



Statutory Document No. 13/06

THE PENSION SCHEMES ACT 1995
THE PENSION SCHEMES ACT 1993 (APPLICATION)
(AMENDMENT) ORDER 2006

Approved by Tynwald

22nd February 2006

Coming into operation in accordance with Article 1

In exercise of the powers conferred on the Department of Health and Social Security by section 1 of the Pension Schemes Act 1995 (c.11), and of all other enabling powers, the following Order is hereby made:-

Citation and commencement

1. This Order may be cited as the Pension Schemes Act 1993 (Application) (Amendment) Order 2006 and shall, subject to section 1(4) of the Pension Schemes Act 1995, come into operation on 6th April 2006.

Amendment of the Pension Schemes Act 1993 (Application) Order 1995

2. (1) Amend the Schedule to the Pension Schemes Act 1993 (Application) Order 1995(a) (which sets out the Pension Schemes Act 1993 (of Parliament) (c.48) as it has effect in the Isle of Man) in accordance with the following paragraphs.

(2) In section 11 (elections as to employments covered by contracting-out certificates)-

(a) in subsection (5) for paragraph (b)(ii) substitute -

“(ii) to any registered trade union recognised to any extent for the purposes of collective bargaining in relation to those employees;” and

(b) after that subsection add -

“(5A) In paragraph (b)(ii) of subsection (5) -

(a) “registered” means registered in accordance with the Trade Unions Act 1991 (of Tynwald); and

(a) S.D. 531/95.

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- (b) “collective bargaining” has the same meaning as in section 32(2) of the Employment Act 1991 (of Tynwald).”.

(3) In section 19 (occupational pension scheme trustees or managers to be discharged from their liability to provide guaranteed minimum pensions by securing insurance policies or annuity contracts) –

- (a) in subsection (4) for paragraph (a) substitute –

“(a) the insurer with which it is or was taken out or entered into -

- (i) is, or was at the relevant time, carrying on long term business in the Isle of Man or long-term insurance business in the United Kingdom or any other Member State (as the case may be); and
- (ii) satisfies, or at the relevant time satisfied, prescribed requirements; and”;

- (b) repeal subsection (7).

(4) In section 29 (the pension and annuity requirements for the purposes of section 28) –

- (a) in subsection (3)(b) for “insurance company” substitute “insurer”; and
- (b) in subsection (4) for “insurance company”, in both places, substitute “insurer”.

(5) In section 32A (discharge of protected rights on winding up by way of insurance policies) in subsection (2) for paragraph (a) substitute –

“(a) the insurer with which it is or was taken out or entered into -

- (i) is, or was at the time when the policy was taken out or (as the case may be) the benefit of it was assured, carrying on long term business in the Isle of Man or long-term insurance business in the United Kingdom or any other Member State (as the case may be), and
- (ii) satisfies, or at the time satisfied, prescribed requirements, and”.

(6) In section 38 (alteration of rules of appropriate schemes: permitted forms) –

- (a) in subsection (6), in paragraph (b) for the words from “has” to the end substitute “is an authorised unit trust scheme”; and
- (b) after that subsection, insert -

“(6A) “Authorised unit trust scheme” –

- (a) has the meaning given in Part 17 of the Financial Services and Markets Act 2000 and includes any scheme which is, as a result of an order made under section 426 of that Act making transitional provisions, treated as falling within that meaning; or
- (b) means such a scheme authorised under Part 1 of the Financial Services and Markets Act 1988 (an Act of Tynwald).”.

(7) In section 47(3)(d)(ii) (further provisions concerning entitlement to guaranteed minimum pensions for the purposes of section 46) for “the Policyholders Protection Act 1975” substitute “the United Kingdom Financial Services Compensation Scheme”.

(8) In section 95 (ways of taking right to cash equivalent) in subsection (2)(c) for “insurance companies” substitute “insurers”.

(9) In section 101F(2)(b) (authorised purposes for transfer notice) for “insurance companies” substitute “insurers”.

(10) In section 113 information requirements to be complied with in the case of occupational and private pension schemes) –

(a) in subsection (2) insert as paragraph (d)–

“(d) in the case of an occupational pension scheme, recognised trade unions recognised to any extent for the purposes of collective bargaining in relation to members and prospective members of the scheme (see section 11(5A) for interpretation of terms appearing in this paragraph);” and

(b) as subsection (4) insert –

“(4) The regulations shall make provision for referring to the Employment Tribunal any question as to whether an organisation is such a trade union as is mentioned in subsection (2)(d).”.

(11) Omit Chapter II of Part VII (payment by the Department of unpaid scheme contributions in the case of insolvent employers).

(12) For section 146 (functions of the Pensions Ombudsman) substitute –

“Functions of the Pensions Ombudsman

146. (1) The Pensions Ombudsman may investigate and determine the following matters

(a) a complaint made to him by or on behalf of an actual or potential beneficiary of an occupational or personal pension scheme who alleges that he has sustained injustice in consequence of maladministration in connection with any act or omission of a person responsible for the management of the scheme,

(b) a complaint made to him –

(i) by or on behalf of a person responsible for the management of an occupational pension scheme who, in connection with any act or omission of another person responsible for the management of the scheme, alleges maladministration of the scheme, or

(ii) by or on behalf of the trustees or managers of an occupational pension scheme who, in connection with any act or omission of any trustee or manager of another such scheme, allege maladministration of the other scheme,

and in any case falling within sub-paragraph (ii) references in this Part to the scheme to which the complaint relates are references to the other scheme referred to in that sub-paragraph,

- (ba) a complaint made to him by or on behalf of an independent trustee of a trust scheme who, in connection with any act or omission which is an act or omission either -
 - (i) of trustees of the scheme who are not independent trustees, or
 - (ii) of former trustees of the scheme who were not independent trustees,alleges maladministration of the scheme,
- (c) any dispute of fact or law in relation to an occupational or personal pension scheme between -
 - (i) a person responsible for the management of the scheme, and
 - (ii) an actual or potential beneficiary,
- (d) any dispute of fact or law between the trustees or managers of an occupational pension scheme and -
 - (i) another person responsible for the management of the scheme, or
 - (ii) any trustee or manager of another such scheme,and in a case falling within sub-paragraph (ii) references in this Part to the scheme to which the reference relates are references to each of the schemes,
- (e) any dispute not falling within paragraph (f) between different trustees of the same occupational pension scheme,
- (f) any dispute, in relation to a time while section 22 of the Pensions Act 1995 (circumstances in which the Department may appoint an independent trustee) applies in relation to an occupational pension scheme, between an independent trustee of the scheme appointed under section 23(1) of that Act and either—
 - (i) other trustees of the scheme, or
 - (ii) former trustees of the scheme who were not independent trustees appointed under section 23(1) of that Act; and
- (g) any question relating, in the case of an occupational pension scheme with a sole trustee, to the carrying out of the functions of that trustee.

(1A) The Pensions Ombudsman shall not investigate or determine any dispute or question falling within subsection (1)(c) to (g) unless it is referred to him -

- (a) in the case of a dispute falling within subsection (1)(c), by or on behalf of the actual or potential beneficiary who is a party to the dispute,
- (b) in the case of a dispute falling within subsection (1)(d), by or on behalf of any of the parties to the dispute,

- (c) in the case of a dispute falling within subsection (1)(e), by or on behalf of at least half the trustees of the scheme,
- (d) in the case of a dispute falling within subsection (1)(f), by or on behalf of the independent trustee who is a party to the dispute,
- (e) in the case of a question falling within subsection (1)(g), by or on behalf of the sole trustee.

(1B) For the purposes of this Part, any reference to or determination by the Pensions Ombudsman of a question falling within subsection (1)(g) shall be taken to be the reference or determination of a dispute.

(2) Complaints and references made to the Pensions Ombudsman must be made to him in writing.

(3) For the purposes of this Part, the following persons (subject to subsection (4)) are responsible for the management of an occupational pension scheme or a personal pension scheme –

- (a) the trustees or managers, and
- (b) the employer;

but, in relation to a person falling within one of those paragraphs, references in this Part to another person responsible for the management of the same scheme are to a person falling within the other paragraph.

(4) Regulations may provide that, subject to any prescribed modifications or exceptions, this Part shall apply in the case of an occupational or personal pension scheme in relation to any prescribed person or body of persons where the person or body –

- (a) is not a trustee or manager or employer, but
- (b) is concerned with the financing or administration of, or the provision of benefits under, the scheme,

as if for the purposes of this Part he were a person responsible for the management of the scheme.

(4A) For the purposes of subsection (4) a person or body of persons is concerned with the administration of an occupational or personal pension scheme where the person or body is responsible for carrying out an act of administration concerned with the scheme.

(5) The Pensions Ombudsman may investigate a complaint or dispute notwithstanding that it arose, or relates to a matter which arose, before 1st October 1990 (the date on which the provisions under which his office was constituted came into force).

(6) The Pensions Ombudsman shall not investigate or determine a complaint or dispute

- (a) if, before the making of the complaint or the reference of the dispute –
 - (i) proceedings in respect of the matters which would be the subject of the investigation have been begun in any court or the Employment Tribunal, and

- (ii) those proceedings are proceedings which have not been discontinued or which have been discontinued on the basis of a settlement or compromise binding all the persons by or on whose behalf the complaint or reference is made;
- (b) if the scheme is of a description which is excluded from the jurisdiction of the Pensions Ombudsman by regulations under this subsection; or
- (c) if, and to the extent that, the complaint or dispute, or any matter arising in connection with the complaint or dispute, is of a description which is excluded from the jurisdiction of the Pensions Ombudsman by regulations under this subsection.

(6A) For the purposes of subsection (6)(c) -

- (a) a description of complaint may be framed (in particular) by reference to the person making the complaint or to the scheme concerned (or to both), and
- (b) a description of dispute may be framed (in particular) by reference to the person referring the dispute or to the scheme concerned (or to both).

(7) The persons who, for the purposes of this Part, are “actual or potential beneficiaries” in relation to a scheme are –

- (a) a member of the scheme,
- (b) the widow or widower, or any surviving dependant, of a deceased member of the scheme;
- (ba) a person who is entitled to a pension credit as against the trustees or managers of the scheme;
- (c) where the complaint or dispute relates to the question -
 - (i) whether a person who claims to be such a person as is mentioned in paragraph (a), (b) or (ba) is such a person, or
 - (ii) whether a person who claims to be entitled to become a member of the scheme is so entitled,

the person so claiming.

(8) In this Part -

“employer”, in relation to a pension scheme, includes a person -

- (a) who is or has been an employer in relation to the scheme, or
- (b) who is or has been treated under section 181(2) as an employer in relation to the scheme for the purposes of any provision of this Act;

“independent trustee”, in relation to a scheme, means a trustee of the scheme appointed under section 23(1) of the Pensions Act 1995 (appointment of independent trustee by the Department);

“member”, in relation to a pension scheme, includes a person -

- (a) who is or has been in pensionable service under the scheme, or
- (b) who is or has been treated under section 181(4) as a member in relation to the scheme for the purposes of any provision of this Act;

“pensionable service” in this subsection includes pensionable service as defined in section 70(2);

“trustees or managers”, in relation to a pension scheme which is a public service pension scheme, includes the scheme’s administrators.”.

(13) In section 149(6) (procedure on an investigation by the Pensions Ombudsman: persons to whom information may be disclosed) –

- (a) repeal paragraphs (f) and (g); and
- (b) for paragraphs (l) and (m) substitute –
 - “(l) a body designated under section 326(1) of the Financial Services and Markets Act 2000;
 - (m) a recognised investment exchange or a recognised clearing house (as defined by section 285 of that Act); and”.

(14) In the heading to section 152 for “Special County Court Rules” substitute “High Court Rules”.

(15) For section 158 (disclosure of information between Government Departments Etc.) substitute –

“Disclosure of Information Between Government Departments Etc.

158. (1) No obligation as to secrecy imposed by statute or otherwise on a person employed in the assessment or collection of income tax by the Treasury shall prevent information obtained or held in connection with the assessment or collection of income tax from being disclosed -

- (a) to the Department, or
- (b) to an officer of the Department authorised to receive such information,

in connection with the operation of this Act (except Chapter II of Part VII and sections 157 and 161).

(1A) No obligation as to secrecy imposed by statute or otherwise on a person employed in the assessment or collection of income tax by the Treasury shall prevent information obtained or held for the purposes of Part III of this Act (certification of pension schemes, etc.) from being disclosed -

- (a) to the Department, or
- (b) to an officer of the Department authorised to receive such information,

in connection with the operation of this Act (except Chapter II of Part VII).

(2) to (4) Omitted.

(5) Subsections (1) and (1A) extend only to disclosure by or under the authority of the Assessor or the Treasury.

(6) Subject to subsection (7), information which is the subject of disclosure to any person by virtue of subsection (1) or (1A) shall not be further disclosed to any other person, except where the further disclosure is made -

- (a) to a person to whom disclosure could by virtue of this section have been made by or under the authority of the Assessor or the Treasury;
- (b) for the purposes of any civil or criminal proceedings in connection with the operation of this Act (except Chapter II of Part VII and sections 157 and 161); or
- (c) for the purposes of Chapter II of Part I of the Social Security Act 1998 (social security decisions and appeals);
- (d) omitted.

(7) The Department may provide the Insurance and Pensions Authority with such information as it may request for the purposes of the register mentioned in section 24 of the Retirement Benefits Schemes Act 2000 (of Tynwald) ("the register") and no obligation as to secrecy or confidentiality imposed by statute or otherwise on persons employed in the Department shall prevent them from disclosing to the Insurance and Pensions Authority such information as is necessary for the purposes of the register.

(8) The Department may inform any person claiming to be entitled to a pension under an occupational pension scheme or a personal pension scheme of the name and address of any person appearing to the Department to be responsible for paying that pension notwithstanding that information with respect to that matter has come into the Department's possession by virtue of this section."

(16) In section 164 (Crown employment) omit sub-paragraph (ii) of subsection (1)(b).

(17) In section 165 (application of certain provisions to cases with a foreign element) -

- (a) in subsection (3) -
 - (i) in paragraph (c) for "in any part of Great Britain" substitute "in the Isle of Man", and
 - (ii) in paragraph (d) for "Great Britain" substitute "the British Isles"; and
- (b) in subsection (4) omit "or (c)".

(18) In section 167(3) (application of general provisions relating to the administration of social security) -

- (a) for "Section 11" substitute "Sections 7B and 11";
- (b) after "decisions" insert "including those made by contributions decision-makers"; and
- (c) for "it applies" substitute "they apply".

(19) In section 170(1)(c) (determination of questions by the Department) for "the Policyholders Protection Act 1975" substitute "the United Kingdom Financial Services Compensation Scheme".

(20) In section 177 (general financial arrangements) –

(a) in subsection (2) –

(i) before paragraph (a) insert –

“(za) payments by the Department under section 41(1D) or section 42A(2C) or (3);”, and

(ii) omit paragraph (b);

(b) in subsection (3) omit paragraph (a); and

(c) in subsection (7)(a) after “section” insert “41(1E), 42A(2D) or (5) or”.

(21) In section 178 (regulations prescribing who is to be treated as trustees and managers of occupational pension schemes) in paragraph (a) omit “(except Chapter II of Part VII or section 157)”.

(22) After section 180 insert –

““Insurer”, “long term business” and “long-term insurance business”

180A. (1) In this Act “insurer” means –

(za) a person who is authorised under the Insurance Act 1986 (of Tynwald) to effect or carry out contracts of insurance, or

(a) a person who has permission under Part 4 of the Financial Services and Markets Act 2000 to effect or carry out contracts of insurance, or

(b) an EEA firm of the kind mentioned in paragraph 5(d) of Schedule 3 to that 2000 Act, which has permission under paragraph 15 of that Schedule (as a result of qualifying for authorisation under paragraph 12 of that Schedule) to effect or carry out contracts of insurance.

(2) In this Act –

(a) “long term business” has the meaning given in section 34 of the Insurance Act 1986 (an Act of Tynwald); and

(b) “long-term insurance business” means business which consists of the effecting or carrying out of contracts of long-term insurance.

(3) Subsections (1)(a) and (b) and (2)(b) must be read with -

(a) section 22 of the Financial Services and Markets Act 2000;

(b) any relevant order under that section; and

(c) Schedule 2 to that Act.”.

(23) In section 181 (general interpretation) in subsection (1) –

(a) in the appropriate place in the alphabetical order of definitions insert –

“the United Kingdom Financial Compensation Scheme” means the Financial Compensation Scheme referred to in section 213(2) of the Financial Services and Markets Act 2000; and

(b) repeal the definition of “insurance company”.

(24) In section 182 (orders and regulations: general provisions) omit “(except an order under section 153(8))”.

(25) In section 183(3) (sub-delegation of powers under the Pension Schemes Act 1993) omit “63(2)”.

Made 29th December 2005



Minister for Health and Social Security

EXPLANATORY NOTE

(This note is not part of the Order)

1. This Order, which comes into operation on 6th April 2006, makes a number of miscellaneous amendments to the Pension Schemes Act 1993 as that Act of the United Kingdom Parliament has effect in the Isle of Man (“the 1993 Act”).
- 2.1 *Introductory*
 - 2.1.1 Article 1 provides for the citation and commencement of the Order and article 2(1) introduces the amendments it makes.
 - 2.1.2 The major changes the Order makes are explained in paragraphs 3 to 5 of this note. The others are explained in paragraph 6.
3. *The functions of the Pensions Ombudsman*
 - 3.1 Under the 1993 Act the United Kingdom Pensions Ombudsman may investigate and determine complaints, disputes and questions made by persons in the Isle of Man in the same way as ones made by persons in the United Kingdom.

- 3.2 Article 2(12) replaces the existing version of section 146 of the 1993 Act (which sets out the Ombudsman's functions) with another one. The new version of section 146 incorporates changes made to independent trustee legislation in the Pensions Act 1995 (as that Act of the United Kingdom Parliament has effect in the Isle of Man).
4. *DHSS's duty to pay unpaid pension scheme contributions into a pension scheme whose employer has become insolvent*
- 4.1 Article 2(11) omits Chapter II of Part VII of the 1993 Act. That Chapter provided that if, on application made to it by certain persons, the DHSS was satisfied that –
- an employer had become insolvent; and
 - at that time the employer had failed to pay into an occupational or personal pension scheme contributions which it was liable to pay (either its own or ones on behalf of its employees which it had deducted but failed to pay),
- then the DHSS would pay into the resources of the scheme an amount in respect of those unpaid contributions.
- 4.2 Chapter II is being omitted because the same provision is found in Part VI of the Employment Act 1991 (of Tynwald).
- 4.3 Article 2(16), (20)(a)(ii) and (b) and (21) make amendments consequential on article 2(11).
- 5 *Disclosure of information between Government Departments, etc.*
- 5.1 Article 2(15) replaces the existing version of section 158 of the 1993 Act.
- 5.2 That section –
- sets out the ways in which relevant information obtained or held by the Assessor of Income Tax may be disclosed to the DHSS in connection with the operation of the 1993 Act;
 - sets out how the DHSS may provide information to the IPA for the purpose of compiling its register of retirement benefits schemes under section 24 of the Retirement Benefits Schemes Act 2000 (of Tynwald); and
 - allows the DHSS to disclose to anyone claiming to be entitled to an occupational or personal pension the name and address of the person who appears to be responsible for paying that pension, notwithstanding the fact that that information has been obtained by the DHSS under section 158.
- 5.3 The main purpose of the changes to section 158 is to reflect the recent passing of responsibility for maintaining the register of pension schemes from the DHSS to the IPA.
6. *Minor amendments*
- 6.1 The other changes the Order makes are as follows –
- article 2(2) corrects terminology used to describe trade unions in the Isle of Man as it appears in section 11 of the 1993 Act.

Section 11 provides that regulations may require employers to give notice to any trade union of their intention to elect to contract-out of the State's additional pension scheme in relation to any of their employees (or to abstain from doing so) where that trade union is recognised for the purpose of collective bargaining in relation to those employees. Regulations made under section 11 may also require employers to provide certain information to, and consult with, the same type of trade unions about such notices.

- article 2(10) inserts new provision into section 113 of the 1993 Act providing that regulations may also specify requirements to be complied with by occupational and personal pension schemes with a view to providing trade unions (as well as scheme members *et al.*) with certain information about the scheme;
- article 2(3) to (5), (8), (9), (22) and (23)(b) replace reference to "insurance company" in the 1993 Act with "insurer" and amend the interpretive provisions of that Act following the coming into force of the Financial Services and Markets Act 2000 in the United Kingdom;
- article 2(6) replaces the existing definition of what constitutes an authorised unit trust scheme in section 38 of the 1993 Act following the coming into force of the same 2000 Act in the United Kingdom;
- article 2(7), (19) and (23)(a) replace reference to compensation under the United Kingdom Policyholders Protection Act 1975 with that under its replacement, the United Kingdom Financial Services Compensation Scheme;
- article 2(13) updates a number of references in section 149 of the 1993 Act following the coming into force of the Financial Services and Markets Act 2000 in the United Kingdom;
- article 2(14) corrects the heading to section 152 of the 1993 Act ("Special County Court Rules" is replaced with "High Court Rules");
- article 2(17) corrects a number of errors appearing in section 165 of the 1993 Act;
- article 2(18) updates reference in section 167(3) of the 1993 Act to decision-making provisions found in other legislation;
- article 2(20)(a)(i) and (c) insert reference in section 177 of the 1993 Act providing for the payment by the DHSS to employers in respect of certain amounts relating to their employees' contracted-out employment in certain circumstances and for recovery by the DHSS of such amounts which it has paid but which it was not in fact required to pay; and
- article 2(24) and (25) remove reference in sections 182 and 183(3) respectively to other provisions of the 1993 Act which are not in fact in force.