

CHILD SUPPORT, PENSIONS AND SOCIAL SECURITY ACT 2000

EXPLANATORY NOTES

Part II: Pensions

Commentary on Sections

Chapter II: Occupational and Personal Pension Schemes

Selection of trustees and of directors of corporate trustees

460. **Sections 43 to 46** amend sections 16, 18 and 21 of the Pensions Act 1995* (member-nominated trustees and directors); they further provide that sections 17, 19 and 20 shall cease to have effect and introduce a new section 18A. Under the current legislation, trustees are required to implement arrangements for at least one third of the scheme trustees to be member-nominated trustees, or where the trustee is a company, for one-third of the directors to be member-nominated directors. However, the employer has the right to implement alternative arrangements that do not include any member trustees, or directors, provided the members agree. Under the new provisions, all schemes will be required to have at least one third member-nominated trustees or directors, but there will be two ways to determine the nomination and selection arrangements: a flexible nomination and selection procedure laid out in regulations, or, alternatively, by the employer proposing nomination and selection arrangements which are subsequently approved by scheme members.
461. **Section 16**, as amended, will require trustees to ensure that arrangements are put in place for at least one-third of the trustees to be nominated and selected by scheme members. There will be two routes under which member-nominated trustees can be nominated and selected: a statutory route, the nature of which will be determined by reference to section 16 and regulations under section 16, where the trustees are responsible for the precise details of the arrangements and for their implementation; and an alternative route under section 18A (see section 45) where arrangements for the nomination and selection of the scheme trustees are proposed by the employer and implemented by the trustees. Section 16 and regulations made under section 16(9) will apply to both routes (but section 18A(3) allows provision different from that made by regulations under section 16(9) for the scheme specific route). Equivalent provisions apply in relation to trustee companies.

Section 43: Member-nominated trustees

462. This section amends section 16 to provide a revised statutory framework for appointing member-nominated trustees.
463. The revised provisions make no distinction between “arrangements” and “appropriate rules” so *subsections (2) to (4)* remove references to “appropriate rules” from section 16 of the Pensions Act.

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464. *Subsection (5)* incorporates the substance of section 20(3) of the Pensions Act into section 16. Member-nominated trustees must serve a term of office of between three and six years and be eligible for reselection. The existing section 16(6), which provides for the determination of the minimum number of member-nominated trustees, and for this number to be exceeded only if the employer agrees, remains unchanged.
465. *Subsection (6)* incorporates the substance of section 20(5) of the Pensions Act by inserting a new subsection (6A) into section 16. An employer may require that a non-member can only stand for nomination as a member-nominated trustee if the employer approves.
466. **Section 16(7)**, which provides for all member-nominated trustees to have the same powers remains unchanged.
467. *Subsection (7)* amends section 16(8) to enable arrangements under section 16 to provide for a trustee who changes category of membership (for example, from active to deferred) to cease to be a trustee. The requirement for a member-nominated trustee to stand down if they cease to be a member remains unchanged.
468. *Subsection (8)* introduces two new subsections to section 16. The new section 16(9) is a regulation-making power that will be used to prescribe what is meant by “nominated and selected by members”, and to further stipulate details of the arrangements the trustees are required to make for nominating and selecting member-nominated trustees. The intention is to give trustees flexibility to adopt arrangements that best suit the circumstances of the scheme, for example by dividing the membership into separate constituencies. Regulations will provide that all active and pensioner members must be given the opportunity to make nominations. The new section 16(10) incorporates the provisions of section 17(4) of the Pensions Act into section 16. As now, the regulations will provide for exemptions for certain types of scheme. Schemes that are currently exempt will continue to be so.
469. *Subsection (9)* repeals section 17 of the Pensions Act (employer’s right to propose alternative arrangements).

Section 44: Corporate trustees

470. This section makes changes to section 18 of the Pensions Act for member-nominated directors in schemes where the trustee is a company similar to the changes in section 16 for individual trustees.
471. In addition, *subsection (2)(a)* extends the scope of section 18 to include all schemes where there is a trustee company and there is no trustee of the scheme who is not a company.
472. *Subsection (8)* modifies section 18(8) to ensure that the membership of different schemes will be aggregated where the trustee company is trustee for more than one scheme, unless the trustee company decides otherwise.
473. *Subsection (10)* repeals section 19 and 20 of the Pensions Act (employer’s right to propose alternative arrangements and meaning of appropriate rules).

Section 45: Employer's proposals for selection of trustees or directors

474. This section introduces a new section 18A. The new section makes provision for the employer to propose arrangements for nominating and selecting trustees of the scheme or directors of a corporate trustee of the scheme.

New section 18A: Employer’s proposals for selection of trustees or directors

475. *New section 18A(1)(a)* gives employers the right to propose arrangements for nominating and selecting trustees. *Subsection (1)(b)* ensures the arrangements provide

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for at least one third of the trustees to be member-nominated trustees, and that the other requirements of section 16(3) to (7) apply. *Subsection (1)(d)* requires that the proposal is approved by scheme members. *Subsection (1)(d)* also incorporates the regulation-making power similar to that contained in section 21(7) which will enable a statutory consultation procedure for seeking member approval for the proposal to be prescribed. This will be largely the same as the current procedure that is provided in Schedule 1 to the Occupational Pension Schemes (Member-nominated Trustees and Directors) Regulations 1996, although the procedure may be tightened to reduce any opportunity for abuse. Regulations made under *subsection (1)(e)* will impose additional conditions on employers, for example to give notice to the trustees of the intention to propose arrangements. *Section 18A(2)* makes the equivalent provision for trustee companies. Once approved, the trustees are charged with implementing the arrangements.

476. *New section 18A(3)* allows regulations governing arrangements under an employer's proposal to provide for different nomination and selection arrangements from those made under the statutory route. For example, the employer will be able to propose that nominations for trustees are made by organisations representing members (such as Trades Unions and pensioner organisations) as well as members themselves.
477. *New section 18A(4)(a)* provides the power to make regulations governing the manner and time in which trustees must implement approved arrangements. This is similar to the current power under section 21(4)(a). Trustees will be given six months following approval to ensure that the arrangements are made, and trustees appointed. Regulations under *subsection 18A(4)(b)* will determine when approval of section 18A arrangements cease to have effect. As now, approval will last for six years. They will also determine what happens when approval of arrangements ceases to have effect without the existing arrangements having been re-approved or fresh arrangements approved.
478. *New section 18A(5)* enables regulations to be made about approval of arrangements for the purpose of section 18A. Regulations under *subsection 18A(5)(a)* will give the Occupational Pensions Regulatory Authority (Opra) the discretion to treat proposals as approved in certain circumstances where there is a breach of the requirements of the approval process. Regulations under *subsection 18A(5)(b)* will provide for proposals to be treated as approved by persons who do not object. The existing section 21(8)(b) allows the approval process to operate in this way. Regulations will, as now, provide for proposals to be approved if not more than 10% of those consulted object.
479. *New section 18A(6)* permits nominations for a member-nominated trustee or director to be made by an organisation of a prescribed description that represents the interests of members of the scheme. It also permits nominations by such organisations to be the only nominations. It is intended that regulations will prescribe that recognised Trades Unions and pensioner organisations, for example, can make such nominations.
480. *New section 18A(7)* disapplies the section as far as it applies to member-nominated trustees in cases where all the trustees comprise all the members, or where there is only a corporate trustee (or trustees).
481. *New section 18A(8)* is a regulation-making power to disapply the section for schemes of a prescribed description. This provision is required in addition to the exemptions from sections 16 and 18 because those sections impose a mandatory requirement on all trustees, whereas this section only applies if the employer chooses to propose scheme-specific arrangements. In practice, section 18A will be disapplied for the same classes of scheme that are exempt from sections 16 and 18.
482. *Subsections (2) and (3)* of section 45 are consequential amendments to, respectively, sections 68(2) and 117(2)(c) of the Pensions Act.

Section 46: Non-compliance in relation to arrangements or proposals

483. This section contains various consequential amendments to section 21 of the Pensions Act 1995.
484. All references to appropriate rules are removed, as are references to sections 17 and 19 (which are repealed).
485. A new subsection (2A) has been added to section 21 to enable Opra to impose sanctions on an employer who fails to carry out the statutory consultation procedure properly. The equivalent provision is currently in sections 17(5) and 19(5). Opra already has the power under section 21 to impose sanctions on trustees who fail (without reasonable cause, in the case of individual trustees) to comply with the requirements. Opra can prohibit a trustee, or impose a financial penalty.

Winding-up of schemes

486. These measures aim to speed the process of winding-up by introducing accountability into the winding-up process and by giving Opra a more active role in the process than at present. A consultation paper setting out proposals for speeding up the winding-up process was issued on 27 May 1999. The comments received were taken into account.
487. Scheme rules or the trust deed setting up the scheme set out the events which may trigger the cessation and winding-up of an occupational pension scheme. These generally are the employer's insolvency, notice from the employer that he no longer wishes to sponsor the scheme, or failure by the employer to pay contributions within a specified period. It is the trustees or managers who are required to carry out the winding-up.
488. Winding-up can be a time-consuming task, sometimes taking many years, particularly where the scheme records have not been well kept. During this time members may feel particularly vulnerable.
489. The measures aim to ensure that a trustee is in place following the insolvency of the employer so that decisions can be made about the future of the scheme. Where winding-up has started, trustees or managers will be required to make reports to Opra if winding-up is not completed within a specified period of time and Opra will be able to direct action to speed the process along. Opra will also be able to modify scheme rules where they need to be changed to allow winding-up to proceed.

Section 47: Information to be given to the Authority

490. This section inserts three new sections into the Pensions Act 1995. It also amends section 118 of that Act to allow these new sections to be modified by regulations to impose the duties on other people (see *subsection (4)*). Sections 26A, 26B and 26C set out circumstances in which trustees or managers of schemes or scheme administrators are required to notify Opra during the insolvency of the employer.
491. *Subsection (1)* amends references in section 22 of the Pensions Act 1995 to include the new inserted section 26A. *Subsection (2)* inserts sections 26A, 26B and 26C.

New section 26A: Information to be given to the Authority in a s. 22 case

492. New section 26A sets out the circumstances in which the trustees or persons involved in the administration of a scheme must make a report to Opra, where the scheme has to have an independent trustee during the insolvency of the employer (sections 22 and 23 of the Pensions Act 1995).
493. *New section 26A(1)* requires the trustees of a scheme, where the scheme has to have an independent person in place as trustee during the insolvency of the employer, to notify Opra that there appears to be no independent trustee unless they have been told by the insolvency practitioner or official receiver that he is satisfied that one of them satisfies

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the independence test, or they have reasonable grounds to believe that the practitioner or official receiver is satisfied that one of them does so. The notification must be made as soon as reasonably practicable.

494. *New section 26A(2)* places on those involved with the administration of the scheme a requirement similar to that in subsection (1) where there are no trustees.
495. *New section 26A(3)* sets out the circumstances where no notification to Opra is required. These are where it appears that the insolvency practitioner or official receiver intends to appoint an independent trustee and that he will do so within a specified period.
496. *New section 26A(4)* removes the requirement for a report to be made under subsection (2) by those involved with the administration of the scheme where it appears that Opra are already aware that the scheme has no trustees.
497. *New section 26A(5)* ensures that the requirement in subsection (1) covers later situations where the practitioner or receiver is no longer satisfied that the independence test is met, even though he may previously have told the trustees that it was met.
498. *New section 26A(6)* defines whether the practitioner or receiver is satisfied as to a person's independent status by reference to the independence test in section 23.
499. *New section 26A(7)* provides that section 10 of the Pensions Act 1995 applies to trustees who fail to take reasonable steps to ensure compliance with the requirements to notify Opra regarding the independent trustee. Section 10 allows Opra to impose financial penalties.
500. *New section 26A(8)* provides that section 10 of the Pensions Act 1995 applies to anyone who fails to comply with the subsection (2) requirement to notify Opra that there are no trustees.

New section 26B: Information to be given in cases where s. 22 disapplied

501. The new section 26B sets out the circumstances in which reports must be made to Opra on the insolvency of the employer where the scheme is not required to have an independent trustee (section 22 of the Pensions Act 1995).
502. *New section 26B(1)* requires the persons involved (if any) in the administration of a trust scheme, where there is no requirement for an independent trustee, to notify Opra where the employer of the scheme is the sole trustee and he becomes insolvent, unless they have an assurance from the employer. For multi-employer schemes this will apply only where *all* the employers are insolvent.
503. *New section 26B(2)* provides that for the purposes of this section an employer's assurance has been received if the employer has told the persons involved in the administration of the scheme that there is no reason why the employer should not continue to act as a trustee of the scheme, he does not withdraw that statement, and the trustees of the scheme have not changed since the employer has made that statement.
504. *New section 26B(3)* removes the requirement for a report to be made under subsection (2) where it appears that Opra are already aware of the situation or where the prescribed period has not elapsed, or at any other time which is prescribed.
505. *New section 26B(4)* provides that section 10 of the Pensions Act 1995 applies to anyone who fails to comply with the requirements in this section.

New section 26C: Construction of ss. 26A and 26B

506. The new section 26C sets out further details relating to the requirements in new sections 26A and 26B.

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507. *New section 26C(1)* sets out who is considered to be involved in the administration of the scheme for the purpose of the requirements in sections 26A and 26B. For example, those persons who are involved in the administration of the scheme in their professional capacity, such as actuaries and auditor, the fund manager, the employer of the scheme, their employees, agents or contractors who carry out administration tasks, are not considered to be involved in the administration of the scheme.
508. *New section 26C(2)* provides that regulations may add to the list of those who are not considered to be involved in the administration of the scheme.
509. *New section 26C(3)* provides that wherever there is a requirement in section 26A or 26B to do something “as soon as reasonably practicable”, that may be replaced by time limits specified in regulations.
510. *Subsection (3)* of section 46 makes a consequential amendment to section 118(2) of the Pensions Act 1995 to allow for regulations to exempt schemes from the new requirements in sections 26A to 26C.
511. *Subsection (4)* inserts a new section 118(3) into that Act to allow for regulations to modify sections 26A and 26B so as to impose the notification duty on persons other than trustees and other than those involved in the administration of the scheme.
512. *Subsection (5)* amends the provisions in the Pension Schemes Act 1993 so that regulations may prescribe who is to be treated as a trustee for the purposes of sections 22 to 26 of the Pensions Act 1995 and the new sections inserted by this section.

Section 48: Modification of scheme to secure winding-up

513. This section inserts a new section 71A into the Pensions Act. This is to extend Opra’s existing powers to modify scheme rules, to enable winding-up to continue.

New section 71A: Modification by Authority to secure winding-up

514. *New section 71A(1)* enables Opra to modify scheme rules to ensure that the scheme is properly wound up but only where the scheme is being wound up and the employer is insolvent.
515. *New section 71A(2)* only allows Opra to modify scheme rules where they have been asked by the trustees or managers to do so. The request cannot be made in advance. As with the modification itself, the request may be made only while the scheme is being wound up and the employer is insolvent.
516. *New section 71A(3)* requires that unless regulations provide otherwise, the application to Opra must be in writing.
517. *New section 71A(4)* allows regulations to set out the detail of the information which is contained in, or documents which must accompany, the application. The regulations may also provide for certain people to be told about the request for a modification; what the notification must contain; for the time limit in which they will have to contact Opra to make representations; and how Opra must deal with the request for modification.
518. *New section 71A(5)* limits Opra’s powers to modify scheme rules to the minimum necessary to enable the scheme to be wound up properly and for any modification to be restricted to those which would not have a significant adverse effect on accrued rights or benefit entitlements under the scheme.
519. *New section 71A(6)* makes it clear that any modification made by Opra will be as effective in law as if it had been made under scheme rules and without any requirement to obtain consent before any modification can be made.

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520. *New section 71A(7)* allows regulations to exempt certain types of schemes in particular circumstances or for the requirements in the section to apply with modifications in particular circumstances.
521. *New section 71A(8)* sets out the circumstances in which an employer is to be treated as insolvent for the purpose of this section. The circumstances are those which trigger the application of section 22 of the Pensions Act 1995 (or would trigger it if that section applied to the scheme) ie. where an insolvency practitioner or official receiver takes up office. These terms are defined in section 22(3) by reference to the Insolvency Act 1986.
522. *New section 71A(9)* excludes public service pension schemes from this section.

Section 49: Reports about winding-up

523. This section introduces a number of provisions including a requirement for trustees or managers to make reports to Opra, a definition of when a scheme begins to wind up and a requirement for records to be kept of a decision to wind up a scheme.

New section 72A: Reports to Authority about winding-up

524. *New section 72A(1)* introduces a requirement for trustees or managers of a scheme which began to wind up after a specified date to make regular reports to Opra about the progress of winding-up.
525. *New section 72A(2)* allows regulations to specify when the first report should be made to Opra. That period will be within a specified period of the date on which winding-up began, or the date on which the winding-up was brought within the section (if later).
526. *New section 72A (3)* sets out the timing of subsequent reports to Opra which must be made at no more than twelve-monthly intervals after the date of the previous report. If the last report was made late, the next one must still be made no later than twelve months after the last one was due.
527. *New section 72A(4)* allows Opra to extend the deadline for making any follow-up reports. Opra can only extend the interval by up to twelve months (under *new section 72A(5)*), and can only grant the extension within the time limit, not after it. There is no similar power to extend time for the first report.
528. *New section 72A(6)* allows more than one extension of the deadline for the follow-up report, but the total extensions for that report must not exceed the twelve-month limit mentioned in subsection (5).
529. *New section 72A(7)* provides that regulations may make requirements as to the reports to Opra, including how the reports should be made, and what they must contain.
530. *New section 72A(8)* provides that regulations may provide for circumstances in which reports need not be made to Opra, and may vary the twelve-monthly period in which further reports must be made. It also provides that regulations may alter the periods in which follow-up reports must be made, and the period over which Opra can extend the time limit for those reports.
531. *New section 72A(9)* applies sections 3 and 10 of the Pensions Act 1995, so that Opra may prohibit from being a trustee someone who fails to take reasonable steps to ensure compliance, and may impose a financial penalty on a trustee or manager who fails to comply with the requirements.
532. *Subsection (2)* of section 49 inserts into section 124 of the Pensions Act 1995 a definition of when winding-up begins for the purposes of Part I of that Act.
533. *Subsection (3)* adds to the requirements in section 49 regarding records, by inserting a new section 49A. The new section 49A requires trustees or managers of an occupational pension scheme to keep written records of their decision to wind up the scheme, of

decisions about when steps should start to be taken for the purposes of winding-up the scheme, and of any decision to defer winding-up. It provides that regulations may extend the requirements to any person, who although not a trustee or manager, can nevertheless make a decision to wind the scheme up. It also allows regulations to make requirements about the form and content of the record. Sanctions under sections 3 and 10 of the 1995 Act can be imposed for non-compliance. Where regulations extend the requirements to other persons, sanctions may be provided for in regulations (under section 10(3) of that Act).

Section 50: Directions for facilitating winding-up

534. This section inserts new section 72B which allows Opra to direct that specific information should be provided, or action taken within a prescribed timescale, where a scheme has begun winding-up. It also inserts new section 72C which imposes sanctions on those not complying with Opra's directions.

New section 72B: Directions by Authority for facilitating winding-up

535. *New section 72B(1)* provides that where a scheme has begun winding-up, Opra will have power to give directions if they feel it is appropriate to do so on any of the grounds in subsection (2).
536. *New section 72B(2)* sets out the grounds Opra may take into account. It also allows regulations to prescribe further circumstances in which Opra may give directions.
537. *New section 72B(3)* limits Opra's powers to direct to where the first report has been made, or should have been made, to Opra under new section 72A, unless regulations prescribe otherwise.
538. *New section 72B(4)* allows regulations to provide that in certain circumstances Opra may only give directions when asked to do so by the trustees or managers of schemes.
539. *New section 72B(5)* provides that a direction from Opra must be given in writing, and can be given to trustees or managers, persons involved in the administration of the scheme or persons prescribed in regulations.
540. *New section 72B(6)* sets out requirements that can be imposed by a direction. They include providing information to the trustees, or managers, or persons involved in the administration of the scheme, or persons prescribed in regulations (which may include Opra), and requiring other steps to be taken.
541. *New section 72B(7)* allows Opra to extend the time limit for persons to comply with the direction, on more than one occasion if necessary, where Opra consider it appropriate to do so.
542. *New section 72B(8)* allows for regulations to limit what Opra may require in their directions and sets out requirements as to when and how applications must be made for an extension to the period for complying with the direction.
543. *New section 72B(9)* sets out who is considered to be involved in the administration of the scheme for the purposes of these requirements. It is almost identical to new section 26C(1) (see section 47).
544. *New section 72B(10)* provides that regulations may add to the list of those who are not considered to be involved in the administration of the scheme. It is identical to new section 26C(2) (see section 47).

New section 72C: duty to comply with directions under 72B

545. *New section 72C(2)* provides that section 3 of the Pensions Act 1995 (Opra may prohibit a person from being a trustee) applies to any trustee who fails to take reasonable steps to ensure compliance, and has no reasonable excuse.

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546. *New section 72C(3)* applies section 10 of the 1995 Act (financial penalties) to any trustee or manager who fails to take reasonable steps to ensure compliance, and has no reasonable excuse.
547. *New section 72C(4)* applies section 10 to anyone else who fails to comply with a direction, and has no reasonable excuse.
548. *New section 72C(5)* provides that any duty of non-disclosure is not a reasonable excuse for failure to supply information in accordance with directions from Opra. The statutory duty to comply with directions will mean that a person complying with a direction will not be in breach of the non-disclosure duty.

Other provisions

Section 51: Restriction on index-linking where annuity tied to investments

549. Rights which accrue from 5 April 1988 in respect of Guaranteed Minimum Pension and protected rights have to be indexed by RPI, capped at 3%. If inflation is above 3% SERPS is fully indexed.
550. All rights accrued from 6 April 1997 in salary-related and money purchase occupational schemes have to be indexed at RPI, capped at 5%. Protected rights in appropriate personal pensions are also subject to the same level of indexation. Additional voluntary contributions and personal pensions are not subject to an indexation requirement.
551. The Department of Social Security issued a public consultation document on 31 January 2000 seeking views on whether greater flexibility should be allowed so that members of money purchase schemes could choose to buy either an investment-linked annuity or a traditional index-linked annuity to satisfy the indexation requirements. The document was circulated widely within the pensions industry, employers and was available on the internet for other interested groups and members of the public.
552. The consultation ended on 29 February. 40 responses were received, of which 34 supported the proposal for change and generally welcomed the Government's willingness to recognise innovative annuity products which are being developed by annuity providers.
553. Investment linked-annuities enable the annuitant to benefit from growth in a range of underlying investments after retirement, though this goes hand in hand with a risk of possible falls in pension income if investment performance is poor. Although an investment-linked annuity will not guarantee to produce an increase in the pension each year, such annuities have performed better overall than the traditional index-linked annuity in recent years.
554. The measure in the Act allows money purchase occupational pension schemes to offer their members the option of using the non-protected rights element of their accumulated pension fund accrued from April 1997 to buy an investment-linked annuity instead of an index-linked annuity. They would continue to be able to choose a traditional index-linked annuity if they wished. The section also provides for a power to prescribe the conditions which investment-based annuity products must satisfy (sub-paragraph (1) (c)), although it is not envisaged that this power would be used in the short term. Regulations may be considered necessary in the future, however, if investment-based products were to be designed in such a way that they provided a high starting income with little prospect for future increases.
555. This section sets out the circumstances when an investment-linked annuity can be used to satisfy the indexation requirements which are currently contained in section 51(2) of the Pensions Act 1995.

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556. *Subsection (1)* provides for a new section 51A to the Pensions Act 1995 to supersede the requirement to increase a pension in payment annually by the published RPI figure, capped at 5%.
557. *Subsection (2)* provides for the insertion of a new section 51A in the Pensions Act 1995.

New section 51A: Restriction on increase where annuity tied to investments

558. *New section 51A(1)* provides that an annual increase under section 51 is not required in respect of the element of money purchase scheme funds as described in *sub-paragraphs 1(a), (b) and (c)*.
- Sub-paragraph 1(a)* stipulates that the alternative pension is payable from an investment-linked annuity.
- Sub-paragraph 1(b)* prevents the inclusion of benefits in respect of protected rights.
- Sub-paragraph 1(c)* provides that regulations may prescribe conditions to be satisfied for investment-linked annuity products.
559. *New section 51A(2)* provides for the option of an investment-linked annuity whether provided under an annuity contract or payable from the funds of money purchase schemes.
560. *New section 51A(3)* provides for the new rule to apply to increases after the date appointed for the new section 51A to come into force.

Section 52: Information for members of schemes

561. The Government intends to introduce amendments to existing regulations that require annual benefit statements to be sent to members of occupational and personal pension schemes with money purchase benefits.
562. In addition to the existing information about contributions paid and the current value of the “pot”, they will be required to include an illustration of the likely value of the “pot” at retirement age, and the benefits it might provide, expressed in today’s prices.
563. This section makes changes to section 113 of the Pension Schemes Act 1993.
564. *Subsection (1)* adds a new sub-paragraph (ca) to section 113(1) of the Pension Schemes Act to permit regulations to require an annual benefit statement in a money purchase scheme to include an illustration of the future benefits that might become payable under the scheme.
565. *Subsection (2)* adds a new subsection (3A) to section 113 of the Pension Schemes Act to allow the basis for calculating any forecast of future benefits to be calculated by reference to guidance notes. This will allow the Secretary of State for Social Security to delegate responsibility for deciding the method of calculation to a suitable professional body such as the Institute and Faculty of Actuaries.
566. *Subsection (2)* also inserts a new subsection (3B) into section 113 to provide for regulations made under that section to allow Opra to extend time limits for compliance with requirements set out in regulations, in relation to cases where schemes are being wound up.

Section 53: Jurisdiction of the Pensions Ombudsman

567. The Social Security Act 1990 created the office of Pensions Ombudsman by inserting new provisions in the Social Security Act 1975. The functions of the Pensions Ombudsman are now contained in sections 145 to 152 of the Pension Schemes Act 1993. His jurisdiction was extended under amendments to that Act introduced by section 157 of the Pensions Act 1995. The Pensions Ombudsman can investigate

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complaints of injustice caused by maladministration and disputes of fact and law brought by members of occupational and personal pension schemes, and their spouses and dependants, against trustees, managers or employers of those schemes. Complaints can also be brought by the same people against the administrators of schemes. The Ombudsman is also able to investigate complaints and disputes from employers against trustees or managers in relation to the same scheme and vice versa for complaints (but not disputes), and investigate complaints from trustees or managers of one scheme against trustees or managers of another.

568. This section extends the Pensions Ombudsman's jurisdiction by making amendments to section 146 of the Pension Schemes Act 1993. This section will allow a greater range of people to refer complaints or disputes to the Pensions Ombudsman.
569. *Subsection (1)* indicates that this section makes amendments to section 146 of the Pensions Schemes Act 1993.
570. *Subsection (2)* extends the application of section 146(1) to another type of complaint which the Pensions Ombudsman can investigate. The new section 146(1)(ba) allows the Pensions Ombudsman to investigate complaints made by the independent trustee (the trustee who is required under the Pensions Act 1995 to be in place when the sponsoring employer of a final salary occupational scheme is insolvent) alleging maladministration by the other trustees, or the former trustees, of a scheme. This will enable an independent trustee, if he believes that the actions of other trustees, or former trustees, constitute maladministration which would have a detrimental effect on the scheme members, to refer the matter to the Pensions Ombudsman.
571. *Subsection (3)* inserts into section 146(1), by way of new subsections (1)(e) to (g), additional types of disputes or complaints that the Pensions Ombudsman can investigate.

New section 146(1)(e) allows trustees of the same scheme to refer disputes between themselves to the Pensions Ombudsman. This will include "friendly" disputes where the trustees are seeking a direction as to how they should act.

New section 146(1)(f) allows the Pensions Ombudsman to investigate a dispute between the independent trustee and other trustees, or former trustees, of the scheme. This will mean that an independent trustee, who has concerns about the actions of the trustees or former trustees prior to his appointment, will be able to refer the matter to the Pensions Ombudsman. At present, the independent trustee and the other trustees of the scheme are barred from referring such matters to the Pensions Ombudsman.

New section 146(1)(g) allows a sole trustee to raise a question with the Pensions Ombudsman about the carrying out of his functions. This will enable sole trustees to obtain a direction from the Pensions Ombudsman regarding how they should act, in the same way as trustees in "friendly" disputes can.

572. *Subsection (4)* inserts new subsections (1A) and (1B) into section 146.
573. *New section 146(1A)* prevents the Pensions Ombudsman from investigating the complaints or disputes listed in section 146(1)(c) to (g) unless they are referred to him by particular people, as provided for in the new subsection (1A)(a) to (e).

New section 146(1A)(a) reproduces the effect of existing section 146(1)(c). It prevents the Pensions Ombudsman from investigating a dispute between a scheme member or another beneficiary of the scheme and the trustees or employer unless it is referred to him by the member or beneficiary. This prevents employers or trustees referring disputes with members to the Pensions Ombudsman.

New section 146(1A)(b) prevents the Pensions Ombudsman from investigating a dispute between employers and trustees or the trustees of different schemes unless the dispute is referred to him by one of the employers or the trustees. This removes the bar on trustees

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referring disputes with the scheme's sponsoring employer to the Pensions Ombudsman, which is the unintentional effect of the current wording of section 146(d).

New section 146(1A)(c) limits the Pensions Ombudsman to only investigating a dispute between the trustees of the same scheme in circumstances where half or more of the trustee board has agreed to refer it to him. Having half or more of the trustee board agree to refer the matter will prevent a minority in the board delaying the actions of the majority. This will also allow trustees to seek clarification of scheme rules without having to go to court. This will be particularly useful when a scheme is winding up, as it will reduce costs on the scheme at a time when it needs to conserve its resources.

New section 146(1A)(d) allows only the independent trustee of a scheme subject to insolvency procedures to refer a dispute to the Pensions Ombudsman and not the other trustees of the scheme.

New section 146(1A)(e) ensures that the Pensions Ombudsman will not accept a question referred to him about the functions of the sole trustee unless it is referred to him by that sole trustee.

New section 146(1B) ensures that the Pensions Ombudsman can treat a question referred to him by a sole trustee as if it were a reference to him, or determination by him, of a dispute.

574. *Subsection (5)* will allow members of a personal pension scheme to make complaints about actions of the employer. At present, if an employer is involved in the running of a personal pension scheme, particularly a group personal pension scheme, members of the scheme cannot refer complaints about the employer's actions to the Pensions Ombudsman.
575. *Subsection (6)* makes replacement provision in respect of one of the circumstances where the Pensions Ombudsman cannot investigate. At present, if a case has gone to an employment tribunal or a court, even in error, the issue cannot then be referred to the Pensions Ombudsman. The new provision will allow the Pensions Ombudsman to accept a complaint or a dispute for investigation where the subject matter has previously gone before an employment tribunal or a court, and the case has been discontinued (unless this was on the basis of a settlement or compromise). *Subsection (10)* ensures that the changes made by subsection (6) to the Pensions Ombudsman's jurisdiction will not apply to any cases that were referred to him before the provisions come into force.
576. *Subsection (7)* provides that a person entitled to a pension credit as against the trustees or managers of a scheme can be considered an actual or potential beneficiary within the meaning of section 146(7), for the purposes of making a complaint or referring a dispute to the Pensions Ombudsman. This will allow those who have an entitlement to a pension credit, but who will not become a member of the scheme awarding the credit, to make a complaint or refer a dispute to the Pensions Ombudsman.
577. *Subsection (8)* inserts a definition of "independent trustee" into section 146(8). The independent trustee will be the trustee appointed as such by the insolvency practitioner under section 23(3)(b) of the Pensions Act 1995.
578. *Subsection (9)* replaces the words "complaints and disputes" in 146(1) with the word "matters". This ensures that the Pensions Ombudsman can consider questions from sole trustees which could not be regarded as a dispute. It also replaces the latter part of section 146(1)(b) of the Pension Schemes Act 1993. This clarifies the position regarding the identity of the scheme to which the complaint relates in cases where complaints of maladministration are made by the trustees of one scheme against the trustees of another scheme. This subsection also removes the words "which arises" from sections 146(1)(c) and 146(1)(d). This will allow disputes between current and former trustees to be considered by the Pensions Ombudsman.

Section 54: Investigations by the Pensions Ombudsman

579. As a result of a Court of Appeal judgement, under the current legislation, the Pensions Ombudsman should not accept a case if the investigation of it would impact upon the interests, particularly the financial interests, of those not directly involved in the case. This is because those not directly involved in the case are currently not able to make representations to the Ombudsman and are not, therefore, bound by his determinations. This section amends sections 148, 149 and 151 of the Pension Schemes Act 1993 as amended by the Pensions Act 1995.
580. *Subsection (2)* inserts new paragraphs (ba) and (bb) into section 148(5). They extend the meaning of who is a party to an investigation for the purposes of staying court proceedings. These new paragraphs allow the Pensions Ombudsman to link to a case those whose interests may be affected by the complaint or dispute or its outcome.
581. *Subsection (3)* replaces subsection (1) of section 149 with a new section 149(1) which lists the person to whom the Pensions Ombudsman is obliged to give the opportunity to comment, with regard to matters being investigated by him. The replacement subsection obliges the Pensions Ombudsman to give those who are being complained against, those who are responsible for the management of schemes to which the dispute relates, and those whose interests are, or may be, affected, the opportunity to put their point of view to him.
582. *Subsection (3)* also inserts two new subsections (1A) and (1B) into section 149. Inserted subsection (1A) ensures the Pensions Ombudsman is not required to give an opportunity to make representations from someone who (as the person making the complaint or reference) has had adequate opportunity to comment or whose interests are being represented by a person appointed to do so. Inserted subsection (1B) makes clear that if a person has been appointed to represent a group, after making initial representations on his own behalf, that person should also be given the opportunity to make comments as a representative of that group.
583. *Subsection (4)* inserts new paragraph (ba) in section 149(3), which lists those matters that can be covered in the Pensions Ombudsman's procedure rules. New paragraph (ba) allows rules to be made permitting the Pensions Ombudsman to appoint a person to represent a group of those who have the same interest in a complaint, for instance, such a group as all the pensioner members. It will then be this appointed person who will make representations on behalf of that group. The precise manner in which these representative persons will be appointed will be laid out in the Personal and Occupational Pension Schemes (Pensions Ombudsman) (Procedure) Rules. The procedure for selection will ensure that those nominated as representing a particular group can satisfy the Pensions Ombudsman that they are truly representative of that group and do not have a conflict of interest in the particular case.
584. *Subsection (5)* inserts new paragraph (d) which adds an additional item in the list of items that can be included in the rules. This will enable the procedure rules to include provisions to allow the Pensions Ombudsman to order that the cost of legal expenses in a particular case can be met from the funds of the scheme. It is envisaged that such orders will be made when the case is particularly complex and involves the interests of several groups. The procedure rules may state that the order should cover only certain expenses up to a certain limit.
585. *Subsection (6)* inserts subsection (8) into section 149. This is intended to ensure that those whose interests may be affected by any determination, or any directions the Pensions Ombudsman may give in relation to the dispute, will also have the opportunity to make representations rather than only giving the opportunity to those with a direct interest in the complaint or dispute itself.
586. *Subsection (7)* inserts new paragraph (c) into subsection (1) of section 151. Section 151(1) specifies who should be given notice of the Pensions Ombudsman's

determination in a particular case. The additional provision requires the Pensions Ombudsman to issue a copy of his determination in a particular case to all those who could have commented on the allegations. Therefore, determinations will be sent to those against whom the allegations are made and to those who could have made representations to the Pensions Ombudsman. These would be either those identified by the Pensions Ombudsman as able to make representations directly to him on their own behalf, or those who are representing groups of individuals who have the same interest.

587. *Subsection (8)* replaces part of subsection (3) of section 151. Subsection (3) specifies who will be bound by the Pensions Ombudsman's determination. This ensures that those who have had the opportunity to comment or make representations – either individually or via an appointed person – will be bound by the Pensions Ombudsman's determination. Those who are bound by the determination can appeal against it on a point of law to the High Court (see section 151(4)).
588. *Subsection (9)* ensures that these changes to the Pensions Ombudsman's remit will not apply to any cases that are referred to him before the provisions come into force.

Section 55: Prohibition on different rules for overseas residents

589. The Council of the European Union adopted Council Directive [98/49/EC](#) on 29 June 1998. Its purpose is to safeguard the occupational pension rights of employed and self-employed workers who move within the European Community, and thereby promote the free movement of workers. Occupational pension schemes in the UK already operate within the spirit of the Directive, but existing legislation does not currently oblige schemes to comply with two specific requirements of the Directive. This section is intended to ensure compliance with the Directive by:
- preventing occupational pension schemes from having scheme rules which allow the accrued pension entitlement of members or beneficiaries to be altered because the member or beneficiary wants payment to be made anywhere outside the UK; and
 - allowing workers who work outside the UK to continue membership of their employer's UK occupational pension scheme. Any such scheme members, and the sponsoring employer, will be able to continue to make contributions to the scheme, subject only to limitations imposed by the Inland Revenue.
590. There will be two regulation-making powers to enable specific exceptions to the rules on payment of pension and the right to remain a member of a UK scheme, provided such exceptions do not contravene the terms of the Directive.
591. [Section 55](#) inserts a new section 66A in the Pensions Act 1995. The provisions in this new section will be brought into force from a date to be established by order made by statutory instrument.

New section 66A: Prohibition on different rules for overseas residents etc

592. *New section 66A(1)* provides that this section applies to an occupational pension scheme which has any rule that contravenes the requirements in *subsections (2) and (3)* in respect of scheme membership, payment of scheme benefits and the payment of contributions.
593. *New section 66A(2)* prevents discrimination in respect of the entitlement to pension benefits of a member or beneficiary, and prevents any discrimination in respect of the payment of those benefits according to whether or not a country outside of the United Kingdom is to be the destination of that payment. Exceptions to the application of the provisions of this subsection may be made by regulations. *New subsection (4)* provides that the date from which schemes will be in contravention in respect of subsection (2) will be from the day section 55 of the Child Support Pensions and Social Security Act 2000 is brought into force.

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594. *New section 66A(3)* stops occupational pension schemes having a rule to prevent workers who are posted to work in a country outside of the United Kingdom from continuing to remain eligible to be members of that occupational pension scheme. Members may not be prevented from making contributions to their occupational pension scheme. That occupational pension scheme must not have a rule which prevents the scheme accepting contributions from the sponsoring employer in respect of members who are posted to work wholly or partly outside of the United Kingdom. Exceptions to the application of the provisions of this subsection may be made by regulations. *New subsection (5)* provides that the date from which schemes will be in contravention in respect of subsection (2) will be from the day section 55 of the Child Support Pensions and Social Security Act 2000 is brought into force.
595. *New section 66A(6)* allows for deductions such as income tax to be made from pension benefits due to members and beneficiaries, notwithstanding any discriminatory effect. Similarly, it is made clear that schemes continue to comply with the conditions for approval, exemption or tax relief given or available under the Tax Acts.

Section 56: Miscellaneous amendments and alternative to anti-franking rules

596. This section brings into force Schedule 5 which makes various amendments to the Pension Schemes Act 1993 and the Pensions Act 1995.

Schedule 5

Part I: Miscellaneous Amendments

Paragraph 1: Guaranteed minimum for widows and widowers

597. These provisions amend section 17 of the Pension Schemes Act 1993 and are consequential upon the introduction of new bereavement benefits under the Welfare Reform and Pensions Act 1999*. The relevant provisions in the 1999 Act are expected to be brought into force from 5 April 2001. Sub-paragraph (1) inserts new subsection (4A) in section 17.

New subsection (4A)(a) provides that the scheme must provide a Guaranteed Minimum Pension (GMP) for the widow or widower for any period for which a Category B pension is payable by virtue of the earner's contributions, or would have been payable but for the overlapping benefit provisions in section 43(1) of the Social Security Contributions and Benefits Act 1992. This restates the existing law.

New subsection (4A)(b) ensures that a GMP is payable for any period for which Widowed Parents Allowance (WPA) or Bereavement Allowance (BA) is payable to the widow or widower by virtue of the earner's contributions.

New subsection (4A)(c) ensures that where a person ceases to be entitled to WPA or BA when over 45, that person will still continue to receive a GMP, provided that he or she is not cohabiting with a person of the opposite sex and provided that he or she has not remarried. Currently, a person entitled to bereavement benefits (widowed mother's allowance or widow's pension) when over the age of 45 continues to receive those benefits, and accordingly a GMP, until state pension age, unless he or she remarries or cohabits with a person of the opposite sex. *New subsection (4A)(c)* thus preserves the current position as regards GMPs despite the fact that the position as regards entitlement to bereavement benefits is to change.

598. *Sub-paragraphs (2) and (3)* make minor amendments designed to ensure that people whose entitlement to bereavement benefits continues under the existing law also continue to be entitled to GMPs under the existing law.

Paragraph 2: Transfer of rights to overseas personal pension schemes

599. Section 1 of the Pensions Schemes Act 1993 provides a definition of a personal pension scheme, the scope of which is limited to schemes providing benefits to, or in respect of, persons employed in Great Britain. The effect of this is to prevent the transfer of protected rights or Guaranteed Minimum Pension rights to a personal pension scheme set up and administered wholly or primarily overseas. This paragraph amends sections 20 and 28 of the Pension Schemes Act 1993 in order to permit such rights to be transferred to overseas arrangements.

Paragraph 3: Protected rights

600. Protected rights are (subject to rare exceptions) that part of a member's fund within a personal pension or occupational money purchase scheme that is derived from the National Insurance contribution rebate.
601. Section 28 of the Pension Schemes Act 1993 provides that effect may only be given to protected rights in the way specified in that section. Section 28 permits effect to be given to protected rights by way of a lump sum only in limited circumstances and, in particular, not before the member has reached age 60.
602. **Paragraph 3** amends section 28 to insert a new subsection (4A) and (4B).

New section 28(4A) provides for effect to be given to a member's protected rights in an occupational pension scheme by way of a lump sum where the trustees or managers of the scheme are satisfied that the member, whatever his age, is terminally ill and likely to die within a year.

New section 28(4B) restricts the amount payable under subsection (4A) where the member is a married person on the date on which the lump sum becomes payable. The balance of the protected rights will then go to provide for survivors' benefits. The amount payable under this subsection is restricted to no more than a half of the member's protected rights.

Paragraph 4: Review and alteration of rates of contribution

603. This paragraph amends sections 42(1)(a)(i) and (3) of the Pension Schemes Act 1993 so that the cross-references to section 41 in these sections take account of the changes made to that section by paragraph 127 of Schedule 7 to the Social Security Act 1998.

Paragraph 5: Contributions equivalent premiums

604. **Paragraph 5(1)** substitutes subsection (4) and introduces a new subsection (4A) in section 58 in the Pension Schemes Act 1993 to ensure that Contributions Equivalent Premiums (CEPs) continue to be equivalent to the National Insurance contribution (NIC) rebate. The CEP is the amount that a contracted-out salary related scheme is required to pay in order for someone with less than two years' qualifying service in the scheme to be reinstated into the State Earnings Related Pension Scheme (SERPS).
605. At present, section 58(4) provides for the CEP to be the difference between the amount of Class 1 contributions payable in respect of the earner's contracted-out employment and the amount of those contributions that would have been payable had the employment not been contracted-out. This method of calculation ensures that CEPs relating to periods prior to April 1999 are equivalent to the contracted-out rebate. Following the introduction of a new Earnings Threshold (the level of earnings at which an employer becomes liable to pay Class 1 contributions) on 6 April 1999, the existing method of calculation no longer ensures that the CEP is equivalent to the rebate. All CEPs in respect of periods after 6 April 1999 would be lower than the rebate.

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New section 58(4) and 58(4A) ensure that the CEP will be equal to the amount of the NIC rebate payable in respect of contracting-out for periods after 6 April 1999 (as it is already for periods before 6 April 1999).

New section 58(4A) provides that where trivial or fractional amounts were not included in the calculation of the rebate they are not included in the calculation of the CEP.

606. **Paragraph 5(2)** amends subsection (2) of section 61 of the Pensions Schemes Act 1993 to ensure that the employee's share of the CEP continues to be equal to the actual reduction in his primary Class 1 contributions paid throughout the period of contracting-out.
607. At present, section 61(2) provides for the employee's share of the CEP to be based on the contracted-out rebate, which is currently equal to the actual reduction in the primary Class 1 contribution. When a new Primary Threshold (the level of earnings at which an employee will become liable to pay Class 1 contributions) is introduced on 6 April 2000, section 61(2) will permit schemes to recover from employees more than that actual reduction in certain cases.
608. **Paragraph 5(3)** substitutes a new paragraph (b) in section 63(1) of the Pensions Schemes Act 1993 so that the reference to section 58 in that paragraph takes account of the changes being made by paragraph 5(1).
609. **Paragraph 5(4)** ensures that the amendments made by paragraphs 5(1), 5(2) and 5(3) have effect in relation to any CEP payable on or after 6 April 1999.

Paragraph 6: Contribution equivalent premiums: Northern Ireland

610. This paragraph makes corresponding provision relating to the CEP for Northern Ireland.

Paragraph 7: Use of cash equivalent for annuity

611. Where a member of a contracted-out money purchase occupational pension scheme exercises his right to take a cash equivalent transfer value of his accrued rights, section 95(4) of the Pension Schemes Act 1993 prohibits the purchase of an annuity. A member may ask for the cash equivalent transfer value to be transferred to another suitable occupational pension scheme or an appropriate personal pension. This paragraph removes the prohibition on annuity purchase and gives the member a further option for the use of his cash equivalent transfer value.

Paragraph 8: Transfer values where pension in payment

612. Subject to limited exemptions, members of occupational pension schemes are prohibited from taking their pension before they actually retire or leave service. Inland Revenue has proposed to use their discretion so that occupational pension scheme members may receive all or part of their accrued pension while still continuing in pensionable employment. Scheme members taking up this option would lose their right to a cash equivalent transfer value, since section 98(7) of the Pension Schemes Act 1993 removes this right if any part of a pension is in payment.
613. This paragraph amends section 98(7) so that a member will be able to take a transfer of his rights which have not come into payment. It also amends section 97(2) to allow regulations to take account of the amount of pension already in payment when calculating a cash equivalent transfer value. The definition of pensioner member in section 124(1) of the Pensions Act 1995 is amended so as to exclude a person with pension rights accruing as an active member of a scheme.

Paragraph 9: Information about contracting-out

614. This paragraph substitutes a new section 156 in the Pension Schemes Act 1993 to make further provision for the information which may be supplied to pension scheme administrators in the light of changes made to contracting-out arrangements by the Pensions Act 1995. At present, section 156 allows the Secretary of State or the Inland Revenue to provide information to pension scheme administrators in connection with any Guaranteed Minimum Pension (GMP) or its calculation. As currently in force, section 156 does not apply to appropriate personal pension schemes (APPS) and specifically excludes occupational money purchase schemes (COMPS).

New section 156: Information for purposes of contracting-out

New section 156(1) enables the Secretary of State or the Inland Revenue to provide trustees or managers of any occupational pension scheme or APPS with the information they are likely to need to enable them to discharge their obligations under the contracting-out arrangements in Part III of the Pension Schemes Act 1993. This will include, for instance, the information which scheme administrators need to help them determine the correct level of contracting-out benefit.

New section 156(2) enables the Secretary of State or the Inland Revenue to provide the same information to other persons in categories specified in regulations and is currently provided for by section 156(b).

Paragraph 10: Register of disqualified trustees

615. Section 29(3) and (4) of the Pensions Act 1995 specify the circumstances in which Opra may disqualify a person from being a trustee of an occupational pension scheme. Section 30(7) of the Act requires Opra to keep a register of all persons it disqualifies (the register does not cover automatic disqualifications under section 29(1)). Opra must, where it receives a request to do so, disclose whether a person named in the request is included in the register as being disqualified in respect of the particular scheme named in the request. This means that Opra may only answer “yes” or “no” to the enquiry and cannot volunteer other information which may be relevant. There is also no requirement for the register to be open to public inspection.
616. This paragraph inserts a requirement for Opra to make the register available for inspection in person by the public. It expands on the requirement for Opra to respond to requests. Opra still cannot volunteer information, but, if requested to do so, it must disclose whether a person named in the request is disqualified in respect of a scheme specified in the request or in respect of *all* schemes. It also allows Opra to publish, in a medium of its choosing, lists of those who appear on the register, and the fact that they are disqualified from being a trustee of all schemes, some schemes or a single scheme. The full name (including initials and titles) and date of birth must be listed if the Authority has a record of them, even if those matters are not recorded in the register itself. The schemes themselves will not be named.
617. This will provide easier access to the register for those responsible for appointing trustees and will thus reduce the risk of disqualified people being appointed as trustees. A person’s name will not be published in respect of any particular disqualification until either time limits for appeals and for applications to review that disqualification decision are passed, or (where the time limit has not passed) it is unlikely that there will be an appeal or application for review, or where an appeal or review is pending.

Paragraph 11: Conditions of payment of surplus to an employee

618. This paragraph makes technical changes to section 37(4)(d) of the Pensions Act 1995 and will allow occupational pension schemes that are making payments from surplus funds to an employer to use their own scheme rules to make increases to pensioner members from the surplus. Occupational pension schemes which have pension funds

which are surplus to liabilities are required to take steps to reduce the surplus. If the employer wants to take a refund, the scheme must first award increases to pensioner members' pensions. These amendments will allow schemes to avoid recalculating increases which have already been granted, under scheme rules. Pensioner members will not suffer any financial loss as a result of the proposed changes.

Paragraph 12: Duties relating to statements of contributions

619. The trustees or managers of every occupational pension scheme are required to appoint an auditor to obtain audited accounts and a statement about the prompt payment of contributions under the scheme during the preceding scheme year. In an "earmarked scheme" (which is a money purchase occupational scheme under which all the benefits provided are secured by one or more contracts of insurance, or by annuity contracts which are specifically allocated to the provision of benefits to, or in respect of, individual members) the auditor is only under a statutory obligation to produce a statement about contributions.
620. This paragraph replaces section 41(5) of the Pensions Act 1995 to enable regulations to be made permitting earmarked schemes to obtain a statement about contributions from a prescribed person or body as an alternative to the scheme appointing an auditor for this purpose. The existing section 41(5)(a) provides for regulations to prescribe the persons who may act as auditors or actuaries. The substituted paragraph will have the same effect. The *new subsection (5A)* enables regulations to be made which impose a duty on the trustees or managers of earmarked schemes to provide the person making the statement about contributions with sufficient information to enable them to do so. The *new subsection (5B)* allows for the imposition of civil penalties by Opra on any trustee or manager of an earmarked scheme who fails to provide the information which they are required to provide by regulations made under subsection (5A).
621. The paragraph also amends section 88 of the Pensions Act 1995. The *new subsection (5)* places a duty on the person providing the statement to report to Opra if contributions have not been paid on time during the course of the scheme year. The *new subsection (6)* provides that Opra may impose a civil sanction on any person who fails to make such a report within the time limit set out in regulations.

Part II Alternative to anti-franking rules

622. **Paragraphs 14 to 17** of Schedule 5 introduce a new minimum benefits test which replaces the anti-franking provisions set out in sections 87 to 92 of the Pension Schemes Act (PSA) 1993. The existing anti-franking legislation prohibits occupational pension schemes from funding increases to Guaranteed Minimum Pensions (GMPs) from other scheme benefits. This principle is reflected in the alternative rules in paragraphs 14 to 17 and the protection is extended to rights built up on after 6 April 1997 (which replaced GMPs). Rights accrued after the end of a period of contracted-out service and late retirement enhancements will no longer be protected. The new provisions prevent schemes from offsetting their pre-6 April 1997 pensions against their post-6 April 1997 pensions, however schemes will be allowed, as at present, to fund the first increase to the GMP, required in the tax year after the one in which it comes into payment, from the scheme pension.

Paragraph 14: Cases in which alternative applies

623. The new provisions apply to all occupational pension schemes that hold GMP rights, subject to exceptions to be prescribed in regulations. All members who left pensionable service (or died) after the legislation comes into force and whose pensions (or survivors' pensions) become payable after that date will have their benefits calculated under the new arrangements. However, the scheme managers or trustees will be able to elect, in a manner to be prescribed, to operate the new rules for members who left pensionable service before these provisions come into force. Where a scheme elects to calculate

early leavers' preserved pensions by reference to the new arrangements, that election must apply to all such deferred members and is a once and for all choice.

Paragraph 15: Alternative rules

624. The minimum benefit rules underpin a scheme's own benefit formula. To check whether the level of pension payable to a scheme member meets the statutory minimum, the scheme administrator will undertake a notional calculation as follows:

Step 1: Calculate the member's GMP entitlement. For the purpose of this calculation, the amount of GMP would include increases in deferment required under section 15 of the PSA, statutory revaluation under section 16 of the PSA and increases in payment under section 109 of the PSA.

Step 2: Calculate the amount of GMP at the termination of salary-related pensionable service, exclude any increases required under sections 15 or 109 of the PSA, or early leaver revaluation required under 16(3), but include any revaluation under section 16(1) of the PSA (section 148 revaluation). The revaluation on the GMP, for the purpose of this step, is to be calculated up to the tax year before the one in which the member left salary-related pensionable service in the scheme, or the tax year before the one in which s/he reached State Pension Age, whichever is the earlier. State Pension Age in this context means 60 for a woman and 65 for a man.

Step 3: Determine whether there are any benefits in excess of the GMP which derive from pre-April 1997 rights. This can be done by deducting the amount in step 2 from the benefits that are attributable to all the pre-April 1997 rights.

Step 4: Calculate the amount of any such benefits in excess of the GMP. The level of earnings used must not be lower than that those used to calculate the post-April 1997 benefits under step 6.

Step 5: Revalue the pre-April 1997 excess over the GMP, in accordance with the rules in chapter II of Part IV of the PSA (Revaluation of Accrued Benefits (excluding Guaranteed Minimum Pensions)).

Step 6: Calculate any benefits accruing in the scheme after 6 April 1997.

Step 7: Revalue post-6 April 1997 benefits, in accordance with the rules on revaluation set out in chapter II of Part IV of the PSA (Revaluation of Accrued Benefits (excluding GMPs)) and index them as required by section 51 (Indexation) of the Pensions Act 1995.

Step 8: Add together the GMP in step 1 plus the revalued excess over the GMP calculated under step 5 and the post-April 1997 rights as calculated under step 7. This is the minimum pension payable.

Paragraph 16: Relationship between alternative rules and other rules

625. The minimum benefits rule does not directly apply to the calculation of alternatives to Short Service Benefits provided under section 73(2)(b) of the PSA. However, the Short Service Benefit on which the alternative is based must itself be calculated in compliance with the minimum benefits test. The new test overrides scheme rules, where the two conflict. For the purposes of calculating transfer values, schemes will be treated as having these provisions within their rules. The test must be undertaken before the level of a member's pension is adjusted to take account of commutation, forfeiture, suspension, charges, liens or set-offs. The remainder of the paragraph sets out the definitions of phrases used.

*These notes refer to the Child Support, Pensions and Social Security
Act 2000 (c.19) which received Royal Assent on 28th July 2000*

Paragraph 17: Supplemental

626. Paragraph 17 gives the Secretary of State a power to modify in regulations the provisions in paragraphs 14 to 16. The exercise of this power is subject to negative procedures, ie subject to annulment in pursuance of a resolution in either House of Parliament.