This section enables the Department to make regulations to supply social security information about State Pension Credit recipients to energy suppliers, or persons providing services to the energy suppliers or the Department.

The regulations may authorise energy suppliers to share their customer information with the Department or a service provider. This is intended to enable either the Department or a third-party to match departmental and energy supplier data to identify the relevant State Pension Credit recipients.

The regulations may also set out a number of matters including the purposes for which information may be supplied and used, and provide for a criminal offence to penalise the unauthorised disclosure of this information.

The regulations will be subject to the confirmatory procedure.