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AT 14 of 2000

**RETIREMENT BENEFITS SCHEMES ACT  
2000**

**UNOFFICIAL CONSOLIDATION SHOWING  
AMENDMENTS MADE BY THE RETIREMENT  
BENEFITS SCHEME (AMENDMENT) BILL 2026  
AT ITS INTRODUCTION**



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## RETIREMENT BENEFITS SCHEMES ACT 2000

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## RETIREMENT BENEFITS SCHEMES ACT 2000

<i>Received Royal Assent:</i>	<i>17 October 2000</i>
<i>Passed:</i>	<i>17 October 2000</i>
<i>Commenced:</i>	<i>See endnotes</i>

**AN ACT** to make new provision for the registration, authorisation, recognition, regulation and supervision of certain retirement benefits schemes and for connected purposes.

### PART 1 – PROMOTION OF RETIREMENT BENEFITS SCHEMES

#### 1 Restrictions on promotion

- (1) Subject to subsections (4) and (6) no person shall —
- (a) issue or cause to be issued any advertisement inviting persons in or resident in the Island to become or offer to become members of a retirement benefits scheme (in this Act referred to as a “**scheme**”) or containing information calculated to lead directly or indirectly to those persons becoming or offering to become members of a scheme; or
  - (b) advise or procure any person in or resident in the Island to become or offer to become a member of a scheme,
- unless the scheme is an authorised scheme or a recognised scheme under this Act.
- (2) Subject to subsections (4) and (6) no person shall, in or from the Island, —
- (a) issue or cause to be issued any advertisement inviting persons outside the Island to become or offer to become members of a scheme or containing information calculated to lead directly or indirectly to those persons becoming or offering to become members of a scheme; or
  - (b) advise or procure any person outside the Island to become or offer to become a member of a scheme,
- unless the scheme is an authorised scheme under this Act.

- ~~(3) No person in or from within the Island shall —~~
- ~~(a) act, by way of business, as the trustee;~~
  - ~~(b) take or receive contributions for the fund,~~
- ~~of a scheme unless the scheme is an authorised scheme or a recognised scheme under this Act.<sup>3</sup>~~
- (3) A person must not, in or from within the Island —
- (a) act, by way of business, as the trustee of a scheme;
  - (b) take or receive towards a scheme —
    - (i) contributions by a member or any other person in respect of one or more members; or
    - (ii) transfers or other credits from another scheme,
- unless the scheme is an authorised scheme or a recognised scheme under this Act.
- (4) Subsections (1)(a) and (2)(a) shall not apply if the advertisement is issued to such other person as may be prescribed in regulations made by ~~the Treasury~~the Authority.
- (5) Any person who contravenes subsection (1), (2) or (3) is guilty of an offence.
- (6) ~~The Treasury~~The Authority may by regulations make provision for exempting from subsection (1), (2) or (3) schemes of such descriptions as are ~~specified~~prescribed in the regulations.
- ~~(7) Regulations under subsection (6) may contain such supplementary and transitional provisions as the Treasury thinks necessary and may also contain provisions imposing obligations or liabilities on the trustee and administrator of an exempted scheme, including, to such extent as it thinks appropriate provisions for purposes corresponding to those for which provision can be made under sections 6 and 16 in relation to authorised schemes.~~
- (7) Regulations under subsection (6) may contain —
- (a) such supplementary and transitional provisions as the Authority thinks necessary;
  - (b) provisions imposing obligations or liabilities on the trustee or administrator of a scheme that is an exempted scheme, including to such extent as the Authority thinks appropriate, provisions for purposes corresponding to those for which provision can be made under sections 6 and 16 in relation to authorised schemes.

## PART 2 – AUTHORISED RETIREMENT BENEFITS SCHEMES

### *Authorisation*

#### ~~2 Applications for authorisation~~

- ~~(1) Any application for the registration of a scheme as an authorised scheme for the purposes of this Act shall be made by the trustee of the scheme.~~
- ~~(2) Any such application —~~
  - ~~(a) shall be made in such manner as the Authority may direct;<sup>2</sup>~~
  - ~~(b) shall contain or be accompanied by such information as the Authority may require for the purpose of determining the application; and<sup>3</sup>~~
  - ~~(c) shall be accompanied by such fee as may be prescribed.~~
- ~~(3) At any time after receiving an application and before determining it the Authority may require the applicant to furnish additional information.<sup>4</sup>~~
- ~~(4) The directions and requirements given or imposed under subsections (2) and (3) may differ as between different applications.~~
- ~~(5) Any information to be furnished to the Authority under this section shall, if the Authority so requires, be in such form or verified in such manner as the Authority may specify.<sup>5</sup>~~

#### **2 Applications for authorisation**

- (1) An application for a scheme to be registered as authorised under section 3 may be made to the Authority by a trustee or administrator.
- (2) The application must —
  - (a) be in the form specified by the Authority;
  - (b) contain the information and documents required by the Authority for the purposes of determining the application; and
  - (c) be accompanied by the fee specified under section 52A(2)(a) (if any).
- (3) Without limiting subsections (2)(b) and (5), the Authority may require that the application be accompanied by a written declaration that the scheme complies with the conditions applicable to it under section 3.
- (4) In respect of any declaration required under subsection (3), appropriate documentation must be available to demonstrate compliance and that documentation must be provided to the Authority on request.
- (5) At any time after receiving an application and before determining it, the Authority may require the applicant to provide such other information and documents as it may reasonably require.

- (6) Where subsection (4) is not complied with, the Authority may take such regulatory action as it considers appropriate.

### ~~3~~ Authorisation

- (1) ~~The Authority may on an application duly made in accordance with section 2 and after being furnished with all such information as the Authority may require under that section, register a scheme as an authorised scheme for the purposes of this Act if—~~
- ~~(a) it appears to the Authority that the scheme complies with the requirements of regulations under section 6 and that the following provisions of this section are satisfied; and~~
  - ~~(b) the Authority has been furnished with a copy of the documents constituting the scheme.<sup>6</sup>~~
- (2) ~~A scheme is not qualified to be registered as an authorised scheme if it is of such class or description of scheme as is excluded from registration by regulations.~~
- (3) ~~A scheme may be registered as an authorised scheme subject to such conditions as the Authority thinks fit, and the Authority may subsequently—~~
- ~~(a) make such authorisation subject to new conditions; or~~
  - ~~(b) vary or revoke any existing condition.<sup>7</sup>~~
- (4) ~~The administrator of an authorised scheme must be a registered schemes administrator or a person who is exempt from registration under section 36(1)(b).~~
- (5) ~~The name of the scheme must not be undesirable or misleading.~~
- (6) ~~Any person who contravenes any condition imposed under subsection (3) shall be guilty of an offence.~~
- (7) ~~A scheme is not qualified to be registered as an authorised scheme if—~~
- ~~(a) the constitutional documents of the scheme do not irrevocably provide for the trustee to hold all the property of the scheme in trust for the beneficiaries of the scheme in accordance with the provisions of those documents;~~
  - ~~(b) the Authority is not satisfied that the trustee is a fit and proper person to undertake his functions;<sup>8</sup>~~
  - ~~(c) the trustees are all individuals and there are less than two of them;<sup>9</sup>~~
  - ~~(d) either the trustee or administrator is prohibited from acting as trustee or administrator of a scheme in the Island or a similar financial product elsewhere;~~
  - ~~(e) the scheme is an occupational scheme no trustee of which is independent of the employer of the member and regulations may~~

~~make provision with respect to the circumstances in which a trustee shall or shall not be treated as being independent for the purposes of this paragraph;<sup>10</sup>~~

- ~~(f) — a majority of the trustees (if more than one) of the scheme do not carry on business in and from within the Island except where a registered schemes administrator is responsible for the administration of the scheme;~~
- ~~(g) — the scheme or its trustee or administrator do not comply with any requirements prescribed for the purposes of this paragraph.~~
- ~~(8) — An occupational scheme is not qualified to be an authorised scheme unless —~~
  - ~~(a) — the scheme is bona fide established for the sole purpose of providing relevant benefits in respect of service as an employee, being benefits payable to, or to the surviving spouse or surviving civil partner, children or dependants or personal representatives of, the employee;<sup>11</sup>~~
  - ~~(b) — the scheme is recognised by the employer and the employees to whom it relates, and that every employee who is, or has a right to be, a member of the scheme has been given written particulars of all essential features of the scheme which concern him;~~
  - ~~(c) — the employer is a contributor to the scheme;~~
  - ~~(d) — the constitutional documents of the scheme do not in any circumstances permit, whether during the subsistence of the scheme or later, the repayment of an employee's contributions under the scheme other than as permitted by regulations.~~
- ~~(9) — A scheme may be registered as an authorised scheme under this Act notwithstanding that all the members or a significant proportion of them are outside the Island.~~
- ~~(10) — Where the Authority refuses an application for registration as an authorised scheme or exercises its power under subsection (3), the Authority shall do so by giving the applicant written notice stating the reasons for the decision.<sup>12</sup>~~

### 3 Authorisation

- (1) After receiving an application that meets the requirements of section 2, the Authority may register a scheme as an authorised scheme if the applicant has satisfied the Authority that the scheme complies with the requirements of regulations under section 6 and meets those of the following requirements that are applicable to it —
  - (a) the scheme must not be of such class or description as is excluded from registration by regulations made under section 51;
  - (b) the name of the scheme must not be undesirable or misleading;

- (c) the scheme —
  - (i) must be established —
    - (A) under irrevocable trusts; or
    - (B) in such other manner as may be specified in an order made by the Treasury;
  - (ii) must have written documents constituting the scheme that include —
    - (A) the terms of the scheme;
    - (B) the powers and duties of the trustees;
    - (C) details of the benefits provided under the scheme; and
    - (D) such other information as may be prescribed by the Authority in regulations;
  - (iii) must have —
    - (A) a minimum of two trustees, none of which need be a body corporate; or
    - (B) a single trustee that is a body corporate;
  - (iv) subject to any exemption prescribed under section 51(2)(d) of this Act or under section 44(2) of the *Financial Services Act 2008* —
    - (A) must not have any trustee that acts by way of business, unless the person holds an appropriate financial services licence;
    - (B) must have at least one trustee that holds an appropriate financial services licence; and
    - (C) must have an administrator that holds an appropriate financial services licence;
  - (v) must not have a trustee or administrator that is disqualified or otherwise prohibited from acting in either such capacity in respect of a scheme in the Island or a scheme or similar financial product (by whatever name called) elsewhere;
- (d) where the scheme is an occupational scheme, the scheme —
  - (i) must be bona fide established for the sole purpose of providing relevant benefits in respect of service as an employee, being benefits payable to, or to the surviving spouse or surviving civil partner, children or dependants or personal representatives of, the employee;
  - (ii) must be recognised as an occupational scheme by the employer and employees to whom it relates;
  - (iii) must be a scheme in respect of which every employee who is, or has the right to be, a member has been given written

- details of all essential features of the scheme which concern that employee;
- (iv) must have an employer that is a contributor to the scheme;
  - (v) must not have constitutional documents which in any circumstances permit, whether during the subsistence of the scheme or later, the repayment of an employee's contributions under the scheme other than as permitted by regulations made by the Authority under this Act;
  - (vi) must have at least one trustee that is independent of the employer of the members of the scheme and regulations made by the Authority may prescribe the circumstances in which a trustee may or may not be treated as independent for the purposes of this provision.
- (2) In relation to every application under section 2, the Authority must —
- (a) register the scheme as authorised;
  - (b) register the scheme as authorised subject to conditions; or
  - (c) refuse the application.
- (3) A scheme may be registered as an authorised scheme under this Act even if all the members or a significant proportion of them are outside the Island.
- (4) The Authority must give written notice to the person who submitted the application under section 2 of its decision under subsection (2), and where the application has been refused or conditions have been imposed in relation to the authorisation of the scheme, the notice must include or be accompanied by a statement of reasons for the decision and a statement setting out the rights of appeal under section 38(3).
- (5) Where a scheme is registered as authorised, the Authority may subsequently —
- (a) make the authorisation subject to new conditions;
  - (b) vary an existing condition; or
  - (c) revoke an existing condition.
- (6) The Authority must give written notice to the trustee and administrator of its decision under subsection (5), and where new conditions have been imposed or an existing condition has been varied, the notice must include or be accompanied by a statement of reasons for the decision and a statement setting out the rights of appeal under section 38(3).
- (7) A person who contravenes a condition imposed or varied under subsection (2) or (5) commits an offence.
- (8) The Authority may, instead of or in addition to pursuing a prosecution under subsection (7), take such regulatory action as it considers appropriate.

- (9) An order under subsection (1)(c)(i)(B) may include such consequential, incidental, transitory, transitional or supplemental provisions and as may appear to the Treasury to be necessary in consequence of or in connection with such an order, including the modification of or the amendment to other provisions of —
- (a) this Act;
  - (b) the *Income Tax Act 1970*;
  - (c) the *Income Tax (Retirement Benefit Schemes) Act 1978*.

#### 4—Revocation of authorisation

- (1) ~~The Authority may revoke the registration of an authorised scheme if it appears to the Authority —~~
- ~~(a) that any of the requirements for registration are no longer satisfied;~~
  - ~~(b) that it is undesirable in the interests of the members or potential members that the scheme should continue to be authorised; or~~
  - ~~(c) without prejudice to paragraph (b), that the trustee or administrator of the scheme has contravened any provision of —~~
    - ~~(i) this Act; or~~
    - ~~(ii) the *Insurance Act 2008*; or<sup>13</sup>~~
    - ~~(iii) the *Financial Services Act 2008*;<sup>14</sup>~~
    - ~~(iv) and (v) [Repealed]<sup>15</sup>~~
    - ~~(vi) any rules, regulations or code made under any of those Acts or, in purported compliance with any such provision, has furnished the Authority with false, inaccurate or misleading information; or<sup>16</sup>~~
  - ~~(d) that the trustee or administrator of the scheme has contravened any condition, prohibition or requirement imposed under the Acts specified in paragraph (c)(i) to (v).<sup>17</sup>~~
- (2) ~~For the purposes of subsection (1)(b), the Authority may take into account any matter relating to the scheme, the trustee or administrator, a director or controller of the trustee or administrator or any person employed by or associated with the trustee or administrator in connection with the scheme.<sup>18</sup>~~
- (3) ~~The Authority may revoke the registration of an authorised scheme at the request of the trustee or administrator of the scheme.<sup>19</sup>~~
- (4) ~~The Authority may refuse a request under subsection (3) if the Authority considers that any matter concerning the scheme should be investigated as a preliminary to a decision on the question whether the registration should be revoked or that revocation would not be in the interests of the members.<sup>20</sup>~~

- ~~(5) In any case in which registration has been revoked under this section, the provisions of sections 6 to 20 shall continue to apply to the scheme in the same manner as they apply to an authorised scheme.~~

#### **4 Revocation of authorisation**

- (6) The Authority may revoke the registration of an authorised scheme if it appears to the Authority —
- (a) that any of the requirements for registration are no longer satisfied;
  - (b) that it is not in the interests of the members or potential members that the scheme should continue to be authorised;
  - (c) without limiting paragraph (b), that a trustee or administrator of the scheme has contravened any provision of —
    - (i) this Act;
    - (ii) the *Insurance Act 2008*;
    - (iii) the *Financial Services Act 2008*; or
    - (iv) any rules, regulations, order or code made under any of those Acts;
  - (d) that a trustee or administrator of the scheme, in purported compliance with any such provision referred to in paragraph (c), has furnished the Authority with false, inaccurate or misleading information; or
  - (e) that a trustee or administrator of the scheme has contravened any condition, prohibition, direction or other requirement imposed under the Acts specified in paragraph (c)(i) to (iii).
- (2) For the purposes of subsection (1), the Authority may take into account any matter relating to the scheme, a trustee or administrator, a director or controller of a trustee or administrator, or any person employed by or associated with the scheme or a trustee or administrator in connection with the scheme.
- (3) The Authority must give written notice to the trustee and administrator of its decision under subsection (1) and the notice must include or be accompanied by a statement of reasons for the decision and a statement setting out the rights of appeal under section 38(3).
- (4) The Authority may revoke the registration of an authorised scheme at the request of a trustee or administrator.
- (5) The Authority must, in relation to every request under subsection (4) —
- (a) revoke the registration of the scheme;
  - (b) revoke the registration of the scheme, subject to conditions; or
  - (c) refuse to revoke the registration of the scheme.

- (6) The Authority may refuse a request under subsection (4) if the Authority considers that —
  - (a) any matter concerning the scheme should be investigated as a preliminary to a decision on the question whether the registration should be revoked; or
  - (b) revocation would not be in the interests of the members.
- (7) The Authority must give written notice to the trustee and administrator of its decision under subsection (5)(b) or (c) and the notice must include or be accompanied by a statement of reasons for the decision and a statement setting out the rights of appeal under section 38(3).
- (8) In any case in which registration has been revoked under this section otherwise than at the request of a trustee or administrator under subsection (4), the provisions of sections 6 to 20 continue to apply to the scheme in the same manner as they apply to an authorised scheme.
- (9) A condition imposed under subsection (5)(b) may apply before or after revocation occurs.

## 5 Representations against revocation

- ~~(1) Where the Authority proposes to revoke a registration under section 4 otherwise than at the request of the trustee or administrator of the scheme, the Authority shall give the trustee and administrator of the scheme written notice of its intention to do so, stating the reasons for which the Authority proposes to act and giving particulars of the rights conferred by subsection (2).<sup>21</sup>~~
- (1) Where the Authority proposes to revoke a registration under section 4 otherwise than on request under section 4(3), the Authority must give the trustee and administrator written notice of its intention to do so, stating the reasons for which the Authority proposes to act and giving particulars of the rights conferred by subsection (2).
- (2) A person on whom a notice is served under subsection (1) may within 21 days of the date of service, make written representations to the Authority and, if desired, oral representations to the Authority.<sup>22</sup>
- (3) The Authority shall have regard to any representations made in accordance with subsection (2) in determining whether to revoke the registration.<sup>23</sup>

*Constitution, officers, accounts, funding, etc.*

## 6 Constitution and management

- (1) ~~The Treasury~~ **The Authority** may make regulations as to —
  - (a) the constitution and management of authorised schemes;

- (b) the trustee, administrator, auditor, actuary and investment manager of any such scheme;
  - (c) the powers and duties of the trustee, administrator or the participating, or previously participating, employer of such a scheme;<sup>24</sup>
  - (d) the rights and obligations of the members of any such scheme;
  - (e) the annual accounts of such a scheme fund, and the statements, reports and information to be annexed to such accounts.
- (2) Without prejudice to the generality of subsection (1), regulations under this section may make provision –
- (a) as to the management and valuation of the assets and obligations of the scheme;
  - (b) as to the expenses of the scheme and the means of meeting them;
  - (c) for the qualifications and experience, appointment, resignation, removal, powers and duties of the trustee and administrator of the scheme;
  - (d) for the qualifications and experience, appointment, resignation, removal, powers and duties of an actuary, auditor and investment manager for the scheme (in this Act referred to collectively as “**professional advisers**”);
  - (e) for restricting or regulating the investment and borrowing powers exercisable in relation to the scheme;
  - (f) requiring the keeping and maintenance of records with respect to the transactions and financial position of the scheme and for the keeping of records on the Island and for the inspection of records;
  - (g) requiring the preparation of periodical reports with respect to the scheme by the trustee, administrator or professional advisers, as the case may be, of the retirement benefits scheme, and the furnishing of those reports to the Authority and, if the regulations so require, to the members;<sup>25</sup>
  - (h) requiring the trustee of a scheme –
    - (i) to obtain at prescribed times or on the happening of prescribed events such information and documents as are prescribed; and
    - (ii) to furnish that information and copies of those documents to the Authority and such persons as may be prescribed in the form, manner and at the time prescribed;<sup>26</sup>
  - (i) restricting or regulating the manner in which a scheme deals with surplus funds;
  - (j) providing for the content, format and audit of the annual accounts of an authorised scheme;

- (k) with respect to the amendment of the scheme;
  - (l) with respect to the payment (including time of payment), nature and amount of benefits which may or may not be paid to members and other beneficiaries of an authorised scheme;
  - (m) prohibiting, restricting or regulating the transfer of —
    - (i) any liability for the payment of any benefits to or from an authorised scheme;
    - (ii) any rights to any benefits to or from an authorised scheme.
- (3) Regulations under this section may make provision as to, and to the contents of, the documents constituting the scheme, and, without prejudice to the generality of that power, may include provision requiring any of the matters mentioned in subsection (2) to be dealt with in such documents as may be specified.
- (4) Regulations under this section shall be binding on the trustee, administrator, professional advisers and members independently of the contents of such documents and, in the case of the members, shall have effect as if contained in them.
- (5) Without prejudice to the generality of subsection (4), where regulations under this section conflict with any rule of law (whether at common law or contained in any enactment) relating to —
- (a) the constitution, powers and management of trusts or bodies corporate;
  - (b) the powers and duties of trustees or the directors of bodies corporate;
  - (c) the rights and obligations of beneficiaries of trusts or members of bodies corporate,
- the regulations shall prevail.
- (6) Regulations under this section may provide that any person who is in contravention of a specified regulation is guilty of an offence.
- (7) Regulations under this section may contain such incidental and transitional provisions as ~~the Treasury thinks necessary or expedient~~ **the Authority thinks necessary**.

### ~~7~~ **Technical funding requirement**

- (1) ~~Every occupational scheme to which this section applies is subject to a requirement (referred to in this Act as “the technical funding requirement”) that the value of the assets of the scheme shall not be —~~
- (a) ~~less than such amount; nor~~
  - (b) ~~more than such amount,~~
- ~~as may be prescribed in regulations for the purposes of this section.~~

- ~~(2) This section applies to authorised occupational schemes other than —~~
- ~~(a) a money purchase scheme, or~~
  - ~~(b) a scheme falling within a prescribed class or description.~~
- ~~(3) For the purposes of this section and sections 8 to 10, 13 and 14, the liabilities and assets to be taken into account, and their amount or value, shall be determined, calculated and verified by a prescribed person and in the prescribed manner.~~
- ~~(4) In calculating the value of any liabilities for those purposes, a provision of the scheme which limits the amount of its liabilities by reference to the amount of its assets is to be disregarded.<sup>27</sup>~~

## 7 Statutory funding objective

[P2004/35/222 and drafting]

- (1) This section applies to authorised occupational schemes other than —
- (a) a money purchase scheme; or
  - (b) a scheme falling within a class or description prescribed by the Authority in regulations.
- (2) Every occupational scheme to which this section applies is subject to a requirement (referred to in this Act as “the statutory funding objective”) that the scheme must have sufficient and appropriate assets to cover its technical provisions.
- (3) A scheme’s “technical provisions” means the amount required, on an actuarial calculation, to make provision for the scheme’s liabilities.
- (4) The scheme’s technical provisions must be calculated in a way that is consistent with the scheme’s funding and investment strategy, as set out in the scheme’s statement of strategy.
- (5) For the purposes of this section and sections 7A to 10D, the following must be done in accordance with regulations made by the Authority —
- (a) the determination, calculation and verification of the assets to be taken into account and their value;
  - (b) the determination of the liabilities to be taken into account; and
  - (c) subject to subsection (4), the calculation of the scheme’s technical provisions in accordance with any methods or assumptions (or both) prescribed in the regulations.
- (6) The Authority may in the regulations —
- (a) prescribe alternative methods or assumptions (or both);
  - (b) provide that it is for the trustee to determine which methods or assumptions (or both) are to be used in calculating a scheme’s technical provisions; and

- (c) require the trustee, in making the determination as to which methods and assumptions are to be used, to —
  - (i) take into account prescribed matters;
  - (ii) follow prescribed principles.
- (7) Any provision of the scheme which limits the amount of the scheme's liabilities by reference to the value of its assets is to be disregarded.

## 7A Funding and investment strategy

[P2004/35/221A and drafting]

- (1) The trustee of an authorised scheme to which section 7 applies must determine and from time to time review and if necessary revise, a strategy for ensuring that the pensions and other benefits under the scheme can be provided over the long term (referred to in this Act as a "funding and investment strategy").
- (2) A funding and investment strategy must, in particular, specify —
  - (a) the funding level the trustee intends the scheme to have achieved as at the relevant date or relevant dates; and
  - (b) the investments the trustee intends the scheme to hold on the relevant date or relevant dates.
- (3) In subsection (2) —
  - "funding level" means the ratio of the scheme's assets to its liabilities;
  - "relevant date" means a date determined in accordance with regulations.
- (4) The Authority may by regulations make provision —
  - (a) requiring the trustee of a scheme, in determining or revising a funding and investment strategy, to —
    - (i) take into account prescribed matters; and
    - (ii) follow prescribed principles;
  - (b) as to the level of detail required in a funding and investment strategy;
  - (c) as to the period within which a funding and investment strategy must be determined;
  - (d) requiring a funding and investment strategy to be reviewed and, if necessary, revised, at such intervals and on such occasions as the Authority may prescribe in the regulations.
- (5) The provision that may be made by virtue of subsection (4)(a) includes provision requiring the trustee, in specifying a funding level for the purposes of subsection (2)(a), to adopt prescribed actuarial methods or assumptions.
- (6) Where the trustee fails to comply with this section, the Authority may take such regulatory action as it considers appropriate.

**7B Statement of strategy**

[P2004/35/221B and drafting]

- (1) The trustee of an authorised scheme to which section 7 applies must, as soon as reasonably practicable after determining or revising the scheme's funding and investment strategy, prepare a written statement of —
  - (a) the scheme's funding and investment strategy; and
  - (b) the supplementary matters set out in subsection (2).
- (2) The supplementary matters are —
  - (a) the extent to which, in the opinion of the trustee, the funding and investment strategy is being successfully implemented and, where it is not, the steps the trustee proposes to take to remedy the position, including details as to timing;
  - (b) the main risks faced by the scheme in implementing the funding and investment strategy and how the trustee intends to mitigate or manage them;
  - (c) reflections of the trustee on any significant decisions taken by the trustee in the past that are relevant to the funding and investment strategy, including any lessons learned that have affected other decisions or may do so in the future;
  - (d) such other matters as the Authority may by regulations prescribe.
- (3) In this Act —
  - (a) a statement under subsection (1) is referred to as a "statement of strategy";
  - (b) the text included in a statement of strategy by virtue of subsection (1)(a) is referred to as "Part 1" of the statement;
  - (c) the text included in a statement of strategy by virtue of subsection (1)(b) is referred to as "Part 2" of the statement.
- (4) The trustee must from time to time, and at such times and on such occasions as may be prescribed in regulations made by the Authority —
  - (a) review Part 2 of the scheme's statement of strategy; and
  - (b) if necessary in the light of that review, revise Part 2 and prepare a replacement statement of strategy incorporating the revised Part 2.
- (5) The trustee must consult the employer when preparing or revising Part 2 of a statement of strategy.
- (6) A statement of strategy must be signed on behalf of the trustee.
- (7) The Authority may by regulations make provision —
  - (a) requiring the trustee of a scheme, in preparing or revising Part 2 of a statement of strategy, to —
    - (i) take into account prescribed matters; and
    - (ii) follow prescribed principles;

- (b) as to the level of detail required in Part 2 of a statement of strategy;
  - (c) as to the form of a statement of strategy;
  - (d) requiring the trustee of a scheme to send a statement of strategy to the Authority at such times and on such occasions as the Authority may prescribe in the regulations.
- (8) Where the trustee fails to comply with this section, the Authority may take such regulatory action as it considers appropriate.

### 7C Statement of funding principles

[P2004/35/223 and drafting]

- (1) The trustee of an authorised scheme to which section 7 applies must prepare, from time to time review and, if necessary, revise, a written statement of —
- (a) the trustee's policy for securing that the statutory funding objective is met; and
  - (b) such other matters as the Authority may prescribe by regulations.
- (2) The statement under subsection (1) is referred to in this Act as a "statement of funding principles".
- (3) The statement of funding principles must, in particular, record any decision by the trustee as to —
- (a) the methods and assumptions to be used in calculating the scheme's technical provisions; and
  - (b) the period within which, and the manner in which, any failure to meet the statutory funding objective is to be remedied.
- (4) The Authority may by regulations make provision —
- (a) as to the period within which a statement of funding principles must be prepared; and
  - (b) requiring a statement of funding principles to be reviewed and (if necessary) revised at such intervals, and on such occasions, as the Authority may prescribe in the regulations.
- (5) Where the trustee fails to comply with this section, the Authority may take such regulatory action as it considers appropriate.

### ~~8 Valuation and certification of assets and liabilities~~

- ~~(1) The trustee of an authorised scheme to which section 7 applies must —~~
- ~~(a) obtain, within a prescribed period, an actuarial valuation from the scheme actuary and afterwards obtain such a valuation before the end of prescribed intervals, and~~
  - ~~(b) on prescribed occasions or within prescribed periods, obtain a certificate prepared by the scheme actuary —~~

- ~~(i) — stating whether or not in his opinion the contributions payable towards the scheme are adequate for the purpose of securing that the technical funding requirement will continue to be met throughout the prescribed period or, if it appears to him that it is not met, will be met by the end of that period, and~~
  - ~~(ii) — indicating any relevant changes that have occurred since the last actuarial valuation was prepared.~~
- ~~(2) — Subject to subsection (3), the trustee must —~~
  - ~~(a) — if the actuary states in such a certificate that in his opinion the contributions payable towards the scheme are not adequate for the purpose of securing that the technical funding requirement will continue to be met throughout the prescribed period or, if it appears to him that it is not met, will be met by the end of that period, or~~
  - ~~(b) — in prescribed circumstances, obtain an actuarial valuation within the period required by subsection (4).~~
- ~~(3) — In a case within subsection (2)(a), the trustee is not required to obtain an actuarial valuation if —~~
  - ~~(a) — in the opinion of the scheme actuary, the value of the scheme assets is not less than the amount prescribed for the purposes of this subsection, and<sup>28</sup>~~
  - ~~(b) — since the date on which the actuary signed the certificate referred to in that subsection, the schedule of contributions for the scheme has been revised under section 9(3)(b).~~
- ~~(4) — If the trustee obtains a valuation under subsection (2) he must do so —~~
  - ~~(a) — in the case of a valuation required by paragraph (a) of that subsection, within the period of 6 months beginning with the date on which the actuary's certificate was signed, and~~
  - ~~(b) — in any other case, within a prescribed period.~~
- ~~(5) — A valuation or certificate obtained under subsection (1) or (2) must be prepared in such manner, give such information and contain such statements as may be prescribed.~~
- ~~(6) — A trustee who fails to comply with this section is guilty of an offence.<sup>29</sup>~~

## 8 Actuarial valuations and reports

[P2004/35/224 and drafting]

- (1) The trustee of an authorised scheme to which section 7 applies must obtain actuarial valuations —

- (a) at intervals of not more than one year or, if the trustee obtains actuarial reports for the intervening years, at intervals of not more than three years; and
  - (b) in such circumstances and on such other occasions as may be prescribed by the Authority in regulations.
- (2) In this Act —
- (a) an “actuarial valuation” means a written report, prepared and signed by the scheme actuary valuing the scheme’s assets and calculating its technical provisions;
  - (b) the effective date of an actuarial valuation is the date by reference to which the assets are valued and the technical provisions calculated;
  - (c) an “actuarial report” means a written report, prepared and signed by the scheme actuary, on developments affecting the scheme’s technical provisions since the last actuarial valuation was prepared;
  - (d) the effective date of an actuarial report is the date by reference to which the information in the report is stated.
- (3) The intervals referred to in subsection (1)(a) are between effective dates of the valuations, and —
- (a) the effective date of the first actuarial valuation must be not more than one year after the establishment of the scheme; and
  - (b) the effective date of any actuarial report must be not more than one year after the effective date of the last actuarial valuation or, if more recent, the last actuarial report.
- (4) The trustee must ensure that an actuarial valuation or an actuarial report required to be obtained by the trustee is received by the trustee within the period after its effective date prescribed by the Authority in regulations.
- (5) Nothing in this section affects any power or duty of the trustee to obtain actuarial valuations or actuarial reports at more frequent intervals or in other circumstances or on other occasions.
- (6) An actuarial valuation or an actuarial report (whether obtained under this section or in pursuance of any other power or duty) must be prepared in such manner, give such information, contain such statements and satisfy such other requirements as the Authority may by regulations prescribe.
- (7) The trustee must secure that any actuarial valuation or actuarial report obtained by the trustee, whether it was obtained under this section or in pursuance of any other power or duty, is made available to the employer within seven days of receipt of it by the trustee.
- (8) As soon as reasonably practicable after receiving an actuarial valuation, the trustee must send a copy of it to the Authority, together with such other information as the Authority may reasonably require.

- (9) Where this section or requirements prescribed under it are not complied with, the Authority may take such regulatory action as it considers appropriate.

### **8A Certification of technical provisions**

[P2004/35/225 and drafting]

- (1) When an actuarial valuation is carried out, the calculation of the technical provisions must be certified by the scheme actuary.
- (2) The certificate referred to in subsection (1) must —
- (a) be in such form as the Authority may determine;
  - (b) state that, in the opinion of the scheme actuary, the calculation is made in accordance with regulations under section 7; and
  - (c) include such other information and declarations as have been prescribed by the Authority in regulations.
- (3) Where the scheme actuary cannot give the certificate required by subsection (2), the scheme actuary must report the matter in writing to the Authority within the period prescribed by the Authority in regulations.
- (4) Where the scheme actuary fails to comply with subsection (3), the Authority may take such regulatory action as it considers appropriate.

### **8B Recovery plan**

[P2004/35/226 and drafting]

- (1) Where the trustee of an authorised scheme to which section 7 applies has obtained an actuarial valuation and, from that valuation, it appears to the trustee that the statutory funding objective was not met on the effective date of the actuarial valuation, the trustee must, within the period prescribed by the Authority in regulations —
- (a) if there is no existing recovery plan in force, prepare a recovery plan;
  - (b) if there is an existing recovery plan in force, review and, if necessary, revise it.
- (2) A recovery plan must set out —
- (a) the steps to be taken to meet the statutory funding objective; and
  - (b) the period within which that is to be achieved.
- (3) A recovery plan must comply with any requirements prescribed by the Authority in regulations and must be appropriate having regard to the nature and circumstances of the scheme.
- (4) The Authority may by regulations make provision stipulating the matters to be taken into account, or the principles to be followed, in determining

for the purposes of subsection (3) whether a recovery plan is appropriate having regard to the nature and circumstances of the scheme.

- (5) In preparing or revising a recovery plan the trustee must take into account matters prescribed by the Authority in regulations.
- (6) The Authority may by regulations make provision stipulating other circumstances in which a recovery plan may or must be reviewed and, if necessary, revised.
- (7) The trustee must, except in circumstances prescribed by the Authority in regulations, send a copy of any recovery plan to the Authority within the period prescribed by the Authority in regulations.
- (8) The copy of any recovery plan sent to the Authority must be accompanied by such information and documents as the Authority may prescribe in regulations.
- (9) Where the trustee fails to comply with this section, the Authority may take such regulatory action as it considers appropriate.

## ~~9 Schedules of contributions~~

- ~~(1) The trustee and administrator of an occupational scheme to which section 7 applies must secure that there is prepared, maintained and from time to time revised a schedule (referred to in this section and in section 10 as a "schedule of contributions") showing—
  - ~~(a) the rates of contributions payable towards the scheme by or on behalf of the employer and the active members of the scheme, and~~
  - ~~(b) the dates on or before which such contributions are to be paid.~~~~
- ~~(2) The schedule of contributions for an occupational scheme must satisfy prescribed requirements.~~
- ~~(3) The schedule of contributions for an occupational scheme—
  - ~~(a) must be prepared before the end of a prescribed period beginning with the signing of the first actuarial valuation for the scheme,~~
  - ~~(b) may be revised from time to time where the revisions are previously agreed by the trustee and administrator and the employer and any revision in the rates of contributions is certified by the actuary of the scheme, and~~
  - ~~(c) must be revised before the end of a prescribed period beginning with the signing of each subsequent actuarial valuation.~~~~
- ~~(4) The matters shown in the schedule of contributions for an occupational scheme—
  - ~~(a) must be matters previously agreed by the trustee and administrator and the employer, or~~~~

- ~~(b) if no such agreement has been made as to all the matters shown in the schedule, must be —~~
- ~~(i) rates of contributions determined by the trustee and administrator, being such rates as in their opinion are adequate for the purpose of securing that the technical funding requirement will continue to be met throughout the prescribed period or, if it appears to them that it is not met, will be met by the end of that period, and~~
  - ~~(ii) other matters determined by the trustee and the administrator;~~
- ~~and the rates of contributions shown in the schedule must be certified by the actuary of the scheme.~~
- ~~(5) An agreement for the purposes of subsection (4)(a) is one which is made by the trustee and administrator and the employer during the prescribed period beginning with the signing of the last preceding actuarial valuation for the scheme.~~
- ~~(6) The actuary may not certify the rates of contributions shown in the schedule of contributions —~~
- ~~(a) in a case where on the date he signs the certificate it appears to him that the technical funding requirement is met, unless he is of the opinion that the rates are adequate for the purpose of securing that the requirement will continue to be met throughout the prescribed period, and~~
  - ~~(b) in any other case, unless he is of the opinion that the rates are adequate for the purpose of securing that the requirement will be met by the end of that period.~~
- ~~(7) The Authority may extend (or further extend) the period referred to in subsection (6), and where the Authority refuses to extend (or further extend) the period the Authority shall give written notice of the refusal together with a statement of reasons for the decision.<sup>30</sup>~~
- ~~(8) Where, in the case of any occupational scheme to which section 7 applies, this section is not complied with —~~
- ~~(a) section 33 applies to any trustee and administrator who has failed to take all such steps as are reasonable to secure compliance, and~~
  - ~~(b) section 50 applies to any trustee and administrator who has failed to take all such steps.<sup>31</sup>~~

## 9 Schedule of contributions

[P2004/35/227 and drafting]

- (1) The trustee of an authorised scheme to which section 7 applies must prepare and from time to time review and, if necessary, revise a schedule of contributions.

- (2) A “schedule of contributions” means a statement showing —
- (a) the rates of contributions payable towards the scheme by or on behalf of the employer and the active members of the scheme; and
  - (b) the dates on or before which such contributions are to be paid.
- (3) The schedule of contributions must satisfy requirements prescribed by the Authority in regulations.
- (4) The Authority may by regulations make provision —
- (a) stipulating the period within which a schedule of contributions must be prepared;
  - (b) requiring the schedule of contributions to be reviewed, and if necessary revised at such intervals, and on such occasions, as may be prescribed by the Authority in regulations; and
  - (c) stipulating the period for which a schedule of contributions is to be in force.
- (5) The schedule of contributions, and any revisions to it, must not be relied on for the purposes of this Act unless it has been certified by the scheme actuary.
- (6) The certificate referred to in subsection (5) must state that, in the opinion of the scheme actuary —
- (a) the schedule of contributions is consistent with the statement of funding principles; and
  - (b) the rates shown in the schedule are such that —
    - (i) where the statutory funding objective was not met on the effective date of the last actuarial valuation, the statutory funding objective can be expected to be met by the end of the period specified in the recovery plan; or
    - (ii) where the statutory funding objective was met on the effective date of the last actuarial valuation, the statutory funding objective can be expected to continue to be met for the period for which the schedule is to be in force; and
  - (c) include such other information and declarations as the Authority may reasonably require.
- (7) The Authority must publish its requirements as to any other information or declarations to be included in the certificate under subsection (6)(c).
- (8) Where the statutory funding objective was not met on the effective date of the last actuarial valuation, the trustee must send a copy of the schedule of contributions to the Authority within 30 days after it is prepared or, as the case may be, revised.

- (9) Where the scheme actuary is unable to give the certificate required by subsection (6), the scheme actuary must report the matter in writing to the Authority within the period prescribed by the Authority in regulations.
- (10) Where the trustee fails to comply with any requirement in subsections (1) to (8), the Authority may take such regulatory action as it considers appropriate.
- (11) Where the scheme actuary fails to comply with subsection (9), the Authority may take such regulatory action as it considers appropriate.
- (12) The provisions of subsections (1) and (4) to (11) do not apply in relation to a schedule of contributions imposed by the Authority under section 10C or, as the case may be, where such a schedule of contributions is in force.

## 10 — ~~Determination of contributions: supplementary~~

- ~~(1) Except in prescribed circumstances, the trustee and administrator of an occupational scheme to which section 7 applies must, where any amounts payable by or on behalf of the employer or the active members of the scheme in accordance with the schedule of contributions have not been paid on or before the due date, give notice of that fact, within the prescribed period, to the Authority and to the members of the scheme.<sup>32</sup>~~
- ~~(2) Any such amounts which for the time being remain unpaid after that date (whether payable by the employer or not) shall, if not a debt due from the employer to the trustee and the administrator apart from this subsection, be treated as such a debt.~~
- ~~(3) If, in the case of an occupational scheme to which section 7 applies, it appears to the trustee or the administrator, at the end of any prescribed period that the technical funding requirement is not met, they must prepare a report giving the prescribed information about the failure to meet that requirement.~~
- ~~(4) If in the case of any such scheme, subsection (1) or (3) is not complied with —
  - ~~(a) section 33 applies to any trustee and administrator who has failed to take all such steps as are reasonable to secure compliance, and~~
  - ~~(b) section 50 applies to any trustee and administrator who has failed to take all such steps.<sup>33</sup>~~~~

## 10 Failure to make payments

[P2004/35/228 and drafting]

- (1) This section applies where an amount payable in accordance with the schedule of contributions by or on behalf of the employer or an active member of a scheme is not paid on or before the due date.

- (2) The trustee must give notice of any such failure as is mentioned in subsection (1) to —
  - (a) the Authority; and
  - (b) the members,within the period prescribed by the Authority in regulations; except in circumstances that are so prescribed.
- (3) Any such amount which is unpaid (whether payable by the employer or not), if not a debt due from the employer to the trustee apart from this subsection, must be treated as a debt.
- (4) If the trustee fails to comply with subsection (2), the Authority may take such regulatory action as it considers appropriate.
- (5) Section 50 applies to the employer if the employer fails without reasonable excuse to make payment required of the employer —
  - (a) in accordance with the schedule of contributions; or
  - (b) by virtue of subsection (3).
- (6) This section applies to a schedule of contributions imposed by the Authority under section 10C as it applies to a schedule of contributions agreed between the trustee and the employer.

#### **10A Matters requiring agreement of the employer**

[P2004/35/229 and drafting]

- (1) The trustee of an authorised scheme to which section 7 applies must obtain the agreement of the employer to —
  - (a) the scheme's funding and investment strategy, as set out in the scheme's statement of strategy;
  - (b) any decision as to the methods and assumptions to be used in calculating the scheme's technical provisions under section 7(6);
  - (c) any matter to be included in the statement of funding principles under section 7C;
  - (d) any provisions of a recovery plan under section 8B;
  - (e) any matter to be included in the schedule of contributions under section 9.
- (2) If the trustee is unable to reach agreement with the employer within the prescribed period on any such matter mentioned in subsection (1), the trustee must report the failure in writing to the Authority within the separate period prescribed for submission of such report.

Both prescribed periods are to be prescribed in regulations made by the Authority.
- (3) If the trustee fails to comply with this section, the Authority may take such regulatory action as it considers appropriate.

**10B Matters on which advice of the actuary must be obtained**

[P2004/35/230 and drafting]

- (1) The trustee of an authorised scheme to which section 7 applies must obtain the advice of the scheme actuary before doing any of the following —
  - (a) making any decision as to the methods and assumptions to be used in calculating the scheme's technical provisions under section 7(6);
  - (b) preparing or revising the statement of funding principles under section 7C;
  - (c) preparing or revising a recovery plan under section 8B;
  - (d) preparing or revising the schedule of contributions under section 9.
- (2) The Authority may make regulations requiring the scheme actuary to comply with any requirements it prescribes in those regulations when advising the trustee on any such matter specified in subsection (1).
- (3) The scheme actuary must have regard to any guidance that is given and from time to time revised by the Authority.
- (4) If the trustee fails to comply with subsection (1), the Authority may take such regulatory action as it considers appropriate.
- (5) If the scheme actuary fails to comply with requirements prescribed under subsection (2) or fails to comply with subsection (3), the Authority may take such regulatory action as it considers appropriate.

**10C Directions in relation to scheme funding**

[P2004/35/231 and drafting]

- (1) With respect to an authorised scheme to which section 7 applies, the Authority may issue a written direction under this section where it appears to the Authority (as a result of a report made to it or otherwise) that —
  - (a) the trustee has failed to comply with any of the requirements of section 7A or regulations under that section;
  - (b) the trustee, when determining the methods and assumptions to be used in calculating the scheme's technical provisions, has failed to comply with a requirement imposed under section 7(6)(c);
  - (c) the trustee has failed to comply with the requirements of section 7C with respect to the preparation or revision of a statement of funding principles;
  - (d) the trustee has failed to obtain an actuarial valuation as required by section 8(1);
  - (e) the scheme actuary is unable, on an actuarial valuation required by section 8(1), to certify the calculation of the scheme's technical provisions;

- (f) the trustee has failed to comply with the requirements of section 8B with respect to the preparation or revision of a recovery plan;
  - (g) the trustee has failed to comply with the requirements of section 9 with respect to the preparation or revision of a schedule of contributions;
  - (h) the scheme actuary is unable to certify a schedule of contributions as required under section 9(6);
  - (i) the employer has failed to make payments in accordance with the schedule of contributions, or that are required by the employer by virtue of section 10(2);
  - (j) the trustee has been unable to reach agreement with the employer within the prescribed period as to a matter in relation to which such agreement is required under section 10A(2).
- (2) A direction under subsection (1) may —
- (a) require the trustee to revise the scheme's funding and investment strategy in accordance with the direction;
  - (b) specify the manner in which the scheme's technical provisions are to be calculated, including the methods and assumptions to be used in such calculation;
  - (c) specify the period within which, and manner in which, any failure to meet the statutory funding objective is to be remedied;
  - (d) require the trustee to revise the scheme's schedule of contributions to specify in accordance with the direction —
    - (i) the rates of contributions payable towards the scheme by or on behalf of the employer and the active members of the scheme; and
    - (ii) the dates on or before which such contributions are to be paid;
  - (e) require the trustee to modify the scheme as regards the future accrual of benefits.
- (3) Where a modification required by a direction given under subsection (2)(e), on taking effect, would or might adversely affect any subsisting right of any member of the scheme or any survivor of a member of the scheme, the trustee —
- (a) must not make the modification; and
  - (b) must notify the Authority of that matter as soon as reasonably practicable; but, in any event, within 30 days of the date of the direction.
- (4) For the purposes of subsection (3) —
- “subsisting right” means —
- (a) in relation to a member of a scheme, at any time —

- (i) any right which at that time has accrued to or in respect of that member to future benefits under the scheme; or
  - (ii) any entitlement to the present payment of a pension or other benefit which that member has at that time, under the scheme;
- (b) in relation to the survivor of a member of a scheme, at any time, any entitlement to benefits, or right to future benefits, which that survivor has at that time under the scheme in respect of the member;
- “survivor” in relation to a member of a scheme, means a person who —
- (a) is the surviving spouse of the member; or
  - (b) has survived the member and has an entitlement to benefit, or right to future benefits, under the scheme rules in respect of the member.
- (5) In exercising any power conferred by this section in relation to a relevant scheme, the Authority must take into account any relevant recommendations made to the trustee.
- (6) For the purposes of subsection (5) —
- (a) “relevant scheme” means a scheme under which the rates of contributions payable by the employer are determined —
    - (i) by or in accordance with the advice of a person other than the trustee; and
    - (ii) without the agreement of the employer; and
  - (b) “relevant recommendations” means any recommendations that the trustee is required to take into account in relation to a relevant scheme by virtue of regulations made under this Act —
    - (i) in determining which accrued benefits funding method and which assumptions are to be used in calculating the scheme’s technical provisions; or
    - (ii) in preparing or revising a recovery plan.
- (7) In exercising the power in subsection (2)(b) to give directions as to the manner in which a scheme’s technical provisions are to be calculated, the Authority must include a direction specifying the effective date by reference to which assets are valued and the amount of liabilities is determined.
- (8) In exercising the power in subsection (2)(d) to give directions requiring the scheme’s schedule of contributions to be revised, the Authority must include a direction specifying —
- (a) the rates of contributions payable towards the scheme by or on behalf of the employer and the active members of the scheme; and
  - (b) the dates on or before which such contributions are to be paid.

- (9) A direction under this section may be made and complied with in relation to a scheme —
  - (a) in spite of any enactment or rule of law or any rule of the scheme; or
  - (b) without regard to any such enactment or rule of law, or any rule of the scheme as would otherwise require, or might otherwise be taken to require, the implementation of any procedure or the obtaining of any consent.
- (10) The powers conferred by this section are in addition to any other powers exercisable by the Authority under this Act, the Financial Services Act 2008 or any other enactment.
- (11) Sections 31(5) and 32 apply to a direction under this section as they apply to a direction under section 31.
- (12) If a person fails to comply with a direction given in accordance with this section, the Authority may take such regulatory action as it considers appropriate.

#### **10D Requirements for winding up procedure**

[P2004/35/231A and drafting]

- (1) Where an authorised scheme in respect of which a recovery plan has been prepared under section 8B begins to wind up during the recovery period, the trustee of the scheme must prepare a winding up procedure as soon as reasonably practicable from the date on which the winding up of the scheme commences.
- (2) A winding up procedure must —
  - (a) set out the action to be taken to establish the liabilities to or in respect of the members of the scheme, in respect of pensions or other benefits, and to recover any assets of the scheme;
  - (b) give an estimate of the amount of time it will take to establish those liabilities and to recover any such assets;
  - (c) give an indication of which of the accrued rights or benefits (if any) to which a person is entitled under the scheme are likely to be affected by a reduction in actuarial value;
  - (d) specify which one or more of the ways mentioned in subsection (3)(a) to (e) of section 74 of the Pensions Act 1995 (of Parliament) as it has effect in the Island will be used to discharge the liabilities to or in respect of the members of the scheme in respect of pensions or other benefits;
  - (e) give an estimate of the amount of time it will take to discharge those liabilities.
- (3) The requirement imposed by subsection (2)(c) applies only to the extent that the trustee has sufficient information to give such an indication.

- (4) A winding up procedure must be appropriate having regard to the nature and circumstances of the scheme.
- (5) A winding up procedure may be reviewed, and if necessary revised where the trustee considers that there are reasons that may justify a variation to it.
- (6) The trustee must send a copy of any winding up procedure to the Authority within the period prescribed by the Authority in regulations.
- (7) If the trustee fails to comply with this section, the Authority may take such regulatory action as it considers appropriate.
- (8) In this section, "recovery period" means the period specified in the scheme's recovery plan in accordance with section 8B(2)(b).

### 10E Power to modify scheme funding provisions

[P2004/35/232 and drafting]

The Authority may by regulations modify the provisions of sections 7 to 10D as they apply in the circumstances prescribed in those regulations.

## 11 Schedule of payments to certain schemes

- (1) This section applies to authorised schemes which are —
  - (a) occupational schemes which are money purchase schemes; and
  - (b) personal schemes,
 other than one falling within a ~~prescribed class or description~~ **class or description prescribed by the Authority in regulations.**
- (2) The trustee and the administrator of every scheme to which this section applies must secure that there is prepared, maintained and from time to time revised a schedule (referred to in this section and section 12 as a "**payment schedule**") showing —
  - (a) in the case of a scheme referred to in subsection (1)(a), the rates of contributions payable towards the scheme by or on behalf of the employer and the active members of the scheme, and
  - (b) in all cases, such other amounts payable towards the scheme as may be prescribed **by the Authority in regulations**, and
  - (c) the dates on or before which payments of contributions or other amounts are to be made (referred to in those sections as "due dates").
- (3) The payment schedule for a scheme must satisfy ~~prescribed requirements~~ **requirements prescribed by the Authority in regulations.**
- (4) The matters shown in the payment schedule for a scheme —
  - (a) to the extent that the scheme makes provision for their determination, must be so determined, and

- (b) otherwise —
  - (i) must be matters previously agreed between the employer and the trustee or administrator of the scheme, or
  - (ii) if no such agreement has been made as to all matters shown in the schedule (other than those for whose determination the scheme makes provision), must be matters determined by the trustee and the administrator of the scheme.
- ~~(5) — If this section is not complied with —~~
  - ~~(a) — section 33 applies to any trustee and administrator who has failed to take all such steps as are reasonable to secure compliance, and~~
  - ~~(b) — section 50 applies to any trustee or administrator who has failed to take all such steps.~~
- (5) Where this section is not complied with, the Authority may take such regulatory action as it considers appropriate.

## 12 Schedules of payments: supplementary

- (1) Except in ~~prescribed circumstances~~ **circumstances prescribed by the Authority in regulations**, the trustee and the administrator of a scheme to which section 11 applies must, where any amounts payable in accordance with the payment schedule have not been paid on or before the due date, give notice of that fact, within the ~~prescribed period~~ **period prescribed by the Authority in regulations**, to the Authority and to the members of the scheme.<sup>34</sup>
- (2) Any such amounts which for the time being remain unpaid after that date (whether payable by the employer or not) shall, if not a debt due from the employer to the trustee or administrator apart from this subsection, be treated as such a debt.
- (3) Any amounts payable in accordance with the payment schedule by or on behalf of the employer must be paid on or before the due date ~~and if this subsection is not complied with the employer shall be guilty of an offence.~~
- (3A) Section 50 applies to an employer that fails to comply with subsection (3).**
- (4) If, in the case of a scheme to which section 11 applies, subsection (1) is not complied with ~~the trustee and administrator shall both be guilty of an offence,~~ **the Authority may take such regulatory action as it considers appropriate.**
- ~~(5) — The administrator of a scheme to which section 11 applies shall keep a copy of the latest version of the payments schedule for that scheme at his principal place of business in the Island.~~
- (5) Every trustee and administrator of a scheme to which section 11 applies that holds an appropriate financial services licence (or, where there is no such licenceholder, an administrator of the scheme who is resident in the**

Island) must keep a copy of the latest version of the payments schedule for the scheme concerned at the place where the person carries out the management or administration of the scheme (as the case may be).

- ~~(6) — If an administrator fails to comply with subsection (5) section 50 applies to the administrator who has failed to comply.~~
- (6) Where subsection (5) is not complied with, the Authority may take such regulatory action as it considers appropriate.

### 13 — Serious underprovision

- ~~(1) — Subsection (2) applies where, in the case of an occupational scheme to which section 7 applies, an actuarial valuation shows that, on the effective date of the valuation, the value of the scheme assets is less than the amount prescribed for the purposes of this subsection (the difference shown in the valuation being referred to in this section as “the shortfall”).<sup>35</sup>~~
- ~~(2) — The employer must —~~
- ~~(a) — by making an appropriate payment to the trustee or administrator, or~~
- ~~(b) — by a prescribed method,~~
- ~~secure an increase in the value of the scheme assets which, taken with any contributions paid, is not less than the shortfall.~~
- ~~(3) — The required increase in that value must be secured —~~
- ~~(a) — before the end of a prescribed period beginning with the signing of the valuation, or~~
- ~~(b) — if the actuarial valuation was obtained by reason of such a statement in a certificate as is referred to in section 8(2), before the end of a prescribed period beginning with the signing of the certificate.~~
- ~~(4) — Except in prescribed circumstances, if the employer fails to secure the required increase in value before the end of the period applicable under subsection (3), the trustee or administrator must, within the period of 14 days beginning with the end of that period, give written notice of that fact to the Authority and to the members of the scheme.<sup>36</sup>~~
- ~~(5) — If the employer fails to secure the required increase in value before the end of the period applicable under subsection (3), then so much of the shortfall as, at any subsequent time, has not been met by an increase in value under subsection (2) —~~
- ~~(a) — by making an appropriate payment to the trustee or administrator,~~
- ~~(b) — by a prescribed method, or~~
- ~~(c) — by contributions made before the end of that period,~~

shall, if not a debt due from the employer to the trustee or administrator apart from this subsection, be treated at that time as such a debt.

- (6) ~~Where an increase in value is secured by a prescribed method, the increase is to be treated for the purposes of this section as being of an amount determined in accordance with regulations.~~
- (7) ~~The Authority may extend (or further extend) the period applicable under subsection (3), and where the Authority refuses to extend (or further extend) the period the Authority shall give written notice of the refusal together with a statement of reasons for the decision.<sup>37</sup>~~
- (8) ~~If subsection (4) is not complied with —~~
  - (a) ~~section 33 applies to any trustee and administrator who has failed to take all such steps as are reasonable to secure compliance, and~~
  - (b) ~~section 50 applies to any trustee or administrator who has failed to take all such steps.<sup>38</sup>~~

#### **14 — Serious overprovision**

- (1) ~~Subsection (2) applies where, in the case of an occupational scheme to which section 7 applies, an actuarial valuation shows that, on the effective date of the valuation, the value of the scheme assets is more than the amount prescribed for the purposes of section 7(1)(b) (the difference shown in the valuation being referred to in this section as “the excess”).~~
- (2) ~~The Authority may issue a written direction to the employer and trustee to take steps by such method as may be approved by the Authority to secure an appropriate reduction in the value of the scheme assets.<sup>39</sup>~~
- (3) ~~The required reduction in that value must be secured before the end of such period as is specified in the direction.~~
- (4) ~~If the employer and the trustee fail to secure the required reduction in value before the end of the period applicable under subsection (3), the trustee or administrator must, within the period of 14 days beginning with the end of that period, give written notice of that fact to the Authority and to the members of the scheme.<sup>40</sup>~~
- (5) ~~The Authority may extend (or further extend) the period applicable under subsection (3), and where the Authority refuses to extend (or further extend) the period the Authority shall give written notice of the refusal together with a statement of reasons for the decision.<sup>41</sup>~~
- (6) ~~If subsection (4) is not complied with —~~
  - (a) ~~section 33 applies to any trustee and administrator who has failed to take all such steps as are reasonable to secure compliance, and~~
  - (b) ~~section 50 applies to any trustee or administrator who has failed to take all such steps.<sup>42</sup>~~

**15 Annual accounts**

- (1) ~~The trustee of an authorised scheme shall produce a copy of the annual accounts of the scheme to the Authority within such period following the close of the year to which they relate as the Authority may require and in any event not later than 6 months after the close of the year to which they relate.<sup>43</sup>~~
- (2) ~~Such statements, reports, certificates and information as may be required by regulations made under this Act, or required by any other enactment to be annexed or attached to the annual accounts for any purpose shall be produced to the Authority at the same time as the annual accounts are submitted.<sup>44</sup>~~
- (3) ~~The Authority may exempt in writing a scheme specified in the exemption from any provision contained in regulations made under this Act relating to accounts.<sup>45</sup>~~
- (4) ~~Subject to any exemption granted under subsection (3), the trustee and administrator of any authorised scheme which fails to comply with subsection (1) or (2) shall be guilty of an offence.~~
- (5) ~~In this section, "annual accounts" means the scheme accounts prepared in compliance with regulations under section 6.~~

**15 Annual accounts**

- (1) The trustee and administrator of an authorised scheme must obtain accounts relating to the scheme prepared in accordance with regulations made under section 6 (referred to in this section as "annual accounts") within the prescribed period after the end of each scheme year.
- (2) The annual accounts must be accompanied by such statements, reports, certificates and information as may be prescribed by the Authority in regulations made under this Act.
- (3) The Authority may exempt in writing a scheme specified in the exemption from any provision contained in regulations made under this Act relating to the annual accounts or any statements, reports, certificates and information required to accompany the annual accounts.
- (4) Subject to any exemption granted under subsection (3) or any exemption or modification prescribed under section 51(2), the Authority may take such regulatory action as it considers appropriate against any person that has failed to comply with subsection (1) or (2).

**15A Scheme return**

- (1) The Authority may require the trustee and administrator of an authorised scheme falling within a class or description prescribed by the Authority in regulations to provide the Authority with a return for the scheme (referred

to in this Act as the “scheme return”) at such intervals as the Authority may prescribe by regulations.

- (2) The scheme return must –
  - (a) include or be accompanied by such information and documents as the Authority may require; and
  - (b) be accompanied by such fee as may be specified under section 52A.
- (3) The scheme return must be submitted to the Authority –
  - (a) by such method of electronic communication as the Authority may reasonably require; or
  - (b) such other method of communication as the Authority may approve.
- (4) The intervals prescribed under subsection (1) and the requirements specified under subsection (2) may differ as between different types of scheme.
- (5) In subsection (3), “electronic communication” has the same meaning as in the *Electronic Transactions Act 2000*.
- (6) Where regulations under this section are not complied with, the Authority may take such regulatory action as it considers appropriate.

### **15B Disclosure of information**

- (1) The Authority may make regulations –
  - (a) requiring the trustee and administrator of an authorised scheme falling within a prescribed class or description to prepare a report (referred to in this Act as “the annual report”);
  - (b) prescribing the information that must be contained in the report and the documents that must accompany the report;
  - (c) prescribing the persons to whom the trustee and administrator of the scheme must provide the annual report, additional information or additional documents; and
  - (e) prescribing the circumstances in which, and the occasions on which, the trustee and administrator supply the annual report, additional information or additional documents to a person prescribed under paragraph (c).
- (2) Where this section is not complied with, the Authority may take such regulatory action as it considers appropriate.

### **16 Publication of scheme particulars**

- (1) ~~The Treasury~~ **The Authority** may make regulations requiring the trustee of an authorised scheme to submit to the Authority and publish or make available to past, present and prospective members of the scheme a document (“scheme particulars”) containing information about the

scheme and complying with such requirements as are ~~specified~~ **prescribed** in the regulations.<sup>46</sup>

- (2) Regulations under this section may require the trustee of an authorised scheme to submit and publish or make available revised or further scheme particulars if —
  - (a) there is a significant change affecting any matter contained in such particulars previously published or made available whose inclusion was required by the regulations; or
  - (b) a significant new matter arises the inclusion of information in respect of which would have been required in previous particulars if it had arisen when those particulars were prepared.
- (3) Regulations under this section may provide for the payment, by the person or persons who in accordance with the regulations are treated as responsible for any scheme particulars, of compensation to any person who has become or agreed to become a member in the scheme and suffered loss as a result of any untrue or misleading statement in the particulars or the omission from them of any matter required by the regulations to be included.
- (4) Regulations under this section shall not affect any liability which any person may incur apart from the regulations.
- ~~(5) If regulations under this section are not complied with —~~
  - ~~(a) section 33 applies to any trustee who has failed to take all such steps as are reasonable to secure compliance, and~~
  - ~~(b) section 50 applies to any trustee who has failed to take all such steps.~~
- (5) Where regulations under this section are not complied with, the Authority may take such regulatory action as it considers appropriate.**

## ~~17~~ **Professional advisers**

- ~~(1) Subject to regulations under sections 6(2)(d) and 51(1)(d), for every authorised scheme the trustee shall appoint —~~
  - ~~(a) a scheme auditor;~~
  - ~~(b) a scheme actuary; and~~
  - ~~(c) an investment manager,~~~~on such terms as the trustee may determine.~~
- ~~(2) A trustee who fails to comply with subsection (1) is guilty of an offence.~~

## **17 Professional advisers**

- (1) Subject to regulations under section 6(2)(d) and 51(2)(d), for every authorised scheme the trustee must appoint —**

- (a) a scheme auditor;
  - (b) a scheme actuary; and
  - (c) an investment manager,
- on such terms as the trustee may determine.
- (2) The trustee must consult the administrator before making an appointment under subsection (1).
  - (3) Where subsection (1) is not complied with, the Authority may take such regulatory action as it considers appropriate.

### **17A Persons disqualified from being scheme functionaries**

[P1995/26/29 & 30 and drafting]

- (1) This section applies to authorised schemes.
- (2) Subject to subsection (3), a person is disqualified from being a trustee or an administrator of a scheme if —
  - (a) the person has been convicted, whether in the Island or elsewhere, of any offence involving dishonesty;
  - (b) the person has been made bankrupt and has not been discharged;
  - (c) where the person is a company, if any director of the company is disqualified under this section; or
  - (d) the person is subject to a disqualification order or disqualification undertaking under the Company Officers (Disqualification) Act 2009.
- (3) In subsection (2) —
  - (a) paragraph (a) applies whether the conviction occurred before or after the coming into operation of that subsection, but does not apply in relation to any conviction which is a spent conviction for the purposes of the Rehabilitation of Offenders Act 2001;
  - (b) paragraph (b) applies whether the adjudication of bankruptcy occurred before or after the coming into operation of that subsection;
  - (c) paragraph (d) applies in relation to orders made, and undertakings given, before or after the coming into operation of that subsection.
- (4) The Authority may, on the application of any person disqualified under this section, give notice in writing to the applicant waiving that person's disqualification, either generally or in relation to a particular scheme or particular description of schemes.
- (5) A notice given under section (4) may be given subject to such conditions as the Authority thinks fit.
- (6) A notice given at any time by virtue of subsection (4) cannot affect anything done before that time.

- (7) Where a person becomes disqualified under this section, the disqualification takes effect immediately.
- (8) A person who purports to act while disqualified under this section commits an offence.
- (9) Things done by a person disqualified under this section while purporting to act in the relevant capacity are not invalid merely because of that disqualification.
- (10) Nothing in this section affects the liability of any person for things done, or omitted to be done, by that person purporting to act while disqualified under this section.
- (11) The Authority may by regulations provide for some or all of the provisions of subsection (2) —
  - (a) not to apply; or
  - (b) to apply with modifications,in relation to a scheme falling within a class or description prescribed by the Authority in those regulations.

### **17B Requirement for knowledge and understanding**

[P2004/35/247 & 248 and drafting]

- (1) This section applies to authorised schemes.
- (2) An individual that is a trustee or administrator of an authorised scheme must —
  - (a) be conversant with —
    - (i) the constitutional documents of the scheme; and
    - (ii) any document recording policy for the time being adopted in relation to the management and administration of the scheme; and
  - (b) have knowledge and understanding of —
    - (i) the law relating to pensions; and
    - (ii) the law relating to trusts.
- (3) A body corporate which is a trustee or administrator of an authorised scheme must secure that each individual who exercises any function which the body corporate has in relation to the scheme —
  - (a) is conversant with —
    - (i) the constitutional documents of the scheme; and
    - (ii) any document recording policy for the time being adopted in relation to the management and administration of the scheme,in so far as they are relevant to the exercise of the function; and

- (b) has knowledge and understanding of —
  - (i) the law relating to pensions; and
  - (ii) the law relating to trusts.
- (4) The degree of knowledge and understanding required by subsection (2)(b) is that appropriate for the purposes of enabling the individual to properly exercise that individual's functions in relation to the scheme.
- (5) The degree of knowledge and understanding required by subsection (3)(b) is that appropriate for the purposes of enabling the individual to properly exercise the function in question.
- (6) References in this section to the exercise by an individual of any function of a body corporate are to anything done by the individual on behalf of the body corporate which constitutes the exercise of the function by the body corporate.
- (7) Nothing in this section affects any rule of law requiring a person to have knowledge of, or expertise in, any matter.
- (8) The Authority may by regulations provide for some or all of the provisions of subsection (2) or (3) —
  - (a) to apply with modifications; or
  - (b) not to apply,to a specified person in circumstances prescribed in the regulations.

### **17C Requirement for an effective system of governance**

[P2004/35/249A and drafting]

- (1) This section applies to authorised schemes.
- (2) The trustee and administrator of an authorised scheme must establish and operate an effective system of governance, including internal controls.
- (3) The system of governance must be proportionate to the size, nature, scale and complexity of the activities of the scheme.
- (4) Nothing in this section affects any other obligation of a person to establish or operate an effective system of governance including internal controls, whether imposed by or by virtue of any enactment, the scheme rules or otherwise.
- (5) In this section, "internal controls" means —
  - (a) arrangements and procedures to be followed in the management and administration of the scheme;
  - (b) systems and arrangements for monitoring that management and administration;
  - (c) arrangements and procedures to be followed for the safe custody and security of the assets of the scheme.

- (6) The Authority may by regulations provide for some or all of the provisions of this section —
- (a) to apply with modifications; or
  - (b) not to apply,
- in relation to a person or scheme falling (in either case) within a class or description prescribed by the Authority in those regulations.

**~~18 Alteration of schemes and changes of trustee, administrator and professional advisers~~**

~~(A1) No trustee or administrator of an authorised scheme shall appoint a person as director, chief executive or manager; nor shall a person become controller of such a trustee or administrator, unless a written notice containing such particulars as may be prescribed is served on the Authority by—~~

- ~~(a) in the case of a director, chief executive or manager, the trustee or administrator as the case requires; or~~
- ~~(b) in the case of a controller, the proposed controller,~~  
not less than 28 days before the event.<sup>47</sup>

~~(1) The trustee of an authorised scheme shall, as soon as practicable, give written notice to the Authority of—~~

- ~~(a) any proposal to—~~
  - ~~(i) alter the scheme;~~
  - ~~(ii) appoint a new scheme administrator;~~
  - ~~(iii) remove the scheme administrator;~~
  - ~~(iv) appoint a professional adviser;~~
  - ~~(v) remove a professional adviser, and~~
- ~~(b) the resignation of—~~
  - ~~(i) a professional adviser;~~
  - ~~(ii) the administrator of the scheme,~~

~~and the notice shall be accompanied by a statement of the reasons for such proposal or resignation.<sup>48</sup>~~

~~(2) The administrator of an authorised scheme shall, as soon as practicable, give written notice to the Authority of any proposal—~~

- ~~(a) for a trustee of the scheme to cease to hold office; or~~
- ~~(b) to replace the trustee,~~

~~and the notice shall be accompanied by a statement of the reasons for the proposal.<sup>49</sup>~~

- ~~(3) Effect shall not be given to any proposal under subsection (1)(a) or under subsection (2) unless —~~
- ~~(a) the Authority has given its approval to the proposal; or<sup>50</sup>~~
  - ~~(b) one month has elapsed since the date on which the notice was given under subsection (1) or (2) without the Authority having given written notice to the trustee or, as the case requires, the administrator that the proposal is not approved together with a statement of reasons for the decision.<sup>51</sup>~~
- ~~(4) Where a professional adviser resigns from an authorised scheme, he shall notify the Authority in writing within 7 days of his reason for resigning.<sup>52</sup>~~
- ~~(5) A trustee who fails to comply with subsection (1) is guilty of an offence.~~
- ~~(6) An administrator who fails to comply with subsection (2) is guilty of an offence.~~
- ~~(7) A professional adviser who fails to comply with subsection (4) is guilty of an offence.~~

## **18 Alteration of schemes and changes of scheme functionaries**

- (1) This section applies to authorised schemes.
- (2) The trustee of an authorised scheme must give written notice to the Authority in relation to —
- (a) any alteration to the scheme;
  - (b) the appointment of a new scheme administrator;
  - (c) the resignation of the scheme administrator;
  - (d) the removal of the scheme administrator;
  - (e) the disqualification of the scheme administrator under section 17A;
  - (f) the appointment of a professional adviser;
  - (g) the removal of a professional adviser; and
  - (h) the resignation of a professional adviser,
- and the notice must contain or be accompanied by such information and documents as the Authority may require.
- (3) The administrator of an authorised scheme must give written notice to the Authority in relation to —
- (a) the removal or resignation of a trustee of the scheme;
  - (b) the appointment of a replacement trustee;
  - (c) the appointment of an additional trustee; and
  - (d) the disqualification of a trustee under section 17A,
- and the notice must contain or be accompanied by such information and documents as the Authority may require.

- (4) A notice required under subsection (2) or (3) must be given within the period prescribed by the Authority in regulations, and such regulations may also provide that any such change is subject to the prior consent of the Authority.
- (5) Where a professional adviser resigns from an authorised scheme, that person must notify the Authority in writing of the reason for resigning within 7 days of the resignation.
- (6) The Authority may make regulations requiring a specified person to provide the Authority with notice of such other events as may be prescribed in regulations in connection with an authorised scheme.
- (7) For the purposes of subsection (6), each of the following is a “specified person” —
  - (a) a trustee;
  - (b) an administrator;
  - (c) a professional adviser;
  - (d) an employer.
- (8) Where a person fails to comply with this section or regulations made under it, the Authority may take such regulatory action as it considers appropriate.

### **19 — Directors, controllers, etc**

- (1) ~~If it appears to the Authority that any individual is not a fit and proper person —~~
  - (a) ~~to be appointed as a director, chief executive or manager; or~~
  - (b) ~~to become a controller,~~

~~of the trustee or administrator of an authorised scheme or an authorised scheme of any specified description, the Authority may direct that the individual shall not, without the written consent of the Authority, be appointed as such a director, chief executive or manager nor become such a controller.<sup>53</sup>~~
- (2) ~~If it appears to the Authority that any —~~
  - (a) ~~director, chief executive or manager; or~~
  - (b) ~~controller,~~

~~of the trustee or administrator of an authorised scheme or an authorised scheme of any specified description, is not a fit and proper person to continue as such, the Authority may direct that the individual shall not, without the written consent of the Authority, continue as such a director, chief executive, manager or controller.<sup>54</sup>~~
- (3) ~~The Authority shall give written notice to the individual concerned of any decision to make a direction under this section together with a statement~~

~~of reasons for the decision and, except where the Authority is satisfied that urgent action is necessary, the notice shall be served on the individual not less than 28 days before the date on which the direction is to take effect.<sup>55</sup>~~

~~(4) Any consent by the Authority under subsection (1) or (2) may be —~~

- ~~(a) given subject to conditions;~~
- ~~(b) varied from time to time; and~~
- ~~(c) revoked at any time;~~

~~and the Authority shall give written notice to the individual concerned of any decision to exercise the powers conferred by paragraph (a), (b) or (c) together with a statement of reasons for the decision.<sup>56</sup>~~

~~(5) Any individual who —~~

- ~~(a) accepts or continues in any appointment referred to in subsection (1)(a) or (2)(a); or~~
- ~~(b) becomes or continues as a controller,~~

~~in contravention of a direction under this section shall be guilty of an offence.~~

~~(6) In this section —~~

~~“chief executive” means an individual who is employed by the body corporate concerned and who either alone or jointly with others is or will be responsible under the immediate authority of the directors for the conduct of its business;~~

~~“manager” means an individual employed by the body corporate concerned who, under the immediate authority of a director or its chief executive —~~

- ~~(a) exercises managerial functions; or~~
- ~~(b) is responsible for maintaining the accounts or other records of the scheme.~~

## **19 Directors, controllers, etc.**

[2008/08/10 and drafting]

- (1) This section applies to authorised schemes.
- (2) The Authority may at any time assess whether each of the following persons is a fit and proper person to act in relation to a scheme in the capacity mentioned —
  - (a) a person who is, or is intended to be, a trustee or an administrator of a scheme;
  - (b) a person who is, or is intended to be, a director, chief executive, manager or controller of a trustee or an administrator of a scheme;
  - (c) a person acting in such other capacity as may be prescribed in regulations made by the Authority.

- (3) For the purposes of an assessment under subsection (2), the onus is on the person concerned to satisfy the Authority that the person is a fit and proper person to act in the relevant capacity.
- (4) If the Authority has not been satisfied that a person is a fit and proper person to act in the relevant capacity, the Authority may direct that the person must not, without the written consent of the Authority, act or continue to act (as the case may be) in the relevant capacity in relation to a specified scheme or a scheme of a specified description.
- (5) The Authority must give written notice to the person concerned of any decision to give a direction under this section together with a statement of reasons for the decision.
- (6) Subject to subsection (7), where a notice has been given under subsection (5), the direction takes effect —
  - (a) if no appeal under section 38 is made within the period specified in rules made under section 8 of the Tribunals Act 2006 for the purposes of such an appeal, on the expiry of that period; or
  - (b) if there is an appeal under section 38 —
    - (i) where the appellant abandons the appeal, on the date of abandonment;
    - (ii) where the decision of the Authority is confirmed, on the date of confirmation;
    - (iii) where the decision of the Authority is varied, on such date as the Tribunal constituted under section 38 directs.
- (7) If the Authority is of the opinion that a direction should have immediate effect, the notice under subsection (5) must contain a statement to that effect, together with the reasons for that opinion and the direction has effect on the giving of the notice.
- (8) A direction or consent by the Authority under subsection (4) may be —
  - (a) given subject to conditions;
  - (b) varied from time to time; and
  - (c) revoked at any time,and the Authority must give written notice to the person concerned of any decision to exercise the powers conferred by paragraph (a), (b) or (c), together with a statement of reasons for the decision.
- (9) A person must not act in a relevant capacity in contravention of a direction under this section.
- (10) A trustee or administrator (as the case may be) must not appoint, or continue the appointment of, a person in contravention of a direction under subsection (4).
- (11) If subsection (9) or (10) is not complied with, the Authority may take such regulatory action as it considers appropriate.

(12) In this section —

“chief executive” means an individual who is employed by the body corporate concerned and who, either alone or jointly with others, is or will be responsible for the conduct of the body corporate’s business under the immediate authority of the directors;

“manager” means an individual employed by the body corporate concerned who, under the immediate authority of the director or its chief executive —

- (a) exercises managerial functions; or
- (b) is responsible for maintaining the accounts or other records of the scheme.

### 19A Warning notices

- (1) This section applies to authorised schemes.
- (2) The Authority may —
  - (a) before making a direction under section 19(4);
  - (b) before making an application under section 33;
  - (c) in any other circumstances that the Authority considers it appropriate to do so,give a written warning notice under this section to a trustee or administrator, or a person who is or has been a director, chief executive, manager or controller of a trustee or administrator, of an authorised scheme (“the relevant person”).
- (3) A warning notice under this section must be accompanied by a statement of the reasons for the giving of the notice.
- (4) A warning notice may —
  - (a) propose that the relevant person take such action as is specified in the notice;
  - (b) ask the relevant person to propose action; or
  - (c) specify action that the relevant person must take and the time within which it must be taken.
- (5) Where a warning notice has been given under this section, the Authority must, before making a direction under section 19(4), take into account any action taken by the relevant person in response to the warning notice.
- (6) The giving of a warning notice under this section —
  - (a) does not limit the exercise of any other power or remedy under this Act, nor does it prevent the commencement of proceedings for an offence under this Act; and
  - (b) is not required prior to —

- (i) the Authority's exercise of any such power or remedy; or
  - (ii) the commencement of proceedings for such an offence.
- (7) A warning notice issued under this section has effect —
- (a) for a period of up to 3 years from the date on which it is issued under subsection (2) and such period must be specified in the notice; or
  - (b) until such time as the Authority is content that any action under subsection (4) has been completed to its satisfaction.
- (8) The Authority may disclose the circumstances surrounding a warning notice to —
- (a) an employer who currently employs a notified person;
  - (b) a person who has received an employment application from a notified person and who, if successful in the application, would be required to be a director, chief executive, manager or controller of a trustee or administrator of an authorised scheme; or
  - (c) a company of which a notified person is, or is likely to become, an officer.
- (9) In subsection (8) —
- “notified person” means a person to whom a notice under subsection (2) has been given and is still effective in accordance with subsection (7);
- “officer” means an officer of a company for the purposes of the Company Officers (Disqualification) Act 2009 (see section 1(2) of that Act); and
- “employment application” in paragraph (b) includes any action which would result in the person acting in a capacity mentioned in that paragraph.

## 20 Avoidance of exclusion clauses

[P1986/60/84]

Any provision of any document constituting an authorised scheme shall be void in so far as it would have the effect of exempting the trustee or administrator from liability for any failure to exercise due care and diligence in the discharge of their respective functions in respect of the scheme.

## PART 3 – SCHEMES FROM OTHER JURISDICTIONS

### 21 Schemes authorised, etc in designated countries

- ~~(1) Subject to subsections (4) and (5), a scheme which is managed in and authorised under the law of a designated country or territory outside the Island is a recognised scheme if —~~
- ~~(a) the scheme is of a class specified by an order made by the Treasury;~~
- ~~and~~

- ~~(b) — it is registered in a register maintained under section 45.~~
- (1) Subject to a notice given in accordance with subsections (4) and (5), a scheme which is managed in and authorised under the law of a designated country or territory outside the Island is a recognised scheme if —
- (a) the scheme is of a class specified by an order made by the Authority; and
- (b) it is registered as recognised under this section and included on the register maintained under section 45.
- (2) In this section, “designated country or territory” means any country or territory designated for the purposes of this section by an order made by ~~the Treasury~~ the Authority.
- (3) ~~The Treasury~~ The Authority shall not make an order under subsection (1) or (2) unless it is satisfied that adequate protection is afforded to members.
- ~~(4) — A scheme shall not be a recognised scheme under this section unless the trustee of the scheme gives written notice to the Authority that he wishes it to be registered as a recognised scheme.<sup>57</sup>~~
- ~~(5) — The notice given by the trustee under subsection (4) —~~
- ~~(a) — shall contain the name and address of a person in the Island who is authorised to accept on behalf of the trustee any process or any notices or other documents required or authorised to be served on him under this Act; and<sup>58</sup>~~
- ~~(b) — shall contain or be accompanied by such information and documents as may be prescribed; and~~
- ~~(c) — shall be accompanied by such fee as may be prescribed.~~
- (4) A notice may be given to the Authority for a scheme to be registered as recognised under this section.
- (5) The notice under subsection (4) must —
- (a) be given by the trustee of the scheme;
- (b) contain the name and address of a person in the Island who is authorised to accept on behalf of the trustee any process or any notices or other documents required or authorised to be served on that person under this Act;
- (c) contain or be accompanied by such other information and documents as the Authority may reasonably require; and
- (d) be accompanied by such fee as may be specified under section 52A(2)(a).
- (6) Sections 6 and 16 shall have effect in relation to a recognised scheme under this section as they have effect in relation to an authorised scheme.
- (7) Regulations under sections 6 and 16 as applied by subsection (6) may make provision whereby compliance with any requirements imposed by

or under the law of a designated country or territory is treated as compliance with any requirement of the regulations.

- (8) An order under subsection (1) may contain such transitional provisions as ~~the Treasury thinks necessary or expedient~~ **the Authority thinks necessary.**

## 22 Revocation of recognised status

- (1) The Authority may at any time direct that a scheme shall cease to be a recognised scheme by virtue of section 21 if it appears to the Authority —
- (a) that it is undesirable in the interests of the members or potential members that the scheme should continue to be recognised; or
  - (b) without prejudice to paragraph (a), that the trustee or administrator of the scheme has contravened any provision of —
    - (i) this Act; or
    - (ii) the *Insurance Act 2008*; or<sup>59</sup>
    - (iii) the *Financial Services Act 2008*;<sup>60</sup>
    - (iv) and (v) [Repealed]<sup>61</sup>
    - (vi) any rules, regulations or code made under any of those Acts or, in purported compliance with any such provision, has furnished the Authority with false, inaccurate or misleading information; or<sup>62</sup>
  - (c) that the trustee or administrator of the scheme has contravened any condition, prohibition or requirement imposed under the Acts specified in paragraph (b)(i) to (v).<sup>63</sup>
- (2) For the purposes of subsection (1)(a) the Authority may take into account any matter relating to the scheme, the trustee or administrator, a director or controller of the trustee or administrator or any person employed by or associated with the trustee or administrator in connection with the scheme.<sup>64</sup>
- (3) The Authority may give such a direction as is mentioned in subsection (1) at the request of the trustee or administrator of the scheme; but the Authority may refuse to do so if it considers that any matter concerning the scheme should be investigated as a preliminary to a decision on the question whether the direction should be given or the recognition revoked or that the direction or revocation would not be in the interests of the members.<sup>65</sup>
- (4) Where the Authority proposes to give such a direction as is mentioned in subsection (1), the Authority shall give the trustee written notice of its intention to do so, stating the reasons for which the Authority proposes to act and giving particulars of the rights conferred by subsection (5).<sup>66</sup>

- (5) A person on whom a notice is served under subsection (4) may, within 21 days of the date of service, make written representations to the Authority and, if desired, oral representations to the Authority.<sup>67</sup>
- (6) The Authority shall have regard to any representations made in accordance with subsection (5) in determining whether to give a direction under subsection (1).<sup>68</sup>

## 23 Facilities, information and assets in the Island

- (1) ~~The Treasury~~ **The Authority** may make regulations requiring the trustee of recognised schemes to maintain in the Island such facilities as it thinks desirable in the interests of members and as are specified in the regulations.
- (2) The Authority may by notice in writing together with a statement of reasons for the decision require the trustee of any recognised scheme to include such explanatory information as is specified in the notice in any investment advertisement issued or caused to be issued by him in the Island in which the scheme is named.<sup>69</sup>
- (3) The Authority may direct the trustee of a recognised scheme in writing together with a statement of reasons for the direction, to maintain in the Island, or transfer to and keep in the custody of a person specified in the direction, assets of the scheme of such value and description as may be directed.<sup>70</sup>
- (4) No assets kept in the custody of any person pursuant to a direction given under subsection (3) shall, so long as the direction is in force —
  - (a) be removed from that person; or
  - (b) be made the subject of any mortgage, charge or lien,except with the prior written consent of the Authority.<sup>71</sup>
- ~~(5) Any person who fails to comply with regulations made under this section, a direction given under this section or who contravenes subsection (4), shall be guilty of an offence.~~
- (5) If any person —**
  - (a) fails to comply with regulations made under this section;**
  - (b) fails to comply with a direction given under this section;**
  - (c) contravenes subsection (4),****the Authority may take such regulatory action as it considers appropriate.**
- (6) Any mortgage, charge or lien created in contravention of subsection (4) shall be void against a person winding up the scheme and any creditor of the scheme.

~~PART 4 — GENERAL REGISTER OF SCHEMES~~ **PART 4 —**  
**SCHEME TRACING**

~~24 — Registration of retirement benefits schemes~~ **Scheme tracing register**

- (1) The Treasury may by regulations make provision —
  - (a) requiring —
    - (i) the trustee or administrator of a scheme; and
    - (ii) any person constituting or establishing, or concerned in constituting or establishing a scheme,  
to cause the scheme to be registered in a register to be established under this section of all or any specified class of schemes;
  - (b) for the compilation and maintenance of a register of schemes;
  - (c) for conferring on the Authority such functions relating to the compilation and maintenance of the register as may be specified in the regulations;<sup>72</sup>
  - (d) for requiring the trustee or administrator of a scheme to provide such information to its members, at such intervals and in such form, as may be prescribed;
  - (e) for contravention of, or failure to comply with any provision contained in regulations under any such provision to be an offence under this Act.
- (2) The register —
  - (a) may consist of one or more parts, as may be prescribed;
  - (b) shall be organised in such manner, and contain such information relating to schemes, as may be prescribed; and
  - (c) subject to the regulations, may be kept in such manner and form as the Authority thinks fit.<sup>73</sup>
- (3) The regulations may make provision —
  - (a) for the register, or extracts from the register, or for copies of the register or of extracts from the register, to be open to inspection by, and
  - (b) for copies of the register, or of extracts from it, to be supplied to, such persons, in such manner, at such times, upon payment of such fees, and subject to such other terms and conditions, as may be prescribed.
- (4) The regulations may require —
  - (a) any person who is or has been —
    - (i) a trustee or administrator of a scheme, or
    - (ii) the employer in relation to employment of any description or category to which an occupational scheme relates, and

- (b) such other persons as may be prescribed,  
to provide the Authority with such information for the purposes of the register in such form and within such time as may be prescribed.<sup>74</sup>
- (5) Subsections (2) to (4) are without prejudice to the generality of subsection (1).
- (6) The inclusion of a scheme in a register established under this section shall not be taken to imply that the scheme is authorised under section 3 nor recognised under section 21.

## PART 5 – POWERS OF SUPERVISION, INVESTIGATION, INTERVENTION, ETC.

25 [Repealed]<sup>75</sup>

### 25A Guidance

- (1) The Authority may give guidance consisting of such information and advice as it considers appropriate —
- (a) with respect to the operation of this Act and of any public document made under it;
  - (b) for the purpose of meeting the regulatory objectives;
  - (c) with respect to any other matters about which it appears to the Authority to be desirable to give information and advice.
- (2) The Authority may —
- (a) publish its guidance; and
  - (b) offer copies of its published guidance for sale at a reasonable price

### ~~26 — Inspection and investigation~~

~~Schedule 5 to the *Insurance Act 2008* shall have effect in relation to the inspection and investigation powers of the Authority.<sup>76</sup>~~

27 and 28 [Repealed]<sup>77</sup>

### ~~29 — Injunctions~~

- ~~(1) — If, on the application of the Authority, the High Court is satisfied that —~~
- ~~(a) — there is a reasonable likelihood that a particular person will do any act which constitutes a misuse or misappropriation of assets of a scheme, or~~

~~(b) that a particular person has done any such act and that there is a reasonable likelihood that he will continue or repeat the act in question or do a similar act,~~

~~the court may grant an injunction restraining him from doing so.<sup>78</sup>~~

~~(2) If on the application of the Authority, the High Court is satisfied —~~

~~(a) that there is a reasonable likelihood that a particular person will contravene any provision of this Act or any regulations under this Act;~~

~~(b) that a particular person has contravened any such provision and that there is a reasonable likelihood that he will continue or repeat the contravention; or~~

~~(c) that a particular person has contravened any such provision and that there are steps that could be taken for remedying the contravention,~~

~~the Court may grant an injunction restraining the contravention or, as the case may be, make an order requiring that person and any other person who appears to the Court to have been knowingly concerned in the contravention to take such steps as the Court may direct to remedy it.<sup>79</sup>~~

~~(3) Nothing in this section affects the right of any person other than the Authority to bring proceedings in respect of the matters to which this section applies.<sup>80</sup>~~

## 29 Injunctions

[2008/08/20 and drafting]

(1) If, on the application of the Authority, the High Court is satisfied that —

(a) there is a reasonable likelihood that a particular person will do any act which constitutes a misuse or misappropriation of any of the assets of a scheme; or

(b) a particular person has done any such act and that there is a reasonable likelihood that the person concerned will continue or repeat the act in question or do a similar act,

the court may grant an injunction restraining that person from doing so.

(2) If, on the application of the Authority, the High Court is satisfied that —

(a) there is a reasonable likelihood that a particular person will contravene —

(i) any provision of this Act;

(ii) any provision of a public document made under this Act;

(iii) any condition imposed by or under this Act; or

(iv) any direction given under this Act;

- (b) a particular person has contravened any such provision, condition or direction and that there is a reasonable likelihood that the contravention will continue or be repeated; or
- (c) a particular person has contravened any such provision, condition or direction and that there are steps that could be taken for remedying the contravention,

the court may grant an injunction restraining the contravention or, as the case may be, make an order requiring that person and any other person who appears to the court to have been knowingly concerned in the contravention to take such steps as the court may direct to remedy it.

- (3) Nothing in this section affects the right of any person other than the Authority to bring proceedings in respect of the matters to which this section applies.

### ~~30~~ Restitution

- ~~(1) If, on the application of the Authority, the High Court is satisfied —~~
  - ~~(a) that a power to make a payment, or distribute any assets, to any person, has been exercised in contravention of regulations under this Act, or~~
  - ~~(b) that any act or omission of the trustee or administrator of a scheme was in contravention of this Act or regulations under it,~~

~~the court may order the trustee, administrator and any other person who appears to the court to have been knowingly concerned in the contravention to take such steps as the court may direct for restoring the parties to the position in which they were before the payment or distribution was made, or the act or omission occurred.<sup>81</sup>~~
- ~~(2) Nothing in this section affects the right of any person other than the Authority to bring proceedings in respect of the matters to which this section applies.~~

### 30 Restitution

[2008/08/20 and drafting]

- (1) If, on the application of the Authority, the High Court is satisfied that —
  - (a) there has been a misuse or misappropriation of any of the assets of a scheme; or
  - (b) there has been a contravention of any provision, condition or direction as mentioned in section 29(2),

the court may order the trustee or administrator and any other person who appears to the court to have been knowingly concerned in the misuse, misappropriation or contravention to take such steps as the court may

direct for restoring the parties to the position in which they were before the misuse, misappropriation or contravention occurred.

- (2) If, on the application of the Authority, the High Court is satisfied that —
- (a) a power to make a payment, or distribute any assets, to the employer, has been exercised in contravention of regulations under this Act; or
  - (b) any act or omission of the trustee was in contravention of any restrictions prescribed in regulations made by the Authority with respect to the proportion of the resources of the trustee that may at any time be invested in, or in any description of, employer-related investments (see the definition of “employer-related investments” in section 54(1)),

the court may order the employer and any other person who appears to the court to have been knowingly concerned in the contravention to take such steps as the court may direct for restoring the parties to the position in which they were before the payment or distribution was made, or the act or omission occurred.

- (3) Nothing in this section affects the right of any person other than the Authority to bring proceedings in respect of the matters to which this section applies.

### 30A Public statements

[2008/08/13 and drafting]

- (1) The Authority may issue a public statement concerning a person if the Authority has reasonable grounds to believe that the person is contravening, or has contravened, —
  - (a) any provision of, or made under, this Act; or
  - (b) any condition or requirement imposed, or any direction given, under or by virtue of this Act.
- (2) The Authority may issue a public statement concerning —
  - (a) any person who it believes is or has been —
    - (i) a trustee of a scheme;
    - (ii) an administrator of a scheme; or
    - (iii) an employer of a member of a scheme, whether that person is in the Island or elsewhere; or
  - (b) any scheme,

if it appears to the Authority to be desirable to make the statement for the protection of any past, present or prospective members of a scheme.
- (3) If the Authority has issued, varied or withdrawn a direction under this Act, the Authority may issue a public statement containing —

- (a) such information about the direction as it believes appropriate in the circumstances;
  - (b) such other information as it believes desirable in the public interest about the reasons for —
    - (i) issuing the direction; or
    - (ii) varying or withdrawing the direction.
- (4) The Authority may issue a public statement concerning any matter relating to a scheme or persons acting as a trustee or administrator of schemes in general or any description of scheme or a person acting as a trustee or administrator of a scheme where the Authority believes it to be desirable in the public interest to issue such a public statement.
- (5) Before issuing a public statement under this section, the Authority —
- (a) where the statement is in respect of a trustee or administrator, must send a copy of the proposed statement to the person concerned;
  - (b) where the statement is in respect of a scheme, must send a copy of the proposed statement to the trustee and administrator;
  - (c) where the statement is in respect of any other person, must send a copy of the proposed statement to the person concerned, at the last known address of that person,
- together with a written notice of the reasons for the issue of the statement.
- (6) Except where the Authority is of the opinion that immediate action is necessary, the copy and notice under subsection (5) must be sent not less than 7 days before issuing the public statement under this section.
- (7) The Authority must not issue a public statement under this section in respect of a direction under this Act before the date on which the direction takes effect.

### 31 — Directions

- (1) — If it appears to the Authority —
- (a) — that any of the requirements for the registration of a scheme as an authorised scheme are no longer satisfied;
  - (b) — that the exercise of the power conferred by this subsection is desirable in the interests of members or potential members in any scheme; or
  - (c) — without prejudice to paragraph (b), that the trustee or administrator of, or a professional adviser to, any scheme has contravened any provision of —
    - (i) — this Act; or
    - (ii) — the *Insurance Act 2008*; or<sup>82</sup>
    - (iii) — the *Financial Services Act 2008*;<sup>83</sup>

- (iv) ~~and (v) [Repealed]~~<sup>84</sup>
- (vi) ~~any rules, regulations or code made under any of those Acts or, in purported compliance with any such provision, has furnished the Authority with false, inaccurate or misleading information; or~~<sup>85</sup>
- (d) ~~that the trustee or administrator of the scheme has contravened any condition, prohibition or requirement imposed under the Acts specified in paragraph (c)(i) to (v),~~
- the Authority may give a direction under subsection (2).<sup>86</sup>
- (2) ~~A direction under this subsection may —~~
- (a) ~~require the trustee and administrator of the scheme not to admit new members to the scheme from a date specified in the direction until such further date as is specified in that or another direction;~~
- (b) ~~require the trustee and administrator of the scheme to cause it to be wound up by such date as is specified in the direction or, if no date is specified, as soon as practicable;~~
- (c) ~~require the trustee and administrator of the scheme to take such other action as the Authority considers to be desirable in the interests of the members of the scheme.~~<sup>87</sup>
- (3) ~~The revocation of the registration of a scheme as an authorised scheme shall not affect the operation of any direction under subsection (2) which is then in force and a direction may be given under that subsection in relation to a scheme in the case of which the registration of an authorised scheme has been revoked.~~
- (4) ~~If it appears to the Authority —~~
- (a) ~~that the exercise of the power conferred by this subsection is desirable in the interests of members or potential members in a recognised scheme;~~
- (b) ~~without prejudice to paragraph (a), that the trustee or administrator of, or a professional adviser to, such a scheme has contravened any provision of —~~
- (i) ~~this Act; or~~
- (ii) ~~the *Insurance Act 2008*; or~~<sup>88</sup>
- (iii) ~~the *Financial Services Act 2008*;~~<sup>89</sup>
- (iv) ~~*Collective Investment Schemes Act 2008*;~~<sup>90</sup>
- (v) ~~[Repealed]~~<sup>91</sup>
- (vi) ~~any rules, regulations or code made under any of those Acts or, in purported compliance with any such provision, has furnished the Authority with false, inaccurate or misleading information; or~~<sup>92</sup>

~~(c) has contravened any condition, prohibition or requirement imposed under this Act, the *Insurance Act 2008*, the *Collective Investment Schemes Act 2008* or the *Financial Services Act 2008*,<sup>93</sup>~~

~~the Authority may direct that the scheme shall not be a recognised scheme for a specified period or until the occurrence of a specified event or until specified conditions are complied with.<sup>94</sup>~~

~~(5) For the purposes of subsections (1)(b) and (4)(a) the Authority may take into account any matter relating to the scheme, the trustee or administrator, a director or controller of the trustee or administrator or any person employed by or associated with the trustee or administrator in connection with the scheme.<sup>95</sup>~~

~~(6) The Authority may, either on its own initiative or on the application of the trustee or administrator of, or a professional adviser to, the scheme concerned, withdraw or vary a direction given under this section if it appears to the Authority that it is no longer necessary for the direction to take effect or continue in force or, as the case may be, that it should take effect or continue in force in a different form.<sup>96</sup>~~

~~(7) A trustee, administrator or professional adviser who is in contravention of a direction given in accordance with this section shall be guilty of an offence.~~

~~(8) A direction under this section requiring a scheme to be wound up may include such directions with respect to the manner and timing of the winding up as the Authority thinks appropriate having regard to the purposes of the direction.<sup>97</sup>~~

~~(9) The winding up of a scheme in pursuance of a direction under this section is as effective in law as if it had been made under powers conferred by or under the scheme.~~

~~(10) A direction under this section may be made and complied with in relation to a scheme —~~

~~(a) in spite of any enactment or rule of law, or any rule of the scheme, which would otherwise operate to prevent the winding up, or~~

~~(b) without regard to any such enactment, rule of law or rule of the scheme as would otherwise require, or might otherwise be taken to require, the implementation of any procedure or the obtaining of any consent, with a view to the winding up.~~

## 31 Directions

[P1995/26/11(6A) and drafting]

(1) The Authority may issue written directions under this section if it appears to the Authority —

(a) that any of the requirements for the registration of a scheme under this Act are no longer satisfied;

- (b) that the exercise of a power conferred by this section is desirable in the interests of members or potential members of any scheme;
  - (c) without limiting paragraph (b), that a trustee or administrator of, or professional adviser to, or an employer in relation to, any scheme —
    - (i) has contravened any provision of this Act, the Collective Investment Schemes Act 2008, the Financial Services Act 2008, or the Insurance Act 2008;
    - (ii) has contravened any provision of a public document made under any of those Acts;
    - (iii) in purported compliance with any such provision, has furnished the Authority with false, inaccurate or misleading information; or
    - (iv) has contravened any condition, prohibition, direction or other requirement imposed by or under the Acts specified in paragraph (c)(i).
- (2) A direction under this section may —
- (a) require the trustee and administrator not to admit new members to the scheme from a date specified in the direction until such further date as is specified in that or another direction;
  - (b) require the trustee and administrator to cause it to be wound up by such date as is specified in the direction or, if no date is specified, as soon as practicable;
  - (c) require the trustee and administrator to take, or refrain from taking, such steps as are specified in the direction in order to remedy or prevent reoccurrence of a contravention referred to in subsection (1);
  - (d) require the trustee and administrator to take such other action as the Authority considers to be desirable in the interests of the members or potential members of the scheme.
- (3) A direction under this section —
- (a) which is already in force is not affected by the revocation of the registration of the scheme to which the direction relates;
  - (b) may be given in relation to a scheme the registration of which has been revoked.
- (4) For the purposes of subsection (1)(b), the Authority may take into account any matter relating to —
- (a) the scheme;
  - (b) the trustee and administrator;
  - (c) a director or controller of a trustee or administrator;

- (d) any person employed by or associated with a trustee or administrator in connection with the scheme; or
  - (e) an employer in relation to the scheme.
- (5) The Authority may, either on its own initiative or on the application of a trustee or administrator of, or a professional adviser to, the scheme concerned, withdraw or vary a direction given under this section if it appears to the Authority —
- (a) in the case of a withdrawal, that it is no longer necessary for the direction to take effect or continue in force; or
  - (b) in the case of a variation, that the direction should take effect or continue in force in a different form.
- (6) If a person fails to comply with a direction given in accordance with this section, the Authority may take such regulatory action as it considers appropriate.
- (7) A direction under this section requiring a scheme to be wound up may include such directions with respect to the manner and timing of the winding up as the Authority thinks appropriate having regard to the purposes of the direction.
- (8) The winding up of a scheme in pursuance of a direction under this section is as effective in law as if it had been made under powers conferred by or under the scheme.
- (9) A direction under this section may be made and complied with in relation to a scheme —
- (a) despite any enactment or rule of law, or any rule of the scheme, which would otherwise operate to prevent the winding up; or
  - (b) without regard to any such enactment, rule of law or rule of the scheme as would otherwise require, or might otherwise be taken to require, the implementation of any procedure or the obtaining of any consent, with a view to the winding up.

### **32 — Notice of directions**

- (1) ~~The power to give a direction under section 31 in relation to a scheme shall be exercisable by written notice served by the Authority on the trustee or administrator and any such notice shall take effect on such date as is specified in the notice.<sup>98</sup>~~
- (2) ~~If the Authority refuses to withdraw or vary a direction on the application of the trustee or administrator of the scheme concerned the Authority shall serve that person with a written notice of refusal.<sup>99</sup>~~
- (3) ~~A notice giving a direction, or varying it otherwise than on the application of the trustee or administrator concerned, or refusing to withdraw or vary a direction on the application of such a person shall state the reasons for~~

~~which the direction was given or varied or, as the case may be, why the application was refused.~~

- ~~(4) The Authority may give public notice of a direction given by the Authority under section 31 and of any withdrawal or variation of such a direction; and any such notice may, if the Authority thinks fit, include a statement of the reasons for which the direction was given, withdrawn or varied.<sup>100</sup>~~

## **32 Notice of directions**

- (1) The giving, variation or withdrawal of a direction by the Authority under section 31 (a "section 31 action") –
- (a) must be preceded by the Authority's giving written notice to the trustee and administrator of the Authority's intention to take the specified section 31 action; and
  - (b) does not take effect take effect until the date specified in the written notice.
- (2) If the Authority refuses to withdraw or vary the direction on an application under section 31(5), the Authority must give the applicant written notice of refusal.
- (3) A notice giving a direction, or withdrawing or varying a direction otherwise than on an application under section 31(5), or refusing to withdraw or vary a direction on an application under section 31(5), must state (as the case may be) –
- (a) the reasons for which the direction was given, withdrawn or varied; or
  - (b) why the application was refused.

## **33 ~~Removal of trustee, administrator, etc~~**

- ~~(1) In any case in which the Authority has power to give a direction under section 31(2) in relation to an authorised scheme or, by virtue of subsection (3) of that section, in relation to a scheme which has been such a scheme, the Authority may by order –~~
- ~~(a) direct the removal of the trustee or administrator, or both the trustee and administrator, of the scheme and replace either or both of them with a person or persons nominated by the Authority and appearing to the Authority to satisfy the requirements of section 3; or<sup>101</sup>~~
  - ~~(b) if it appears to the Authority that no, or no suitable, person satisfying those requirements is available, direct the removal of the trustee or administrator, or both the trustee and administrator, and appoint an appropriate person to wind up the scheme.<sup>102-103</sup>~~

- ~~(2) — The Authority may make such order as it thinks fit under this section; and may, revoke any such order as is mentioned in subsection (1)(b) and substitute such an order as is mentioned in subsection (1)(a).<sup>104</sup>~~
- ~~(3) — The Authority shall give written notice of the making of an order under this section to the trustee and administrator of the scheme concerned and take such steps as the Authority considers appropriate for bringing the making of the order to the attention of the members.<sup>105</sup>~~
- ~~(4) — An order under subsection (1)(a) shall have effect to —~~
- ~~(a) — discharge either or both the trustee and the administrator of the scheme concerned; and~~
- ~~(b) — appoint the nominated person or persons in his or their place, and any such appointee shall have the same powers, authorities, and discretions and may in all respects act in the same manner as the person or persons replaced.~~
- ~~(5) — An order under subsection (1) may contain such supplemental provisions as the Authority thinks fit.<sup>106</sup>~~
- ~~(6) — Section 18 shall not apply in respect of a trustee or administrator appointed by an order made under subsection (1)(b).<sup>107</sup>~~

### **33 Power of the court to remove and appoint scheme functionaries**

[2008/07/15 and drafting]

- (1) In any case in which the Authority has power to give a direction under section 31 in relation to an authorised scheme or, by virtue of subsection (3) of that section, in relation to a scheme which has been an authorised scheme, the Authority may apply to the High Court —
- (a) for an order —
- (i) removing the trustee or administrator, or both the trustee and administrator, of the scheme; and
- (ii) replacing the removed person with a person or persons nominated by the Authority and appearing to the Authority to satisfy the requirements of sections 3 and 19; or
- (b) if it appears to the Authority that no person or no suitable person satisfying those requirements is available, for an order directing the trustee and administrator of the scheme to wind up the scheme.
- (2) On an application under subsection (1), the High Court may make such order as it thinks fit.
- (3) The High Court may, on the application of the Authority, rescind an order referred to in subsection (1)(b) and substitute an order referred to in subsection (1)(a).

- (4) The Authority must give written notice of the making of an application under this section to the trustee and administrator of the scheme concerned and take such steps as the Authority considers appropriate for bringing the making of the application to the attention of the members.
- (5) Subsections (2) and (3) of section 18 do not apply where an occurrence listed in either of those subsections is directly attributable to a court order under this section.

### 34 Appointment of ~~inspector~~ authorised person

- (1) The Authority may appoint one or more competent ~~inspectors~~ authorised persons to investigate and report, in such manner as the Authority may direct, ~~on the affairs of, or of the trustee or administrator of, any scheme~~ on the affairs of any scheme or a trustee or administrator of the scheme if the Authority is satisfied that it is in the interests of the members to do so or that the matter is of public concern.<sup>108</sup>
- ~~(2) An inspector appointed under subsection (1) to investigate the affairs of, or of the trustee or administrator of, any scheme may also, if he thinks it necessary for the purposes of that investigation, investigate the affairs of, or of the trustee or administrator of, any other such scheme as is mentioned in that subsection whose trustee or administrator is the same person as the trustee or administrator of the first mentioned scheme.~~
- (2) An authorised person appointed under subsection (1) to investigate the affairs of any scheme or a trustee or administrator of the scheme may also, if the authorised person thinks it necessary for the purposes of that investigation, investigate the affairs of any other such scheme as is mentioned in that subsection if a trustee or administrator of that other scheme is also a trustee or administrator of first-mentioned scheme.
- ~~(3) Sections 134 and 135 of the Companies Act 1931 (powers of inspectors and proceedings on report by inspectors) shall apply in relation to an inspector appointed under this section as they apply in relation to an inspector appointed under section 134 of that Act, but with the modifications specified in subsection (4).~~
- (3) Sections 134 and 135 of the Companies Act 1931 (powers of inspectors and proceedings on report by inspectors) shall apply in relation to an authorised person appointed under this section as they apply in relation to an inspector appointed under section 134 of that Act, but with the modifications specified in subsection (4).
- (4) In the provisions applied by subsection (3) for any reference to a company or its affairs there shall be substituted a reference to the scheme under investigation and the affairs mentioned in subsections (1) and (2) and any reference to an officer or director of the company shall include a reference to any officer or director of the trustee or administrator of the scheme and for any reference to inspector or inspectors there shall be substituted a

reference to the authorised person or authorised persons (as the case may be) appointed under subsection (1).

- (5) An ~~inspector~~ authorised person appointed under this section may, and if so directed by the Authority shall, make interim reports to the Authority and on the conclusion of ~~his~~ the investigation shall make a final report to the Authority.<sup>109</sup>
- (6) Any such report shall be written or printed as the Authority may direct and the Authority may, if it thinks fit —
  - (a) furnish a copy, on request and on payment of a reasonable fee, to the trustee or administrator or any member of a scheme under investigation or any other person whose conduct is referred to in the report; and
  - (b) cause the report to be published.

### 34A Provision of information

[P2004/35/72 and drafting]

- (1) The Authority may, by notice in writing, require any person (whether in the Island or elsewhere) to whom subsection (2) applies to produce any document, or provide any other information, which is —
  - (a) of a description specified in the notice; and
  - (b) relevant to the exercise of the Authority's functions.
- (2) This subsection applies to —
  - (a) a trustee or administrator of an occupational or personal scheme;
  - (b) a professional adviser in relation to an occupational scheme or a personal scheme;
  - (c) the employer in relation to —
    - (i) an occupational scheme; or
    - (ii) a personal scheme where an employer payment arrangement exists in respect of one or more members of the scheme who are employees; and
  - (d) any other person appearing to the Authority to be a person who holds, or is likely to hold, information relevant to the exercise of the Authority's functions.
- (3) Where the production of a document, or the provision of information, is required by a notice given under subsection (1), the document must be produced, or information must be provided, in such a manner, at such a place and within such a period as may be specified in the notice.

**34B Inspection of premises**

[P2002/35/73 and drafting]

- (1) An authorised person may, for the purposes of investigating whether the provisions in or under this Act in relation to an occupational scheme or a personal scheme are being, or have been, complied with, at any reasonable time enter premises liable to inspection.
- (2) Premises are liable to inspection for the purposes of this section if the authorised person has reasonable grounds to believe that —
  - (a) members of the scheme are employed there;
  - (b) documents relevant to the management or administration of the scheme, or work connected with that management or administration, is being carried out there;
  - (c) in the case of an occupational scheme which is a defined benefits scheme, documents relevant to a change of ownership of the employer or of a significant asset of the employer are being kept there.

**34C Inspection of premises in respect of employers' obligations**

[P2004/35/74]

- (1) An authorised person may, for the purposes of investigating whether an employer is contravening or has contravened and provision in, or made under, this Act, at any reasonable time enter premises liable to inspection.
- (2) Premises are liable to inspection for the purposes of subsection (1) if the authorised person has reasonable grounds to believe that —
  - (a) employees of the employer are employed there;
  - (b) documents relevant to the employer's business are being kept there;
  - (c) the employer's business, or work connected with that business, is being carried out there; or
  - (d) documents are being kept there which are relevant to the management or administration of a scheme in connection with the duties referred to in subsection (1).

**34D Inspection of premises: powers of authorised persons**

[P2004/35/75 & 76 and drafting]

- (1) Subsection (2) applies where, for a purpose mentioned in section 34B or 34C, an authorised person enters premises which are liable to inspection for the purposes of that provision.
- (2) While there, the authorised person —
  - (a) may make such examination and inquiry as may be necessary for the purpose for which he entered the premises;

- (b) may require any person on the premises to produce, or secure the production of, any document relevant to compliance with the regulatory provisions for his inspection;
  - (c) may take copies of any such document;
  - (d) may take possession of any document appearing to be a document relevant to compliance with the regulatory provisions or take in relation to any such document any other steps which appear to be necessary for preserving it or preventing interference with it;
  - (e) may, in the case of any such document which consists of information which it stored in electronic form and is on, or accessible from, the premises, require the information to be produced in a form —
    - (i) in which it can be taken away; and
    - (ii) in which it is legible or from which it can readily be produced in a legible form; and
  - (f) may, as to any matter relevant to compliance with the regulatory provisions, examine, or require to be examined, either alone or in the presence of another person, any person on the premises whom he has reasonable cause to believe to be able to give information relevant to that matter.
- (3) Premises which are a private dwelling-house not used by, or by permission of, the occupier for the purposes of a trade or business are liable to inspection only if a warrant has been issued by a justice of the peace authorising such inspection upon the justice of the peace being satisfied that reasonable grounds for permitting the inspection exist.
- (4) Any document of which possession is taken under this section may be retained —
- (a) if the document is relevant to proceedings against any person for any offence which are commenced before the end of the retention period, until the conclusion of those proceedings; and
  - (b) otherwise, until the end of the retention period.
- (5) In subsection (4), “the retention period” means the period comprising —
- (a) the period of 12 months beginning with the date on which possession was taken of the document; and
  - (b) any extension of that period under subsection (6).
- (6) The Authority may, by a direction made before the end of the retention period (including any extension of it under this subsection), extend it by such period not exceeding 12 months as the Authority considers appropriate.

**34E Penalties relating to section 34A to 34D**

[P2004/35/77 and drafting]

- (1) A person who, without reasonable excuse, neglects or refuses to provide information or produce a document when required to do so under section 34A commits an offence.
- (2) A person who without reasonable excuse —
  - (a) intentionally delays or obstructs an authorised person exercising any power under section 34B, 34C or 34D;
  - (b) neglects or refuses to produce, or secure the production of, any document when required to do so under section 34D; or
  - (c) neglects or refuses to answer a question or to provide information when so required,commits an offence.
- (3) An offence under subsection (1) or (2)(b) or (c) may be charged by reference to any day or longer period of time; and a person may be convicted of a second or subsequent offence by reference to any period of time following the preceding conviction of the offence.
- (4) Any person who intentionally and without reasonable excuse alters, suppresses, conceals or destroys any document which he is required to produce under section 34A or 34D commits an offence.

**34F Warrants**

[P2004/35/78 and drafting]

- (1) A justice of the peace may issue a warrant under this section if satisfied on information on oath given by or on behalf of the Authority that there are reasonable grounds for believing —
  - (a) that there is on, or accessible from, any premises any document —
    - (i) the production of which has been required under section 34A or 34D; and
    - (ii) which has not been produced in compliance with that requirement;
  - (b) that there is on, or accessible from, any premises any document whose production could be so required and, if its production were so required, the document —
    - (i) would not be produced; and
    - (ii) is in danger of being removed from the premises, hidden, tampered with, destroyed, or otherwise made inaccessible;
  - (c) that —
    - (i) an offence has been committed; or

- (ii) a person will do any act which constitutes a misuse or misappropriation of the assets of an occupational scheme or a personal scheme,  
and that there is on, or accessible from, any premises any document which relates to whether the offence has been committed, whether the act will be done or whether the person is so liable, and whose production could be required under section 34A or 34D.
- (2) A warrant under this section authorises an authorised person —
  - (a) to enter the premises specified in the information, using such force as is reasonably necessary for the purpose;
  - (b) to search the premises and —
    - (i) take possession of any document appearing to be such a document as is mentioned in subsection (1); or
    - (ii) take in relation to such a document any other steps which appear necessary for preserving it or preventing interference with it;
  - (c) to take copies of any such document;
  - (d) to require any person named in the warrant to provide an explanation of any such document or to state where it may be found or how access to it may be obtained; and
  - (e) in the case of any such document which consists of information which is stored in electronic form and is on, or accessible from, the premises, to require the information to be produced in a form —
    - (i) in which it can be taken away; and
    - (ii) in which it is legible or from which it can readily be produced in a legible form.
- (3) When executing a warrant under this section, an authorised person may be accompanied by such persons as the authorised person considers appropriate.
- (4) A warrant under this section continues in force until the end of the period of one month beginning with the day on which it is issued.
- (5) Any document of which possession is taken under this section may be retained —
  - (a) if the document is relevant to proceedings against any person for any offence which are commenced before the end of the retention period, until the conclusion of those proceedings; and
  - (b) otherwise, until the end of the retention period.
- (6) In subsection (5), “the retention period” means the period comprising —
  - (a) the period of 12 months beginning with the date on which possession was taken of the document; and
  - (b) any extension of that period under subsection (7).

- (7) The Authority may, by a direction made before the end of the retention period (including any extension of it under this subsection), extend it by such period not exceeding 12 months as the Authority considers appropriate.

### **34G Interpretation of sections 34A to 34F**

- (1) In sections 34A to 34F —
- (a) “authorised person” means a person authorised by the Authority to exercise the inspection and investigation powers in those sections; and
- (b) reference to an employer, a trustee, an administrator or a professional adviser includes reference to a person who has previously been an employer, a trustee, an administrator or a professional adviser (as the case may be) in relation to the scheme.
- (2) No authority is granted except for the purpose of investigating the affairs, or any aspect of the affairs, of a person or arrangement specified in the authority.
- (3) No person is bound to comply with any requirement imposed by a person authorised under subsection (1) unless that person has, if requested to do so, produced evidence of the person’s authority.
- (4) Sections 34A to 34F are subject to section 41A.

### **35 Powers exercisable in aid of income tax and pension scheme functions**

The powers conferred on the Authority by ~~sections 25 to 34~~ sections 25 to 34G may be exercised for the purpose of —

- (a) assisting the Treasury to discharge its functions in relation to income tax and occupational and personal pension schemes; or
- (b) assisting the Assessor to discharge his or her functions in relation to income tax.<sup>110</sup>

## **~~PART 6 — RETIREMENT BENEFITS SCHEME~~ ~~ADMINISTRATORS~~**

### **~~36 — Register of scheme administrators~~**

- (1) ~~No person shall act as a scheme administrator for, or in relation to, a scheme, unless that person —~~
- (a) ~~is registered in a register kept in accordance with regulations under section 45 and has paid to the Authority the prescribed registration fee; or<sup>111</sup>~~
- (b) ~~is exempted from registration by regulations.~~

- (2) ~~An applicant for registration shall provide such documents and information as may be required by the Authority.<sup>112</sup>~~
- (3) ~~No person shall be registered unless he satisfies the Authority that —~~
- ~~(a) — he is a fit and proper person;~~
  - ~~(b) — he carries on business as a scheme administrator at a place of business in the Island; and~~
  - ~~(c) — he complies with such other requirements as are prescribed in regulations.<sup>113</sup>~~
- (4) ~~The Authority may —~~
- ~~(a) — refuse to register any applicant for registration;~~
  - ~~(b) — cancel any registration at any time.<sup>114</sup>~~
- (5) ~~Where a person carries on a business which in any respect is or in the opinion of the Authority appears to be of a similar character to the business carried on by a registered schemes administrator, that person upon a declaration made by the Authority in writing shall be subject to the provisions of this Part and shall be deemed to be acting as a registered schemes administrator.<sup>115</sup>~~
- (6) ~~Any person who —~~
- ~~(a) — contravenes subsection (1); or~~
  - ~~(b) — takes or uses any style, title or description which consists of or includes the expression “registered schemes administrator” when he is not registered; or~~
  - ~~(c) — takes or uses any style, title or description falsely implying, or otherwise pretends, that he is registered;~~
- ~~shall be guilty of an offence.~~
- (7) ~~Regulations may include provisions specifying practices to be followed by registered schemes administrators in carrying on the affairs of a scheme and in particular provisions concerning —~~
- ~~(a) — the keeping of accounts and other records, their form, content, inspection and audit;~~
  - ~~(b) — the financial resources of registered schemes administrators;~~
  - ~~(c) — the treatment to be afforded to money received by registered schemes administrator;~~
  - ~~(d) — the form and content of advertisements (whether printed or broadcast) by registered schemes administrators (including matters which must be, as well as matters which may not be included in the advertisements).~~
- (8) ~~The fees to be paid in respect of registration and the continuation of registration shall be prescribed under Part 5, Division 4 (general fee power) of the *Interpretation Act 2015*.<sup>116</sup>~~

- ~~(9) Where the Authority exercises its power under subsection (4), the Authority shall do so by giving the applicant written notice stating the reasons for the decision.<sup>117</sup>~~

## PART 7 – MISCELLANEOUS

### 37 [Repealed]<sup>118</sup>

### 37A Regulatory objectives

Sections 1(2) (the Isle of Man Financial Services Authority) and 2 (exercise of functions to be compatible with the regulatory objectives) of the Financial Services Act 2008 shall apply in respect of the Authority's functions under this Act.<sup>119</sup>

### 38 Appeals to the Financial Services Tribunal<sup>120</sup>

- (1) [Repealed]<sup>121</sup>
- (2) [Repealed]<sup>122</sup>
- ~~(3) Any person who is aggrieved by a decision of the Authority to—~~
- ~~(a) refuse to register a scheme under section 3;~~
  - ~~(b) register a scheme subject to conditions under section 3(3);~~
  - ~~(c) make an authorisation subject to new conditions under section 3(3)(a);~~
  - ~~(d) vary any existing conditions under section 3(3)(b);~~
  - ~~(e) revoke an authorisation under section 4;~~
  - ~~(f) refuse to extend (or further extend) a period under section 9(7), 13(7) or 14(5);~~
  - ~~(g) issue a direction under section 14(2);~~
  - ~~(h) refuse to give approval under section 18(3);~~
  - ~~(i) issue a direction under section 19(1) or (2);~~
  - ~~(j) vary or revoke a consent under section 19(4)(b) or (c);~~
  - ~~(k) issue a direction under section 22(1);~~
  - ~~(l) issue a notice or direction under section 23(2) or (3);~~
  - ~~(m) issue a direction under section 31;~~
  - ~~(n) refuse to withdraw or vary a direction under section 31(1);~~
  - ~~(o) refuse to register an administrator under section 36(4)(a);~~
  - ~~(p) cancel the registration of an administrator under section 36(4)(b);~~
  - ~~(q) disqualify a person under section 41; or~~
  - ~~(r) refuse to revoke a disqualification order under section 41;~~

~~may appeal, in accordance with rules made under section 8 of the Tribunals Act 2006, to the Financial Services Tribunal (in this Act referred to as “the Tribunal”).<sup>123</sup>~~

- (3) Any person who is aggrieved by a decision of the Authority to —
- (a) refuse to register a scheme under section 3;
  - (b) register a scheme subject to conditions under section 3;
  - (c) impose new conditions on an authorised scheme under section 3;
  - (d) vary existing conditions under section 3;
  - (e) revoke the registration of an authorised scheme under section 4(1);
  - (f) make a revocation subject to conditions under section 4(5)(b);
  - (g) refuse to revoke the registration of an authorised scheme under section 4(5)(c);
  - (h) issue a direction under section 10C(1);
  - (i) vary or refuse to vary or withdraw, a direction under section 10C(11);
  - (j) refuse to waive a disqualification under section 17A(4);
  - (k) make a notice waiving a disqualification subject to conditions under section 17A(5);
  - (l) refuse to give consent pursuant to any regulations under section 18(4);
  - (m) issue a direction or refuse to give consent under section 19(4);
  - (n) give a direction or consent subject to conditions under section 19(8)(a);
  - (o) vary a direction or vary or revoke a consent under section 19(8)(b) or (c);
  - (p) give a warning notice under section 19A;
  - (q) issue a direction under section 22(1);
  - (r) issue a notice or direction under section 23(2) or (3);
  - (s) issue a direction under section 31;
  - (t) on its own initiative vary, or (on application) refuse to withdraw or vary, a direction under section 31(5);
  - (u) disqualify a person under section 41;
  - (v) refuse to revoke a disqualification order under section 41;
  - (w) impose a civil penalty under section 50;
  - (x) withdraw an exemption pursuant to regulations under section 51(4)(b),

may appeal, in accordance with rules made under section 8 of the Tribunals Act 2006, to the Financial Services Tribunal (in this Act referred to as “the Tribunal”).

- (4) On the determination of an appeal under this section the Tribunal shall confirm, vary or revoke the decision in question.
- (5) Any variation or revocation of a decision shall not affect the previous operation of that decision or anything duly done or suffered under it.
- (6) Without prejudice to section 32(7) of the *Financial Service Act 2008*, any decision of the Tribunal on an appeal under this section shall be binding on the Authority and the applicant.<sup>124</sup>
- (7) [Repealed]<sup>125 126</sup>

### 39 Retirement Benefits Schemes Ombudsman

- (1) For the purpose of conducting investigations into complaints by members of schemes, the Treasury may appoint a commissioner to be known as the Retirement Benefits Schemes Ombudsman.
- (2) The Treasury may by order apply the provisions of Part X (investigation of complaints by the Retirement Benefits Schemes Ombudsman) of the Pension Schemes Act 1993 (an Act of Parliament) as part of the law of the Island with such adaptations, exceptions and modifications as may be specified in the order.
- (3) An order under subsection (2) may limit complaints to the Retirement Benefits Schemes Ombudsman to complaints —
  - (a) from members of specified classes of schemes;
  - (b) from specified classes of members.<sup>127</sup>

### 40 [Repealed]<sup>128</sup>

### 41 ~~Blowing the whistle~~ **Duty to report breaches of the law**

- ~~(1) If the trustee, administrator, auditor, actuary or investment manager of any scheme has reasonable cause to believe that —
 
  - ~~(a) any duty relevant to the administration of the scheme imposed by any enactment or rule of law on any person acting in connection with the scheme has not been or is not being complied with, and~~
  - ~~(b) the failure to comply is likely to be of material significance in the exercise by the Authority of any of its functions,<sup>129</sup>~~
 he must immediately give a written report of the matter to the Authority.<sup>130</sup>~~
- ~~(2) No duty to which the auditor, actuary or investment manager of any scheme is subject shall be regarded as contravened merely because of any information or opinion contained in a written report under this section.~~
- ~~(3) No duty to which any person is subject shall be regarded as contravened merely because of any information or opinion contained in a report under~~

~~this section; but this subsection does not apply to any information disclosed in such a report by the legal adviser of a scheme if he would be entitled to refuse to produce a document containing the information in any proceedings in any court on the grounds that it was the subject of legal professional privilege.~~

~~(4) Any person who fails to comply with subsection (1) is guilty of an offence.~~

(1) Where a person specified in subsection (2) has reasonable cause to believe that —

- (a) any duty relevant to the management or administration of the scheme imposed by any enactment or rule of law on any person acting in connection with the scheme has not been or is not being complied with; and
- (b) the failure to comply is likely to be of material significance in the exercise by the Authority of any of its functions,

that person must give a written report of the matter to the Authority as soon as reasonably practicable.

(2) For the purpose of subsection (1), a specified person is —

- (a) a trustee of a scheme;
- (b) an administrator of a scheme;
- (c) a professional adviser to a scheme; and
- (d) the employer in relation to an occupational scheme.

(3) Subject to section 41A, a duty to which a person is subject must not be regarded as contravened merely because of any information or opinion contained in a report under this section.

(3A) For the purposes of subsection (3), a duty includes any form of agreement or contract, or a clause within an agreement or a contract, under which it is agreed that certain information will be kept confidential and which attempt to prevent a person from providing information to the Authority under subsection (1).

(4) Where a person fails to comply with subsection (1), the Authority may take such regulatory action as it considers appropriate.

(5) If it appears to the Authority that a trustee, administrator, auditor, actuary or investment manager has failed to comply with subsection (1), the Authority may by notice in writing, together with reasons for the decision, disqualify him for being the trustee, administrator, auditor, actuary or, as the case may be, investment manager of any scheme specified in the notice.<sup>131</sup>

(6) A notice under subsection (5) may specify the scheme to which the failure relates, all schemes falling within any class or description of scheme or all schemes.

- (7) The Authority may, on the application of any person disqualified under this section who satisfies the Authority that he will in future comply with those subsections, by notice in writing revoke the disqualification; but a revocation made at any time cannot affect anything done before that time and where the Authority refuses to revoke a disqualification the Authority shall give written notice of the refusal together with reasons for the decision.<sup>132</sup>
- (8) A trustee, administrator, auditor, actuary or investment manager of a scheme who becomes disqualified under this section shall, while he is so disqualified, cease to be the trustee, administrator, auditor, actuary or, as the case may be, investment manager of any scheme specified in the notice disqualifying him.
- (9) A person who, while he is disqualified under this section, purports to act as trustee, administrator, auditor, actuary or investment manager of a scheme specified in the notice disqualifying him is guilty of an offence.
- (10) An offence under subsection (9) may be charged by reference to any day or longer period of time; and a person may be convicted of a second or subsequent offence under that subsection by reference to any period of time following the preceding conviction of the offence.

#### **41A Privileged information**

A person is not under an obligation under this Act to disclose information subject to legal privilege within the meaning of section 13 (meaning of "items subject to legal privilege") of the *Police Powers and Procedures Act 1998*.

*Information, etc.*

#### **42 Publication of information and advice**

- (1) The Authority may publish information or give advice, or arrange for the publication of information or the giving of advice, in such form and manner as it considers appropriate with respect to —
  - (a) ~~the operation of this Act and any public document made under it, including in particular the rights of members of any scheme, the duties of trustee, administrator and any other person involved in the management or administration of a scheme, and the steps to be taken for enforcing those rights or complying with those duties;~~
  - (a) the operation of this Act and any public document made under it, including in particular the rights of members of any scheme, the duties of any person involved in the management or administration of a scheme, an employer in relation to a scheme and a professional adviser in relation to a scheme, and the steps to be taken for enforcing those rights or complying with those duties;

- (b) any matter relating to the functions of the Authority under any enactment;<sup>133</sup>
  - (c) any other matters about which it appears to it to be desirable to publish information or give advice for the protection of members or any class of members in schemes.<sup>134</sup>
- (2) The Authority may offer for sale copies of information published under this section and may, if it thinks fit, make a reasonable charge for advice given under this section at any person's request.<sup>135</sup>
- (3) This section shall not be construed as authorising the disclosure of restricted information within the meaning of section 43 in any case in which it could not be disclosed apart from the provisions of this section.

#### ~~43 — Restrictions on disclosure of information~~

~~Schedule 6 to the *Insurance Act 2008* shall have effect in relation to the restrictions on disclosure of information.<sup>136</sup>~~

#### **43 Restrictions on disclosure of information**

**Schedule 5 to the *Financial Services Act 2008* has effect in relation to the restrictions on disclosure of information.**

#### **44 [Repealed]<sup>137</sup>**

### **PART 8 – SUPPLEMENTAL**

#### ~~45 — Public registers~~

- ~~(1) The Authority shall keep at its principal office registers to which this section applies containing such particulars and information as may be prescribed.<sup>138</sup>~~
- ~~(2) Any person shall be entitled to inspect the registers during ordinary office hours.~~
- ~~(3) This section applies to the registers of —~~
  - ~~(a) authorised schemes;~~
  - ~~(b) recognised schemes; and~~
  - ~~(c) scheme administrators.~~

#### **45 Register of schemes**

**[Malta2015/514/3 and drafting]**

- (1) The Authority must keep and maintain a register of every scheme that has been registered in any of the categories specified in subsection (2)**

(collectively referred to as “registered schemes”), and that register (the “section 45 register”) —

- (a) must be kept in electronic form;
  - (b) must include the name of each registered scheme;
  - (c) must include such other information as may be prescribed in regulations made by the Authority.
- (2) The categories are —
- (a) authorised schemes;
  - (b) recognised schemes;
  - (c) schemes registered as permitted schemes under the Retirement Benefits Schemes (Permitted Schemes) Regulations 2004<sup>1</sup>.
- (3) Where a person, having had regard to any guidance given by the Authority, makes what the Authority considers a reasonable request for disclosure of information from the section 45 register, the Authority must supply the person with a legible copy of the portion of information extracted from the register that may be disclosed in accordance with data protection legislation.
- (4) The Authority may publish —
- (a) the section 45 register; or
  - (b) any part of the register.
- (5) In this section “data protection legislation” has the meaning given in regulation 5(1) of the GDPR and LED Implementing Regulations 2018<sup>2</sup>.

#### **46 False and misleading statements**

A person commits an offence if —

- (a) for the purposes of or in connection with any application under this Act; or
- (b) in purported compliance with any requirement imposed on him by or under this Act,

he furnishes information which he knows to be false or misleading in a material particular or recklessly furnishes information which is false or misleading in a material particular.

#### **47 Defence in criminal proceedings**

In proceedings brought against any person for an offence under this Act it shall be a defence for him to prove that he took all reasonable precautions and exercised all due diligence to avoid the commission of the offence.

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<sup>1</sup> SD 2004/0593

<sup>2</sup> SD 2018/0145

#### 48 Criminal penalties

Any person who commits an offence under this Act or any public document made under this Act shall be liable —

- (a) on summary conviction to a fine not exceeding level 5 on the standard scale or to a term of custody not exceeding 6 months, or to both;<sup>139</sup>
- (b) on conviction on information, to a fine or to a term of custody not exceeding 2 years, or to both.

#### 49 Offences by bodies corporate

- (1) Where an offence under this Act committed by a body corporate is proved to have been committed with the consent or connivance of, or to be attributable to neglect on the part of, a director, manager, secretary or other similar officer of the body corporate or a person who was purporting to act in such a capacity, he, as well as the body corporate, is guilty of the offence and liable to be proceeded against and punished accordingly.
- (2) Where the affairs of a body corporate are managed by the members subsection (1) shall apply in relation to the acts and defaults of a member in connection with his functions of management as if he were a director of the body corporate.
- (3) For the purposes of subsection (1), “body corporate” includes a limited liability company constituted under the *Limited Liability Companies Act 1996* and, in relation to such a company, any reference to a director, or other officer of a body corporate is a reference to a member and to the company’s manager and registered agent.

#### 50 Civil penalties

- (1) A summary fixed penalty (in this section referred to as a “penalty”) may be imposed on —
  - (a) the trustee, administrator or professional adviser of a scheme; or
  - (b) the employer of a member of a scheme,by the Authority if that person has acted in contravention of a prescribed provision of this Act or a public document under this Act.<sup>140</sup>
- (2) Where the Authority intends to impose a penalty, it shall give notice in writing to the person concerned giving particulars of the alleged contravention and of the amount of the penalty.<sup>141</sup>
- (3) Within 14 days of the service of the notice under subsection (2), the person concerned shall either —
  - (a) pay the penalty to the Treasury; or

- (b) apply to the High Bailiff for a review of the imposition of the penalty and serve a copy of the application on the Authority.<sup>142</sup>
- (4) Subsection (3) does not confer a right to apply to the High Bailiff for a review of the amount of a penalty.
- (5) An application under subsection (3)(b) shall be in such form, within such period, and subject to such conditions as may be prescribed.
- (6) On the determination of a review under this section, the High Bailiff may either –
- (a) confirm the decision of the Authority to impose a penalty; or<sup>143</sup>
- (b) revoke the decision if he is satisfied that the person concerned has not acted in contravention of this Act or a public document under this Act as alleged in the notice served on the person concerned under subsection (2).
- (7) On the determination of a review under this section, the High Bailiff may –
- (a) order the applicant to pay the costs of the Authority in relation to the review;<sup>144</sup>
- (b) order the Authority to pay the costs of the applicant in relation to the review;<sup>145</sup>
- (c) make no order as to costs.
- (8) The decision of the High Bailiff under this section is final.
- (9) Where the High Bailiff has confirmed a decision of the Authority to impose a penalty, the person concerned shall pay that penalty together with any costs awarded under subsection (7)(a) within 14 days of the determination of the review.<sup>146</sup>
- (10) Where a person fails to comply with either paragraph (a) or (b) of subsection (3) or with subsection (9), the penalty may be collected by the Treasury as a civil debt due to it.<sup>147</sup>
- (11) The Treasury may by order make such provisions as it considers to be necessary to give effect to this section and, but without prejudice to the generality of that power, may –
- (a) prescribe the provisions of this Act and public documents under it for the purposes of subsection (1);
- (b) prescribe forms, periods and conditions for the purposes of subsection (5);
- (c) prescribe the amount of penalties which may be levied under this section or the method by which they may be calculated;
- (d) regulate the practice and procedure to be adopted in a review by the High Bailiff under this section.

- (12) Any amount received in respect of a penalty levied under this section shall be paid into and form part of the General Revenue.
- (13) This section is in addition to and not in derogation of any other provision which applies this section, confers a power or provides for contravention to be an offence.

### **51—Regulations and orders**

- (1) ~~The Treasury may make such regulations as are necessary or desirable to carry the provisions of this Act into effect and, but without prejudice to the generality of that power, may —~~
- ~~(a) direct that sections 6 and 16 apply to such schemes or classes of schemes (other than authorised schemes or recognised schemes) as may be specified in the regulations;~~
  - ~~(b) require the administrator of a scheme to pay such periodical fees in respect of that scheme as may be specified, and such fees may be fixed fees or may be calculated by reference to such factors or circumstances as may be specified;~~
  - ~~(c) make provision whereby compliance with or contravention of any specified requirements imposed by or under the law of a country prescribed for this purpose is treated as compliance with or contravention of any specified requirement of this Act or any public document made under this Act;~~
  - ~~(d) exempt any person or scheme from this Act or any provision of it;~~
  - ~~(dd) provide for any of the provisions of this Act to apply (to such extent as may be prescribed), or to apply with prescribed modifications (in spite of anything in those provisions) —~~
    - ~~(i) to money purchase or other schemes falling within a prescribed class or description; or~~
    - ~~(ii) for the purpose of taking account of pension sharing orders under Part 1 of the *Matrimonial Proceedings Act 2001*; or~~
    - ~~(iii) for the purpose of taking account of the law of countries outside the Island where authorised schemes have members or operations in such countries as well as in the Island;<sup>148</sup>~~
  - ~~(e) create offences.~~
- (2) ~~The generality of subsection (1) is not prejudiced by any other provision in this Act which enables the Treasury to make regulations.~~
- (3) ~~Without prejudice to the generality of the power contained in subsection (1), regulations made under that subsection may regulate the issue, form and content of advertisements or other documents relating to schemes and in particular —~~
- ~~(a) may prohibit the issue of advertisements of schemes of particular descriptions or by persons of particular descriptions; and~~

- ~~(b) may make provision with respect to matters which must be, as well as to matters which may not be, included in advertisements.~~
- ~~(4) Any person who issues an advertisement in contravention of regulations made under this section shall be guilty of an offence.~~
- ~~(5) Any orders (with the exception of an order of a court or an order appointing a day or days for the commencement of this Act) or regulations made under this Act shall be laid before Tynwald as soon as practicable after they are made and, if Tynwald at the sitting before which the order or regulation, as the case may be, are laid or at the next following sitting fails to approve the order or regulations, they shall thereupon cease to have effect.~~

## 51 Regulations and orders

[2008/08/44 & 45 and drafting]

- (1) The Authority may make such regulations as are necessary to give effect to this Act.
- (2) Without limiting subsection (1), the Authority may make regulations that —
- (a) prescribe any matter that is to be, or may be, prescribed under this Act (except in regulations that may be made by the Treasury under section 24);
  - (b) direct that sections 6 and 16 apply to such schemes or classes of schemes (other than authorised or recognised schemes) as may be specified in the regulations;
  - (c) make provision whereby compliance with or contravention of any specified requirements imposed by or under the law of a country prescribed for this purpose is treated as compliance with or contravention of any specified requirement of this Act or any public document made under this Act;
  - (d) exempt any person or scheme from this Act or any provision of it;
  - (e) provide for any of the provisions of this Act to apply (to such extent as may be prescribed), or to apply with prescribed modifications (in spite of anything in those provisions) —
    - (i) to schemes falling within a prescribed class or description;
    - (ii) for the purposes of taking account of pension sharing orders under Part 2 of the *Matrimonial Proceedings Act 2003*; or
    - (iii) for the purpose of taking account of the law of countries outside the Island where authorised schemes have members or operations in such countries as well as the Island;
  - (f) create offences;
  - (g) regulate the issue, form and content of advertisements or other documents relating to schemes, and in particular may —

- (i) prohibit the issue of advertisements of schemes of particular descriptions or by persons of particular descriptions; and
  - (ii) make provision with respect to matters which must be, as well as to matters which must not be, included in advertisements; and
- (h) contain such transitional, consequential, incidental or supplementary provisions as appear to the Authority to be necessary for the purposes of the regulations.
- (3) The generality of subsections (1) and (2) is not limited by any other provision in this Act which enables the Authority or the Treasury to make regulations.
- (4) Without limiting Part 5 of the *Interpretation Act 2015* or any other provision of this Act, regulations under subsection (2)(d) and (e) or under any other provision of this Act which enables an exemption or modification to be prescribed by the Authority may provide for —
  - (a) the conditions subject to which any exemption or modification must operate;
  - (b) the circumstances in which the Authority may withdraw an exemption;
  - (c) an exemption or modification to operate in respect of some or all persons or schemes.
- (5) Any person who issues an advertisement in contravention of regulations made under this section commits an offence.
- (6) Before making any order or regulations under this Act, the Authority must consult —
  - (a) the Treasury;
  - (b) such persons or bodies as appear to be representative of interests likely to be affected; and
  - (c) such other persons or bodies as the Authority may determine.
- (7) Before making any order or regulations under this Act, the Treasury must consult —
  - (a) the Authority;
  - (b) such persons or bodies as appear to be representative of interests likely to be affected; and
  - (c) such other persons or bodies as the Treasury may determine.
- (8) Subject to subsections (9), (10) and (11), the Tynwald procedure for orders under this Act is “affirmative” (see section 31 of the *Legislation Act 2015*).
- (9) Subsection (8) does not apply to court orders.

- (10) The Tynwald procedure for orders made under section 3(1)(c)(i)(B) or section 54(3) is “approval required” (see section 30 of the *Legislation Act 2015*).
- (11) The Tynwald procedure for orders made under section 56(2) is “laying only” (see section 34 of the *Legislation Act 2015*).
- (12) Subject to subsection (13), the Tynwald procedure for regulations under this Act is “affirmative” (see section 31 of the *Legislation Act 2015*).
- (13) The Tynwald procedure for the following regulations is “approval required” (see section 30 of the *Legislation Act 2015*) —
  - (a) regulations under section 10E;
  - (b) regulations under the definition of “retirement benefits scheme” in section 53;
  - (c) regulations under the definition of “administrator” in section 54; and
  - (d) regulations under paragraph (e) of the definition of “employer-related investments” in section 54
- (14) Except where otherwise expressly stated, every reference in this section to something being “prescribed” is a reference to that thing being prescribed by the Authority in regulations made under this section.

### **51A Regulations and orders – supplementary provisions**

- (1) If a person contravenes a requirement imposed by, or in accordance with, regulations or an order made under this Act (“a relevant requirement”), the Authority may take such regulatory action as it considers appropriate.
- (2) Contravention of a relevant requirement does not affect the validity of any transaction.

## **52 Financial provision**

- (1) Any expenses incurred under this Act by the Treasury, the Authority or any person appointed or authorised to exercise any powers under section 34 shall be defrayed out of money provided by Tynwald.<sup>149</sup>
- (2) Any fees received under this Act shall form part of the General Revenue of the Island.

### **52A Fees**

[2008/08/46 and drafting]

- (1) The Authority may by order specify the fees payable to it in connection with the discharge of any of its functions under or as a result of this Act.
- (2) Without limiting subsection (1), an order under this section may provide for the payment by the trustee or administrator of such application or

periodical fees as may be specified in or in accordance with the order, including the fees payable in relation to —

- (a) an application or notice in connection with the registration of a scheme under this Act;
- (b) any amendment of any registration under this Act;
- (c) the revocation of the registration of a scheme under this Act;
- (d) any scheme of a specified description registered under this Act (such fee to be paid annually, on such date as may be so specified);
- (e) any return required to be submitted to the Authority under this Act; and
- (f) any other application or notification in respect of any other matter arising under or relating to this Act or a registration under it.

### 53 Principal terms defined

In this Act —

**“employee”** means a person gainfully employed in the Island or elsewhere either under —

- (a) a contract of service; or
- (b) in an office (including an elective office) with remuneration chargeable to income tax in the same manner as remuneration received under a contract of service;

**“employer”** includes, in the case of the holder of an office, such person as may be prescribed by regulations or, the Government Department, Statutory Board, public authority or body of persons responsible for paying the remuneration of the office;

**“occupational scheme”** means a scheme established under an irrevocable trust and sponsored by one or more participating employers who contribute to it, which has, or is capable of having, effect so as to provide only relevant benefits to or in respect of employees or former employees of the participating employers, or previously participating employers;

**“personal scheme”** means a scheme (not being an occupational scheme) which has, or is capable of having, effect so as to provide relevant benefits to or in respect of individuals who have made arrangements with the trustee or administrator of the scheme for them to become members of it;

**“relevant benefits”** means any pension, lump sum, gratuity or such other benefit as may be prescribed, given or to be given on retirement or death, or in anticipation of retirement, or, in connection with past service, after retirement or death, or to be given on or in anticipation of or in connection with any change in the nature of the service of the employee in question, except that it does not include any benefit which is to be afforded solely by reason of the disablement by accident of a person occurring during his

service or of his death by accident so occurring and for no other reason, and in this definition, retirement includes reaching the age of 50 notwithstanding the continuation of employment, self-employment or service;

**“retirement benefits scheme”** means any scheme or arrangement which is comprised in one or more instruments or agreements and which has, or is capable of having, effect so as to provide relevant benefits but does not include such schemes or classes of scheme as may be prescribed by the Authority in regulations.

## 54 Interpretation - general

(1) In this Act —

**“active member”**, in relation to an occupational scheme, means a person who is in service in any description or category of employment to which the scheme relates which qualifies the member (on the assumption that it continues for the appropriate period) for benefits under the scheme;

**“actuarial report”** has the meaning given by section 8(2)(c);

**“actuarial valuation”** has the meaning given by section 8(2)(a);

~~**“administrator”** means the person responsible for the management of a scheme;~~

**“administrator”** means —

(a) in relation to a trust scheme, a person appointed by the trustee of a trust scheme to perform functions for or on behalf of the trustee, including one or more of the following —

- (i) collecting and processing contributions and monitoring payments;
- (ii) processing and making payment of benefits to members or their beneficiaries;
- (iii) undertaking transaction monitoring and reconciliation functions relating to member accounts;
- (iv) keeping records in relation to the scheme;
- (v) handling queries and complaints by members and beneficiaries; and

(b) in relation to any other scheme, a person performing analogous or similar functions to those specified in paragraph (a),

but does not include such persons or classes of persons as may be exempted by regulations made by the Authority;

**“advertisement”** includes every form of advertising whether in a publication or by the display of notices or by means of circulars or other documents or by an exhibition of photographs or cinematograph films or by way of

sound broadcasting, television, electronic communications or any electronic media;<sup>150</sup>

**“annual accounts”** has the meaning given by section 15(1);

**“annual report”** has the meaning given by section 15B(1);

**“appropriate financial services licence”** means a licence issued by the Authority under section 7 of the *Financial Services Act 2008* to a person to carry on regulated activity under section 3(2)(aa) of that Act;

**“authorised scheme”** means a scheme which is registered in accordance with section 3, and **“authorised”** shall be construed accordingly;

**“Authority”** means the Isle of Man Financial Services Authority (as established by article 4 of the Transfer of Functions (Isle of Man Financial Services Authority) Order 2015);<sup>151</sup>

**“controller”** means—

- (a) ~~a managing director of a body corporate of which the body corporate concerned is a subsidiary;~~
- (b) ~~a chief executive of a body corporate of which the body corporate concerned is a subsidiary;~~
- (c) ~~an individual in accordance with whose directions or instructions one or more of the directors of a body corporate of which the body corporate concerned is a subsidiary are accustomed to act unless the director or directors are accustomed so to act by reason only that they do so on advice given by that person in a professional capacity;~~
- (d) ~~an individual who either alone or with any associate or associates is entitled to exercise or control the exercise of 15% or more of the voting power at any general meeting of the body corporate concerned or of another body corporate of which it is a subsidiary;~~

**“controller”, in relation to a body corporate, means —**

- (a) a managing director of a body corporate of which the person is a subsidiary;
- (b) a chief executive of a body corporate of which the person is a subsidiary;
- (c) a person in accordance with whose directions or instructions one or more of the directors of a body corporate of which the person is a subsidiary are accustomed to act unless the director or directors are accustomed so to act by reason only that they do so on advice given by that person in a professional capacity;
- (d) a person who either alone or with any associate or associates is entitled to exercise or control the exercise of 15% or more of the voting power at any general meeting of the person or of another body corporate of which it is a subsidiary;

- (e) a person who either alone or with any associate or associates is able to exercise significant influence over the management of the person or of another body corporate of which the person is a subsidiary by virtue of —
  - (i) a holding of shares in; or
  - (ii) an entitlement to exercise, or control the exercise of, the voting power of, the person concerned; or
- (f) a person who has the power to appoint directors to the board or other executive committees of the person and to remove them;».

~~“director” includes —~~

- ~~(a) any individual occupying the position of director by whatever name called;~~
- ~~(b) any individual in accordance with whose directions or instructions one or more of the appointed directors are accustomed to act unless the appointed director or directors are accustomed so to act by reason only that they do so on advice given by that person in a professional capacity;~~

**“director” includes —**

- (a) any person occupying the position of director by whatever name called;
- (b) any person in accordance with whose directions or instructions one or more of the appointed directors are accustomed to act unless the appointed director or directors are accustomed so to act by reason only that they do so on advice given by that person in a professional capacity;
- (c) in relation to a limited liability company constituted under the *Limited Liability Companies Act 1996*, a member, company’s manager and the registered agent;
- (d) in respect of any other body corporate, such persons as occupy a position equivalent to that of a director;

**“electronic communication”** has the same meaning as in the *Electronic Transactions Act 2000*;

**“employer-related investments”** means —

- (a) shares or other securities issued by the employer or by any person who is connected with, or an associate of, the employer;
- (b) land which is occupied or used by, or subject to a lease in favour of, the employer or any such person;
- (c) property (other than land) which is used for the purposes of any business carried on by the employer or any such person;
- (d) loans to the employer or any such person; and

- (e) such other investments as may be prescribed by the Authority in regulations;

**“employer payment arrangement”** means any arrangement under which contributions fall to be paid by or on behalf of an employer toward a scheme either —

- (a) on the employer’s own account (but in respect of an employee); or
- (b) on behalf of an employee out of deductions from the employee’s earnings;

**“funding and investment strategy”** has the meaning given by section 7A(1);

**“investment manager”** means a person who manages the investments held for the purposes of a scheme;

**“IPA”** [Repealed]<sup>152</sup>

**“member”** means a member, however described, of a scheme;

**“money purchase scheme”** means a scheme under which the rate or amount of benefits is calculated by reference to —

- (a) contributions to the scheme by members or by any other person in respect of the members; and
- (b) the investment performance of the assets of the scheme fund;

**“occupational scheme”** has the meaning given in section 53;

**“personal scheme”** has the meaning given in section 53;

**“professional advisers”** has the meaning given by section 6(2)(d);

**“recognised scheme”** means a scheme which is registered in accordance with section 21;

~~**“registered schemes administrator”** has the meaning given by section 36;~~

**“regulations”** means regulations made under section 51;

**“regulatory action”** means the exercise of any one or more of the following powers —

- (a) in respect of any scheme —
  - (i) an application for an injunction under section 29;
  - (ii) an application for restitution under section 30;
  - (iii) the issue of a public statement under section 30A;
  - (iv) the issue of a direction under section 31;
  - (v) the appointment of an authorised person under section 34;
  - (vi) the exercise of inspection or investigation powers under sections 34A to 34F;
  - (vii) the imposition of a civil penalty under section 50;

- (viii) the withdrawal of an exemption pursuant to regulations under section 51(4)(b);
- (b) in respect of an authorised scheme, the actions specified in paragraph (a) and —
  - (i) the imposition or variation of a condition under section 3(5)(a) or (b);
  - (ii) the revocation of the registration of an authorised scheme under section 4(1);
  - (iii) the issue of a direction as to fitness and propriety under section 19;
  - (iv) the issue of a warning notice under section 19A;
- (c) in respect of a scheme which is or has been an authorised scheme, the actions specified in paragraph (a) and an application to the court under section 33;
- (d) in respect of a recognised scheme, the actions specified in paragraph (a) and —
  - (i) the issue of a direction under section 22(1);
  - (ii) the issue of a notice or direction under section 23(2) or (3);

“**retirement benefits scheme**” has the meaning given in section 53;

“**Review Committee**” [Repealed]<sup>153</sup>

“**scheme**” has the meaning given by section 1(1)(a);

“**scheme return**” has the meaning given by section 15A(1);

“**schedule of contributions**” has the meaning given by section 9(2);

“**statement of funding principles**” has the meaning given by section 7C(2);

“**statement of strategy**” has the meaning given by section 7B(3)(a);

“**statutory funding objective**” has the meaning given by section 7(2);

“**Supervisor**” [Repealed]<sup>154</sup>

“**technical funding requirement**” has the meaning given by section 7;

“**technical provisions**” has the meaning given by section 7(3);

“**trust scheme**” means a scheme established under irrevocable trusts;

“**trustee**” means —

- (a) in relation to a trust scheme, the trustee of the scheme; and
- (b) in any other case, the administrator of the scheme.

(2) Subject to section 50(14), the exercise of any power referred to in the definition of “regulatory action” does not prevent the exercise of any other power or remedy under this Act nor does it prevent the commencement of proceedings for an offence under this Act.

- (3) The Authority may by order add to or amend any definition in this section or in section 53.

## 55 Amendments and repeals

- (1) The enactments specified in Schedule 2 are amended in accordance with that Schedule.
- (2) The enactments mentioned in Schedule 3 are repealed to the extent specified in column 3 of that Schedule.

## 56 Short title and commencement

- (1) This Act may be cited as the Retirement Benefits Schemes Act 2000.
- (2) This Act shall come into force on such day as the Treasury may by order appoint and different days may be so appointed for different provisions and for different purposes.<sup>155</sup>
- (3) An order under subsection (2) may make such transitional provisions or savings as the Treasury may consider necessary in connection with any provision brought into force by the order.

**SCHEDULE 1<sup>156</sup>**

**SCHEDULE 2**

**AMENDMENT OF ENACTMENTS**

Section 55(1)

[Sch 2 amended by Collective Investment Schemes Act 2008 Sch 7 and by Insurance Act 2008 Sch 9, and amends the following Act –

Companies Act 1982 q.v.]

**SCHEDULE 3**

**REPEAL OF ENACTMENTS**

Section 55(2)

[Sch 3 amended by Insurance Act 2008 Sch 9, and repeals the following Acts and public document in part –

Companies Act 1982

SD610/96 (Insurance and Pensions Authority Order 1996, articles 2 to 6).]



## ENDNOTES

### Table of Legislation History

Legislation	Year and No	Commencement

### Table of Renumbered Provisions

Original	Current

### Table of Endnote References

- <sup>1</sup> Subs (3) substituted by Life Assurance (Insurable Interest) Act 2004 Sch 2.
- <sup>2</sup> Para (a) amended by SD2015/0090 as amended by SD2015/0276.
- <sup>3</sup> Para (b) amended by SD2015/0090 as amended by SD2015/0276.
- <sup>4</sup> Subs (3) amended by SD2015/0090 as amended by SD2015/0276.
- <sup>5</sup> Subs (5) substituted by SD2015/0090 as amended by SD2015/0276.
- <sup>6</sup> Subs (1) substituted by SD2015/0090 as amended by SD2015/0276.
- <sup>7</sup> Subs (3) substituted by SD2015/0090 as amended by SD2015/0276.
- <sup>8</sup> Para (b) amended by SD2015/0090 as amended by SD2015/0276.
- <sup>9</sup> Para (c) amended by Life Assurance (Insurable Interest) Act 2004 Sch 2.
- <sup>10</sup> Para (e) amended by Life Assurance (Insurable Interest) Act 2004 Sch 2.
- <sup>11</sup> Para (a) amended by Civil Partnership Act 2011 Sch 14.
- <sup>12</sup> Subs (10) substituted by SD2015/0090 as amended by SD2015/0276.
- <sup>13</sup> Subpara (ii) amended by Insurance Act 2008 Sch 8.
- <sup>14</sup> Subpara (iii) substituted by Financial Services Act 2008 Sch 6.
- <sup>15</sup> Subparas (iv) and (v) repealed by Financial Services Act 2008 Sch 6.
- <sup>16</sup> Subpara (vi) substituted by SD2015/0090 as amended by SD2015/0276.
- <sup>17</sup> Subs (1) amended by SD2015/0090 as amended by SD2015/0276.
- <sup>18</sup> Subs (2) amended by SD2015/0090 as amended by SD2015/0276.
- <sup>19</sup> Subs (3) amended by SD2015/0090 as amended by SD2015/0276.
- <sup>20</sup> Subs (4) amended by SD2015/0090 as amended by SD2015/0276.
- <sup>21</sup> Subs (1) substituted by SD2015/0090 as amended by SD2015/0276.
- <sup>22</sup> Subs (2) amended by SD2015/0090 as amended by SD2015/0276.
- <sup>23</sup> Subs (3) amended by SD2015/0090 as amended by SD2015/0276.

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- <sup>24</sup> Para (c) substituted by Life Assurance (Insurable Interest) Act 2004 Sch 2.
- <sup>25</sup> Para (g) amended by SD2015/0090 as amended by SD2015/0276.
- <sup>26</sup> Subpara (ii) amended by SD2015/0090 as amended by SD2015/0276.
- <sup>27</sup> S 7 not yet in force.
- <sup>28</sup> Para (a) amended by Life Assurance (Insurable Interest) Act 2004 Sch 2.
- <sup>29</sup> S 8 not yet in force.
- <sup>30</sup> Subs (7) substituted by SD2015/0090 as amended by SD2015/0276.
- <sup>31</sup> S 9 not yet in force.
- <sup>32</sup> Subs (1) amended by SD2015/0090 as amended by SD2015/0276.
- <sup>33</sup> S 10 not yet in force.
- <sup>34</sup> Subs (1) amended by SD2015/0090 as amended by SD2015/0276.
- <sup>35</sup> Subs (1) amended by Life Assurance (Insurable Interest) Act 2004 Sch 2.
- <sup>36</sup> Subs (4) amended by SD2015/0090 as amended by SD2015/0276.
- <sup>37</sup> Subs (7) substituted by SD2015/0090 as amended by SD2015/0276.
- <sup>38</sup> S 13 not yet in force.
- <sup>39</sup> Subs (2) amended by SD2015/0090 as amended by SD2015/0276.
- <sup>40</sup> Subs (4) amended by SD2015/0090 as amended by SD2015/0276.
- <sup>41</sup> Subs (5) substituted by SD2015/0090 as amended by SD2015/0276.
- <sup>42</sup> S 14 not yet in force.
- <sup>43</sup> Subs (1) amended by SD2015/0090 as amended by SD2015/0276.
- <sup>44</sup> Subs (2) amended by SD2015/0090 as amended by SD2015/0276.
- <sup>45</sup> Subs (3) substituted by SD2015/0090 as amended by SD2015/0276.
- <sup>46</sup> Subs (1) amended by SD2015/0090 as amended by SD2015/0276.
- <sup>47</sup> Subs (A1) inserted by Life Assurance (Insurable Interest) Act 2004 Sch 2 and amended by SD2015/0090 as amended by SD2015/0276.
- <sup>48</sup> Subs (1) amended by SD2015/0090 as amended by SD2015/0276.
- <sup>49</sup> Subs (2) amended by SD2015/0090 as amended by SD2015/0276.
- <sup>50</sup> Para (a) substituted by SD2015/0090 as amended by SD2015/0276.
- <sup>51</sup> Para (b) amended by SD2015/0090 as amended by SD2015/0276.
- <sup>52</sup> Subs (4) amended by SD2015/0090 as amended by SD2015/0276.
- <sup>53</sup> Subs (1) substituted by SD2015/0090 as amended by SD2015/0276.
- <sup>54</sup> Subs (2) substituted by SD2015/0090 as amended by SD2015/0276.
- <sup>55</sup> Subs (3) amended by SD2015/0090 as amended by SD2015/0276.
- <sup>56</sup> Subs (4) amended by SD2015/0090 as amended by SD2015/0276.
- <sup>57</sup> Subs (4) amended by SD2015/0090 as amended by SD2015/0276.
- <sup>58</sup> Para (a) amended by Life Assurance (Insurable Interest) Act 2004 Sch 2.
- <sup>59</sup> Subpara (ii) amended by Insurance Act 2008 Sch 8.
- <sup>60</sup> Subpara (iii) substituted by Financial Services Act 2008 Sch 6.
- <sup>61</sup> Subparas (iv) and (v) repealed by Financial Services Act 2008 Sch 6.
- <sup>62</sup> Subpara (vi) amended by SD2015/0090 as amended by SD2015/0276.
- <sup>63</sup> Subs (1) amended by SD2015/0090 as amended by SD2015/0276.
- <sup>64</sup> Subs (2) amended by SD2015/0090 as amended by SD2015/0276.

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- <sup>65</sup> Subs (3) substituted by SD2015/0090 as amended by SD2015/0276.
- <sup>66</sup> Subs (4) substituted by SD2015/0090 as amended by SD2015/0276.
- <sup>67</sup> Subs (5) amended by SD2015/0090 as amended by SD2015/0276.
- <sup>68</sup> Subs (6) amended by SD2015/0090 as amended by SD2015/0276.
- <sup>69</sup> Subs (2) amended by SD2015/0090 as amended by SD2015/0276.
- <sup>70</sup> Subs (3) amended by SD2015/0090 as amended by SD2015/0276.
- <sup>71</sup> Subs (4) amended by SD2015/0090 as amended by SD2015/0276.
- <sup>72</sup> Para (c) amended by SD2015/0090 as amended by SD2015/0276.
- <sup>73</sup> Para (c) amended by SD2015/0090 as amended by SD2015/0276.
- <sup>74</sup> Subs (4) amended by SD2015/0090 as amended by SD2015/0276.
- <sup>75</sup> S 25 repealed by Insurance Act 2008 Sch 9.
- <sup>76</sup> S 26 substituted by Insurance Act 2008 Sch 8 and amended by SD2015/0090 as amended by SD2015/0276..
- <sup>77</sup> Ss 27 and 28 repealed by Insurance Act 2008 Sch 9.
- <sup>78</sup> Subs (1) amended by SD2015/0090 as amended by SD2015/0276.
- <sup>79</sup> Subs (2) amended by SD2015/0090 as amended by SD2015/0276.
- <sup>80</sup> Subs (3) amended by SD2015/0090 as amended by SD2015/0276.
- <sup>81</sup> Subs (1) amended by SD2015/0090 as amended by SD2015/0276.
- <sup>82</sup> Subpara (ii) amended by Insurance Act 2008 Sch 8.
- <sup>83</sup> Subpara (iii) substituted by Financial Services Act 2008 Sch 6.
- <sup>84</sup> Subparas (iv) and (v) repealed by Financial Services Act 2008 Sch 6.
- <sup>85</sup> Subpara (vi) amended by SD2015/0090 as amended by SD2015/0276.
- <sup>86</sup> Subs (1) amended by SD2015/0090 as amended by SD2015/0276.
- <sup>87</sup> Para (c) amended by SD2015/0090 as amended by SD2015/0276.
- <sup>88</sup> Subpara (ii) amended by Insurance Act 2008 Sch 8.
- <sup>89</sup> Subpara (iii) substituted by Financial Services Act 2008 Sch 6.
- <sup>90</sup> Subpara (iv) substituted by Collective Investment Schemes Act 2008 Sch 6.
- <sup>91</sup> Subpara (v) repealed by Financial Services Act 2008 Sch 6.
- <sup>92</sup> Subpara (vi) amended by SD2015/0090 as amended by SD2015/0276.
- <sup>93</sup> Para (c) amended by Financial Services Act 2008 Sch 6, by Collective Investment Schemes Act 2008 Sch 6 and by Insurance Act 2008 Sch 8.
- <sup>94</sup> Subs (4) amended by SD2015/0090 as amended by SD2015/0276.
- <sup>95</sup> Subs (5) amended by SD2015/0090 as amended by SD2015/0276.
- <sup>96</sup> Subs (6) substituted by SD2015/0090 as amended by SD2015/0276.
- <sup>97</sup> Subs (8) amended by SD2015/0090 as amended by SD2015/0276.
- <sup>98</sup> Subs (1) amended by SD2015/0090 as amended by SD2015/0276.
- <sup>99</sup> Subs (2) amended by SD2015/0090 as amended by SD2015/0276.
- <sup>100</sup> Subs (4) amended by SD2015/0090 as amended by SD2015/0276.
- <sup>101</sup> Para (a) amended by SD2015/0090 as amended by SD2015/0276.
- <sup>102</sup> Para (b) amended by SD2015/0090 as amended by SD2015/0276.
- <sup>103</sup> Subs (1) amended by SD2015/0090 as amended by SD2015/0276.
- <sup>104</sup> Subs (2) amended by SD2015/0090 as amended by SD2015/0276.
- <sup>105</sup> Subs (3) amended by SD2015/0090 as amended by SD2015/0276.

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- <sup>106</sup> Subs (5) amended by SD2015/0090 as amended by SD2015/0276.
- <sup>107</sup> Subs (6) amended by SD2015/0090 as amended by SD2015/0276.
- <sup>108</sup> Subs (1) substituted by SD2015/0090 as amended by SD2015/0276.
- <sup>109</sup> Subs (5) substituted by SD2015/0090 as amended by SD2015/0276.
- <sup>110</sup> S 35 substituted by SD2014/08 and amended by SD2015/0090 as amended by SD2015/0276.
- <sup>111</sup> Para (a) amended by SD2015/0090 as amended by SD2015/0276.
- <sup>112</sup> Subs (2) amended by SD2015/0090 as amended by SD2015/0276.
- <sup>113</sup> Subs (3) substituted by Life Assurance (Insurable Interest) Act 2004 Sch 2 and amended by SD2015/0090 as amended by SD2015/0276.
- <sup>114</sup> Subs (4) amended by SD2015/0090 as amended by SD2015/0276.
- <sup>115</sup> Subs (5) amended by SD2015/0090 as amended by SD2015/0276.
- <sup>116</sup> Subs (8) amended by Interpretation Act 2015 s 106.
- <sup>117</sup> Subs (9) substituted by SD2015/0090 as amended by SD2015/0276.
- <sup>118</sup> S 37 repealed by Insurance Act 2008 Sch 9.
- <sup>119</sup> S 37A inserted by Insurance Act 2008 Sch 8 and substituted by SD2015/0090 as amended by SD2015/0276.
- <sup>120</sup> S 38 heading amended by Insurance (Amendment) Act 2017 Sch 2.
- <sup>121</sup> Subs (1) repealed by Insurance (Amendment) Act 2017 Sch 2.
- <sup>122</sup> Subs (2) repealed by Insurance (Amendment) Act 2017 Sch 2.
- <sup>123</sup> Subs (3) amended by SD2015/0090 as amended by SD2015/0276 and by Insurance (Amendment) Act 2017 Sch 2.
- <sup>124</sup> Subs (6) amended by SD2015/0090 as amended by SD2015/0276 and by Insurance (Amendment) Act 2017 Sch 2.
- <sup>125</sup> Subs (7) repealed by Insurance (Amendment) Act 2017 Sch 2.
- <sup>126</sup> S 38 substituted by Insurance Act 2008 Sch 8.
- <sup>127</sup> S 39 not yet in force.
- <sup>128</sup> S 40 repealed by Financial Services Act 2008 Sch 7 (with savings see para 5 of Sch 8) and by Insurance Act 2008 Sch 9.
- <sup>129</sup> Para (b) substituted by SD2015/0090 as amended by SD2015/0276.
- <sup>130</sup> Subs (1) amended by SD2015/0090 as amended by SD2015/0276.
- <sup>131</sup> Subs (5) amended by SD2015/0090 as amended by SD2015/0276.
- <sup>132</sup> Subs (7) amended by SD2015/0090 as amended by SD2015/0276.
- <sup>133</sup> Para (b) amended by SD2015/0090 as amended by SD2015/0276.
- <sup>134</sup> Subs (1) amended by SD2015/0090 as amended by SD2015/0276.
- <sup>135</sup> Subs (2) amended by SD2015/0090 as amended by SD2015/0276.
- <sup>136</sup> S 43 substituted by Insurance Act 2008 Sch 8.
- <sup>137</sup> S 44 repealed by Insurance Act 2008 Sch 9.
- <sup>138</sup> Subs (1) substituted by SD2015/0090 as amended by SD2015/0276.
- <sup>139</sup> Para (a) amended by Fines and Penalties Act 2024 Sch 5.
- <sup>140</sup> Subs (1) amended by SD2015/0090 as amended by SD2015/0276.
- <sup>141</sup> Subs (2) amended by SD2015/0090 as amended by SD2015/0276.
- <sup>142</sup> Para (b) amended by SD2015/0090 as amended by SD2015/0276.

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- <sup>143</sup> Para (a) amended by SD2015/0090 as amended by SD2015/0276.
- <sup>144</sup> Para (a) amended by SD2015/0090 as amended by SD2015/0276.
- <sup>145</sup> Para (b) amended by SD2015/0090 as amended by SD2015/0276.
- <sup>146</sup> Subs (9) amended by SD2015/0090 as amended by SD2015/0276.
- <sup>147</sup> Subs (10) amended by SD2015/0090 as amended by SD2015/0276.
- <sup>148</sup> Para (dd) inserted by Life Assurance (Insurable Interest) Act 2004 Sch 2.
- <sup>149</sup> Subs (1) amended by SD2015/0090 as amended by SD2015/0276.
- <sup>150</sup> Definition of “advertisement” amended by Communications Act 2021 Sch 9.
- <sup>151</sup> Definition of “Authority” inserted by SD2015/0090 as amended by SD2015/0276.
- <sup>152</sup> Definition of “IPA” repealed by SD2015/0090 as amended by SD2015/0276.
- <sup>153</sup> Definition of “Review Committee” repealed by Insurance Act 2008 Sch 9.
- <sup>154</sup> Definition of “Supervisor” repealed by SD2015/0090 as amended by SD2015/0276.
- <sup>155</sup> ADO (ss 37, 38(3) and (10), 51 to 56, Schs 1 to 3) 1/4/2001; (all other provisions of the Act but only to such extent as is necessary for the purpose of making public documents under the Act) 1/4/2001 (SD173/01); ss 1, 2, 11, 12, 15, 17, 18, 36 in respect of international schemes which immediately before 1/1/2002 are operating in or from the Island) 1/6/2002; (ss 1, 2, 11, 12, 15, 17, 18, 36 in respect of all other international schemes) 1/1/2002; (ss 3 to 6, 16, 19, 20, 25 to 35, 38(1), (2) and (4) to (9), 41 to 50) 1/1/2002 (SD648/01); (ss 2, 11, 12, 15, 17, 18, 21 to 24, 36) 1/11/2004; (s 1) 1/5/2005 (SD588/04).
- <sup>156</sup> Sch 1 repealed by Insurance Act 2008 Sch 9.