



Statutory Document No. 18/06

THE PENSION SCHEMES ACT 1995

THE CHILD SUPPORT, PENSIONS AND SOCIAL SECURITY ACT 2000
(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, commencement and interpretation

1. (1) This Order may be cited as the Child Support, Pensions and Social Security Act 2000 (Application) (Amendment) Order 2006 and shall, subject to section 2(1) of the Social Security Act 2000, come into force on 6th April 2006.

(2) Modifications subject to which the provisions of the Pensions Act 1995 are applied to the Isle of Man by virtue of this Order are in ***bold italic*** type.

Amendment of the Child Support, Pensions and Social Security Act 2000 (Application) (No. 2) Order 2001

2. Amend the Child Support, Pensions and Social Security Act 2000 (Application) (No. 2) Order 2001(a) ("the 2001 Order") (which sets out in its Schedule those provisions of the Child Support, Pensions and Social Security Act 2000 ("the 2000 Act") (c.19) relating to pension schemes which have effect in the Isle of Man) in accordance with the following.

Amendment of article 1(4) of the 2001 Order (commencement dates)

3. In article 1(4) (which specifies when the provisions of the 2000 Act being applied to the Isle of Man by the 2001 Order are to come into force) after sub-paragraph (a) insert -

“(aa) sections 48 to 50 shall come into force on 6th April 2006;”.

Price: £1.70 Band: B

(a) S.D. 379/01.

Amendment of article 2(1)(a) of the 2001 Order (applied legislation)

4. In article 2(1) (which specifies which provisions of the 2000 Act are applied to the Isle of Man by the 2001 Order) in sub-paragraph (a) for “51 to 54” substitute “48 to 54”.

Application of section 48 of the 2000 Act (modification of schemes to secure winding-up)

5. In the Schedule to the 2001 Order insert as section 48 of the 2000 Act -

“Modification of scheme to secure winding-up

48. After section 71 of the Pensions Act 1995 (effect of modification orders under section 69) there shall be inserted-

“Modification by *Department* to secure winding-up

71A. (1) The *Department* may at any time while-

- (a) an occupational pension scheme is being wound up, and
- (b) the employer in relation to the scheme is subject to an insolvency procedure (*see subsection (8)*),

make an order modifying that scheme with a view to ensuring that it is properly wound up.

(2) The *Department* shall not make such an order except on an application made to *it*, at a time such as is mentioned in subsection (1), by the trustees or managers of the scheme.

(3) Except in so far as regulations otherwise provide, an application for the purposes of this section must be made in writing.

(4) Regulations may make provision-

- (a) for the form and manner in which an application for the purposes of this section is to be made to the *Department*;
- (b) for the matters which are to be contained in such an application;
- (c) for the documents which must be attached to an application for the purposes of this section or which must otherwise be delivered to the *Department* with or in connection with any such application;
- (d) for persons to be required, before such time as may be prescribed, to give such notifications of the making of an application for the purposes of this section as may be prescribed;
- (e) for the matters which are to be contained in a notification of such an application;
- (f) for persons to have the opportunity, for a prescribed period, to make representations to the *Department* about the matters to which such an application relates;
- (g) for the manner in which the *Department* is to deal with any such application.

(5) The power of the *Department* to make an order under this section-

- (a) shall be limited to what *it considers* to be the minimum modification necessary to enable the scheme to be properly wound up; and

(b) shall not include power to make any modification that would have a significant adverse effect on-

(i) the accrued rights of any member of the scheme; or

(ii) any person's entitlement under the scheme to receive any benefit.

(6) A modification of an occupational pension scheme by an order of the *Department* under this section shall be as effective in law as if-

(a) it had been made under powers conferred by or under the scheme;

(b) the modification made by the order were capable of being made in exercise of such powers notwithstanding any enactment, rule of law or rule of the scheme that would have prevented their exercise for the making of that modification; and

(c) the exercise of such powers for the making of that modification would not have been subject to any enactment, rule of law or rule of the scheme requiring the implementation of any procedure or the obtaining of any consent in connection with the making of a modification.

(7) Regulations may provide that, in prescribed circumstances, this section-

(a) does not apply in the case of occupational pension schemes of a prescribed class or description; or

(b) in the case of occupational pension schemes of a prescribed class or description applies with prescribed modifications.

(8) The times when an employer in relation to an occupational pension scheme shall be taken for the purposes of this section to be subject to an insolvency procedure are-

(a) in the case of a trust scheme, while section 22 applies in relation to the scheme; and

(b) in the case of a scheme that is not a trust scheme, while section 22 would apply in relation to the scheme if it were a trust scheme;

and for the purposes of this subsection no account shall be taken of modifications or exclusions contained in any regulations under section 118.

(9) The *Department* shall not be entitled to make an order under this section in relation to a public service pension scheme.””

Application of section 49 of the 2000 Act (reports about winding-up)

6. In the Schedule to the 2001 Order insert as section 49 of the 2000 Act -

“Reports about winding-up

49. (1) After section 72 of the Pensions Act 1995 there shall be inserted-

“Supervision of winding-up

Reports to *Department* about winding-up

72A. (1) Where—

- (a) an occupational pension scheme is being wound up, and
- (b) the winding-up is one beginning at a time by reference to which regulations provide that it is to be a winding-up to which this section applies,

it shall be the duty of the trustees or managers, in accordance with this section, to make periodic reports in writing to the *Department* about the progress of the winding-up.

(2) In the case of each winding-up, the first report to be made under this section shall be made—

- (a) —
 - (i) after the end of the prescribed period beginning with the day on which the winding-up began; and
 - (ii) before the end of the prescribed period that begins with the end of the period that applies for the purposes of subparagraph (i);
- (b) *omitted.*

(3) Subject to subsection (4), each subsequent report made under this section in the case of a winding-up shall be made no more than twelve months after the date which (apart from any postponement under subsection (4)) was the latest date for the making of the previous report required to be made in the case of that winding-up.

(4) If, in the case of any report required to be made under subsection (3), the *Department considers* (whether on an application made for the purpose or otherwise) that it would be appropriate to do so, *it* may, at any time before the latest time for the making of that report, postpone that latest time by such period as *it thinks fit*.

(5) The latest time for making a report shall not be postponed under subsection (4) by more than twelve months.

(6) Subject to the application of the limit specified in subsection (5) to the cumulative period of the postponements, more than one postponement may be made under subsection (4) in the case of the same report.

(7) A report under this section—

- (a) must contain such information and statements as may be prescribed; and
- (b) must be made in accordance with the prescribed requirements.

(8) Regulations may—

- (a) provide that, in prescribed circumstances, there shall be no obligation to make a report that would otherwise fall to be made under this section;
- (b) make provision for the period within which, and the manner in which, applications may be made for a postponement under subsection (4); and

- (c) modify subsections (3) and (5) by substituting periods of different lengths for the periods for the time being specified in those subsections.

(9) If there is any failure by the trustees or managers of any scheme to comply with their duty to make a report in accordance with the requirements imposed by or under this section—

- (a) *omitted*;
- (b) section 10 applies (irrespective of the description of scheme involved) to any trustee or manager who has failed to take all such steps.”

(2) In section 124 of that Act (interpretation of Part I), after subsection (3) there shall be inserted-

"(3A) In a case of the winding-up of an occupational pension scheme in pursuance of an order of the *Department* under section 11 or of an order of a court, the winding-up shall (subject to subsection (3E)) be taken for the purposes of this Part to begin-

- (a) if the order provides for a time to be the time when the winding-up begins, at that time; and
- (b) in any other case, at the time when the order comes into force.

~~(3B) In a case of the winding-up of an occupational pension scheme in accordance with a requirement or power contained in the rules of the scheme, the winding-up shall (subject to subsections (3C) to (3E)) be taken for the purposes of this Part to begin-~~

- ~~(a) at the time (if any) which under those rules is the time when the winding-up begins; and~~
- ~~(b) if paragraph (a) does not apply, at the earliest time which is a time fixed by the trustees or managers as the time from which steps for the purposes of the winding-up are to be taken.~~

(3C) Subsection (3B) shall not require a winding-up of a scheme to be treated as having begun at any time before the end of any period during which effect is being given-

- (a) to a determination under section 38 that the scheme is not for the time being to be wound up; or
- (b) to a determination in accordance with the rules of the scheme to postpone the commencement of a winding-up.

(3D) In subsection (3B)(b) the reference to the trustees or managers of the scheme shall have effect in relation to any scheme the rules of which provide for a determination that the scheme is to be wound up to be made by persons other than the trustees or managers as including a reference to those other persons.

(3E) Subsections (3A) to (3D) above do not apply for such purposes as may be prescribed."

(3) After section 49 of that Act (other responsibilities of trustees employers etc.) there shall be inserted-

"Records

Record of winding-up decisions

49A. (1) Except so far as regulations otherwise provide, the trustees or managers of an occupational pension scheme shall keep written records of-

- (a) any determination for the winding-up of the scheme in accordance with its rules;
- (b) decisions as to the time from which steps for the purposes of the winding-up of the scheme are to be taken;
- (c) determinations under section 38;
- (d) determinations in accordance with the rules of the scheme to postpone the commencement of a winding-up of the scheme.

(2) For the purpose of this section-

- (a) the determinations and decisions of which written records must be kept under this section include determinations and decisions by persons who-
 - (i) are not trustees or managers of a scheme, but
 - (ii) are entitled, in accordance with the rules of a scheme, to make a determination for its winding-up; and
- (b) regulations may, in relation to such determinations or decisions as are mentioned in paragraph (a), impose obligations to keep written records on the persons making the determinations or decisions (as well as, or instead of, on the trustees or managers).

(3) Regulations may provide for the form and content of any records that are required to be kept under this section.

(4) *Omitted.*

(5) Section 10 applies to any trustee or manager of a scheme who fails to take all such steps as are reasonable to secure compliance by the trustees or managers of that scheme with those obligations."

Application of section 50 of the 2000 Act (directions for facilitating winding-up)

7. In the Schedule to the 2001 Order insert as section 50 of the 2000 Act –

“Directions for facilitating winding-up

50. After the section 72A inserted in the Pensions Act 1995 by section 49 there shall be inserted-

“Directions by the Department for facilitating winding-up

72B. (1) Subject to the following provisions of this section, the *Department* shall have power, at any time after the winding-up of an occupational pension scheme has begun, to give directions under this section if *it considers* that the giving of the direction is appropriate on any of the grounds set out in subsection (2).

(2) Those grounds are—

- (a) that the trustees or managers of the scheme are not taking all the steps in connection with the winding-up that the *Department considers* would be being taken if the trustees or managers were acting reasonably;
- (b) that steps being taken by the trustees or managers for the purposes of the winding-up involve things being done with what the *Department considers* to be unreasonable delay;
- (c) that the winding-up is being obstructed or unreasonably delayed by the failure of any person—
 - (i) to provide information to the trustees or managers;
 - (ii) to provide information to a person involved in the administration of the scheme;
 - (iii) to provide information to a person of a prescribed description; or
 - (iv) to take any step (other than the provision of information) that he has been asked to take by the trustees or managers;
- (d) that the winding-up would be likely to be facilitated or accelerated by the taking by any person other than the trustees or managers of any other steps;
- (e) that in any prescribed circumstances not falling within paragraphs (a) to (d)—
 - (i) the provision by any person of any information to the trustees or managers or to any other person, or
 - (ii) the taking of any other step by any person,
 would be likely to facilitate or accelerate the progress of the winding-up.

(3) Except in prescribed circumstances, the power of the *Department* to give a direction under this section in the case of a winding-up shall be exercisable only where—

- (a) periodic reports about the progress of the winding-up are required to be made under section 72A; and
- (b) the first report that has to be made for the purposes of that section in the case of that winding-up either has been made or should have been made.

(4) Regulations may provide that, in prescribed circumstances, the *Department* shall not give a direction on the ground set out in subsection (2)(e) except in response to an application made by the trustees or managers of the scheme for the giving of a direction on that ground.

(5) A direction under this section is a direction in writing given to and imposing requirements on—

- (a) any or all of the trustees or managers of the scheme;
- (b) a person who is involved in its administration; or
- (c) a person of a prescribed description.

(6) The requirements that may be imposed by a direction under this section are any requirement for the person to whom it is given, within such period specified in the direction as the *Department* may consider reasonable—

- (a) to provide the trustees or managers with all such information as may be specified or described in the direction;
- (b) to provide a person involved in the administration of the scheme with all such information as may be so specified or described;
- (c) to provide a person who is of a prescribed description with all such information as may be so specified or described;
- (d) to take such steps (other than the provision of information) as may be so specified or described.

(7) If, at any time before the end of a period within which any step is required by a direction under this section to be taken by any person, the *Department considers* (whether on an application made for the purpose or otherwise) that it would be appropriate to do so, *it* may extend (or further extend) that period until such time as *it thinks fit*.

(8) Regulations may—

- (a) impose limitations on the steps that a person may be required to take by a direction under this section;
- (b) make provision for the period within which, and the manner in which, applications may be made for a period to be extended (or further extended) under subsection (7).

(9) In this section references, in relation to a scheme, to a person involved in the administration of the scheme are (subject to subsection (10)) references to any person who is so involved otherwise than as—

- ~~(a) the employer in relation to that scheme;~~
- (b) a trustee or manager of the scheme;
- (c) the auditor of the scheme or its actuary;
- (d) a legal adviser of the trustees or managers of the scheme;
- (e) a fund manager for the scheme;
- (f) a person acting on behalf of a person who is involved in the administration of the scheme;
- (g) a person providing services to a person so involved;
- (h) a person acting in his capacity as an employee of a person so involved;
- (i) a person who would fall within any of paragraphs (f) to (h) if persons acting in relation to the scheme in any capacity mentioned in the preceding paragraphs were treated as involved in the administration of a scheme.

(10) In this section references, in relation to a scheme, to a person involved in the administration of the scheme do not include references to persons of a particular description if regulations provide for persons of that description to be excluded from those references.

Duty to comply with directions under *section 72B*

72C. (1) It shall be the duty of any person to whom a direction is given under section 72B to comply with it.

(2) *Omitted.*

(3) Section 10 applies to any trustee or manager of a scheme who fails, without reasonable excuse, to take all such steps as are reasonable to secure compliance by the trustees or managers of that scheme with any direction given to them under section 72B.

(4) Section 10 applies to any person who—

- (a) is a person to whom a direction under section 72B is given otherwise than in the capacity of a trustee or manager; and
- (b) without reasonable excuse, fails to comply with that direction.

(5) For the purposes of this section it shall not be a reasonable excuse in relation to any failure to provide information in pursuance of a direction under section 72B that the provision of that information would (but for the duty imposed by subsection (1) of this section) involve a breach by any person of a duty owed to another not to disclose that information.””

Amendment of section 52 of the 2000 Act (information for members of occupational and personal pension schemes)

8. In the Schedule to the 2001 Order in section 52 (information for members of occupational and personal pension schemes) in subsection (2) as subsection (3B) of section 113 of the Pension Schemes Act 1993 (regulations as to information to be provided to scheme members, etc.) insert –

“(3B) The regulations may, in relation to cases where a scheme is being wound up, contain-

- (a) provision conferring power on the Department, at times before the period expires, to extend any period specified in the regulations as the period within which a requirement imposed by the regulations must be complied with; and
- (b) provision as to the contents of any application for the exercise of such a power and as to the form and manner in which, and the time within which, any such application must be made.”



Minister for Health and Social Security

Explanatory note

(This is not part of the Order)

1. This Order amends the Child Support, Pensions and Social Security Act 2000 (Application) (No. 2) Order 2001 (“the 2001 Order”) which applied certain provisions of the Child Support, Pensions and Social Security Act 2000 (of the United Kingdom Parliament) (“the 2000 Act”) relating to occupational and personal pension schemes to the Isle of Man in July 2001. It comes into force on 6th April 2006.
- 2.1 It does so by now applying to the Isle of Man sections 48 to 50 of the 2000 Act and by amending section 52 of that Act. Those sections provide for amendments to be made to the Pensions Act 1995 (“the 1995 Act”) and the Pension Schemes Act 1993 (“the 1993 Act”) (as those Acts of the United Kingdom Parliament also have effect in the Isle of Man) in relation to –
 - the modification of occupational pension schemes by the DHSS to secure their proper winding up;
 - reports about winding up, and decisions facilitating the winding-up, of occupational pension schemes; and
 - requirements to provide information to members of pension schemes which are being wound up.
- 2.2 These changes supplement recent ones made to the 1995 Act elsewhere.
3. Article 1 provides for the citation and commencement of the Order.
4. Article 2 introduces the amendments the Order makes.
5. Article 3 specifies when sections 48 to 50 of the 2000 Act are to come into force in the Isle of Man.

6. Article 4 adds those sections to the list of provisions of the 2000 Act which are applied to the Isle of Man by the 2001 Order.
7. Article 5 applies section 48 of the 2000 Act to the Isle of Man. That section inserts section 71A into the 1995 Act.
 - 7.1 *Section 71A of the 1995 Act – Modification of occupational pension schemes to secure their winding up*
 - 7.1.1 Under section 71A, while an occupational pension scheme (other than a public service pension scheme) is being wound up and the employer in question is subject to section 22 of the 1995 Act (or would be if it were a trust scheme), the trustees or managers of the scheme may ask the DHSS to make an order modifying the scheme to ensure that it is properly wound up.
 - 7.1.2 The DHSS -
 - may only make an order under section 71A to the minimum extent it considers necessary to enable the scheme to be properly wound up; and
 - may not make any modification that would have a significant adverse effect on the accrued rights of any member of the scheme or any person's entitlement under the scheme to receive any benefit.
8. Article 6 applies section 49 of the 2000 Act to the Isle of Man. That section inserts sections 72A, 124(3A) to (3E) and 49A into the 1995 Act.
 - 8.1 *Section 72A of the 1995 Act – Reports to Department about winding-up*
 - 8.1.1 Section 72A introduces a requirement for trustees or managers of an occupational pension scheme which begins to wind up after a specified date to make regular reports to the DHSS about the progress of the scheme's winding-up.
 - 8.2. *Section 124(3A) to (3E) of the 1995 Act – Time when winding-up of a pension scheme is to be taken to begin*
 - 8.2.1 Section 124(3A) to (3E) specifies the time when the winding-up of a pension scheme is to be taken to begin for the purposes of Part I of the 1995 Act (occupational pensions).
 - 8.3 *Section 49A of the 1995 Act – Record of winding-up decisions*
 - 8.3.1 Section 49A requires the trustees or managers of occupational pension schemes to make reports to keep written records of any decision to wind up a scheme in accordance with its rules or any decision to defer doing so.
9. Article 7 applies section 50 of the 2000 Act to the Isle of Man. That section inserts sections 72B and 72C into the 1995 Act.
 - 9.1 *Section 72B of the 1995 Act – Directions by the Department for facilitating winding-up*
 - 9.1.1 Section 72B allows the DHSS to direct that specific information should be provided or other action taken within a prescribed timescale in the case of an occupational pension scheme which has begun to be wound up on certain grounds (e.g. because the scheme's trustees or managers have failed to take all reasonable steps in connection with the winding-up).

- 9.2 *Section 72C of the 1995 Act – Duty to comply with directions under section 72B of the 1995 Act*
- 9.2.1 Section 72C sets out the penalties for failing to comply with a direction imposed under section 72B of the 1995 Act without reasonable excuse.
10. Article 8 amends section 52(2) of the 2000 Act. That section inserted subsections (3A) and (3B) into section 113 of the Pension Schemes Act 1993. However, subsection (3B) of that section has not been applied to the Isle of Man until now.
- 10.1 *Section 113(3B) of the 1993 Act - information to be provided to members of pension schemes which are being wound up*
- 10.1.1 Section 113 of the 1993 Act provides that regulations may specify what occupational and personal pension schemes must do in order to be treated under the legislation as keeping members, prospective members and others properly informed about the scheme.
- 10.1.2 Subsection (3B) provides that, in the case of a scheme which is being wound up, the DHSS may extend any time limit in regulations for providing such information. It also makes provision as to how people can apply to the DHSS to use that power.