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**RETIREMENT BENEFITS SCHEMES (AMENDMENT)  
BILL 2026**

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## **Explanatory Memorandum**

1. This Bill is promoted by the Isle of Man Financial Services Authority (“the Authority”).
2. *Clauses 1 and 2* contain, respectively, the short title of, and the commencement provisions for, the Act resulting from the passing of the Bill (“the resulting Act”).
3. *Clause 3* provides for the amendment of the *Retirement Benefits Schemes Act 2000* (“the 2000 Act”) by the resulting Act.
4. *Clause 4* amends section 1 of the 2000 Act to clarify that the restrictions on promotion apply to the receipt of transfers or other credits from another scheme and to provide that the Authority (rather than the Treasury) has the power to make regulations under that section.
5. *Clause 5* substitutes section 2 of the 2000 Act. The effect of this clause is to make a number of changes to the application provisions in existing section 2, including the introduction of a new provision that would expressly allow the Authority to require an application to contain a declaration of compliance and to take regulatory action for failing to demonstrate such compliance, if requested to do so by the Authority.
6. *Clause 6* substitutes section 3 of the 2000 Act. Many provisions of substituted section 3 remain materially the same as existing section 3. However, a number of significant changes are made, including:
  - applicant burden: substituted section 3 provides that the burden is on the applicant to satisfy the Authority that the scheme complies with the requirements that are applicable to it;
  - scheme constitution: substituted section 3 continues to provide that an authorised scheme must be established under irrevocable trust; however, enabling powers are included to allow the Treasury by order to specify an alternative manner in which authorised schemes may be established (such orders being subject to Tynwald approval under section 51(10));
  - licensing requirements: new licensing requirements are imposed, including a requirement for the administrator and at least one trustee of an authorised scheme to hold an appropriate licence under the *Financial Services Act 2008*, subject to any prescribed exemptions;
  - fitness and propriety: the fitness and propriety of licensed pension providers will be assessed under the *Financial Services Act 2008* and so

substituted section 3 does not include an obligation for the Authority to be satisfied that the trustees are fit and proper.

7. *Clause 7* substitutes section 4 of the 2000 Act. Substituted section 4 includes 3 express decision options in response to requests for revocation of registration (i.e. revocation, revocation subject to conditions, or refusal), as well obliging the Authority to provide notice and reasons for relevant decisions under section 4. It also states that the provisions of sections 6 to 20 of the 2000 Act do not automatically continue to apply post-revocation where registration was revoked on request (subject to any conditions of revocation).
8. *Clause 8* amends section 5 of the 2000 Act consequent upon the proposed changes to section 4 of the 2000 Act.
9. *Clause 9* amends section 6 of the 2000 Act to provide that the Authority (rather than the Treasury) has the power to make regulations under that section.
10. *Clause 10* substitutes section 7 of the 2000 Act (which has never been brought into operation). Substituted section 7 requires authorised defined benefits schemes to have sufficient and appropriate assets to cover their technical provisions (being the amount required on an actuarial calculation to provide for the scheme's liabilities).
11. *Clause 11* inserts new sections 7A to 7C into the 2000 Act. New section 7A requires the trustee of an authorised scheme to which section 7 applies to have a funding and investment strategy for providing benefits over the longer-term. New section 7B requires the trustee of such a scheme to report to the Authority on the implementation of the funding and investment strategy. New section 7C requires the trustee of such a scheme to prepare a statement of funding principles setting out their policy for ensuring that the statutory funding objective is met and covering any other prescribed matters.
12. *Clause 12* substitutes section 8 of the 2000 Act (which has never been brought into operation). Substituted section 8 requires the trustee of an authorised scheme to which section 7 applies to arrange for a written actuarial valuation of assets and technical provisions to verify whether the statutory funding objective is complied with.
13. *Clause 13* inserts new sections 8A and 8B into the 2000 Act. New section 8A requires the scheme actuary to certify the calculation of the scheme's technical provisions when carrying out actuarial valuations. The actuary must notify the Authority if the actuary is unable to certify that the technical provisions have been calculated in accordance with regulations. New section 8B requires a recovery plan to be prepared if the statutory funding objective is not met (i.e. if the scheme is underfunded). The recovery plan must set out the steps to be taken to meet the statutory funding objective and the timeframe for achieving it.
14. *Clause 14* substitutes section 9 of the 2000 Act (which has never been brought into operation). Substituted section 9 includes updated provisions requiring the trustee of an authorised scheme to which section 7 applies to prepare, periodically review and, where necessary update, a schedule of contributions. The schedule

of contributions sets out the contributions payable towards the scheme and shows by when the contributions must be paid.

15. *Clause 15* substitutes section 10 of the 2000 Act (which has never been brought into operation). Substituted section 10 contains updated provisions requiring the trustee of a defined benefits scheme to report the non-payment of contributions, subject to prescribed exceptions.
16. *Clause 16* inserts new sections 10A to 10E into the 2000 Act. New section 10A requires the trustee of an authorised scheme to which section 7 applies to obtain the agreement of the employer in relation to certain specified matters, including the methods and assumptions to be used in calculating the scheme's technical provisions. The proposed new section also contains provisions requiring the Authority to be notified if agreement cannot be reached. New section 10B requires the trustee of such a scheme to obtain the advice of the actuary before making decisions in respect of specified matters, including decisions about the methods and assumptions to be used in calculating the scheme's technical provisions. New section 10C gives the Authority a number of powers in relation to defined benefits scheme funding matters, including the power to issue directions which:
  - specify the manner in which the scheme's technical provisions should be calculated;
  - impose a schedule of contributions specifying the contributions to be made to the scheme and by when they are to be paid;
  - specify how, and over what period, any failure to meet the statutory funding objective should be rectified.

New section 10C sets out the circumstances when these powers may be exercised, including where the scheme has failed to meet the statutory funding objective or the scheme has an inappropriate recovery plan in place. New section 10D requires the trustee of an authorised scheme to which section 7 applies to prepare a winding up procedure if the scheme begins to wind up during the recovery period. New section 10E gives the Authority the power to make regulations that modify sections 7 to 10D in the circumstances provided in the regulations, such regulations being subject to Tynwald approval under section 51(13)(a)).

17. *Clause 17* amends section 11 of the 2000 Act so as to allow the Authority to take regulatory action (see the new definition to be inserted into section 54 of the 2000 Act by this Bill) for a relevant contravention (rather than actions being limited to the removal of the trustee or administrator or the payment of a civil penalty).
18. *Clause 18* amends section 12 of the 2000 Act so as to allow the Authority to take regulatory action against a trustee or administrator for a relevant contravention, (rather than such a contravention constituting a criminal offence or action being limited to the payment of a civil penalty). The amendments to section 12 also enable the Authority to take regulatory action if an employer fails to make payments (rather than such failure being a criminal offence). Section 12 is further amended so as to require a licensed pension provider acting as trustee or administrator of the scheme to keep the payment schedule at its business premises (except in any cases where there is no such licenceholder pursuant to a

prescribed exemption from the licensing requirements (if any), in which case it would be the duty of the administrator in the Island to do so).

19. *Clause 19* repeals section 13 of the 2000 Act (which has never been brought into operation). Its provisions are to be replaced by the new funding regime provided for in this Bill.
20. *Clause 20* repeals section 14 of the 2000 Act (which has never been brought into operation). Its provisions are to be replaced by the new funding regime provided for in this Bill.
21. *Clause 21* substitutes section 15 of the 2000 Act. Substituted section 15 requires the trustee and administrator to obtain scheme accounts that have been prepared in accordance with regulations.
22. *Clause 22* inserts new sections 15A and 15B into the 2000 Act. New section 15A makes provision enabling the Authority to prescribe the types of scheme that are required to submit a scheme return, to prescribe the frequency of scheme returns and to specify the contents scheme returns. New section 15B make provision in relation to the disclosure of information regarding schemes to prescribed persons (e.g. scheme members).
23. *Clause 23* amends section 16 of the 2000 Act to provide that the Authority has the power to make regulations under that section (rather than the Treasury) and to enable the Authority to take regulatory action for contravention of regulations under that section (rather than action being limited to the removal of the trustee or administrator or the imposition of civil penalties).
24. *Clause 24* substitutes section 17 of the 2000 Act. Substituted section 17 includes a provision requiring the trustee to consult the administrator before making appointments under that section and a provision enabling the Authority to take regulatory action where a trustee fails to appoint a scheme auditor, scheme actuary or investment manager (rather than such failure constituting a criminal offence).
25. *Clause 25* inserts new sections 17A to 17C into the 2000 Act. New section 17A automatically disqualifies certain persons, such as undischarged bankrupts and persons with unspent dishonesty offence convictions, from acting as a trustee or administrator of an authorised scheme. The new provisions allow a disqualification to be waived by the Authority on application and also include a power for the Authority to prescribe modifications and exemptions by regulations. New section 17B requires the trustee and administrator of an authorised scheme to have knowledge and understanding of the law relating to pensions and trusts and to be conversant with the constitutional documents of the scheme. It also includes a power for the Authority to prescribe modifications and exemptions by regulations. New section 17C requires the trustee and administrator to establish and operate an effective system of scheme governance, including internal controls. The relevant system of governance must be proportionate to the size, nature, scale and complexity of the activities of the

- scheme. It also includes a power for the Authority to prescribe modifications and exemptions by regulations.
26. *Clause 26* substitutes section 18 of the 2000 Act. Substituted section 18 makes a number of changes to existing section 18, including:
    - to allow alteration notice periods to be prescribed in regulations made by the Authority;
    - to enable additional notification requirements to be prescribed in regulations made by the Authority which may be imposed on certain specified persons, including an employer.
  27. *Clause 27* substitutes section 19 of the 2000 Act. Substituted section 19 includes a number of provisions so as to more closely mirror section 10 of the *Financial Services Act 2008* which is the Act under which professional trustees and administrators of authorised schemes will be licensed. If the Authority reasonably concludes that a person is not fit and proper to act in a relevant capacity, the Authority continues to have the power under section 19 to direct that the person may not be appointed or continue to act in that capacity without the Authority's consent.
  28. *Clause 28* inserts new section 19A into the 2000 Act. New section 19A enables the Authority to issue a warning notice before issuing a direction, before making a court application under section 33 or in any other circumstances the Authority considers it appropriate to do so.
  29. *Clause 29* amends section 21 of the 2000 Act so as to provide the Authority with power to make orders under that section (rather than the Treasury) and the power to require scheme registration notices to contain such information as the Authority may reasonably require.
  30. *Clause 30* amends section 23 of the 2000 Act so as to provide that the Authority has the power to make regulations under that section (rather than the Treasury) and to allow the Authority to take regulatory action for a relevant contravention, (rather than the contravention constituting a criminal offence).
  31. *Clause 31* substitutes the heading of Part 4 of the 2000 Act.
  32. *Clause 32* amends section 24 of the 2000 Act to substitute the section heading so as to more clearly reflect the nature of the register maintained under that section.
  33. *Clause 33* inserts new section 25A into the 2000 Act. New section 25A provides the Authority with the power to issue guidance.
  34. *Clause 34* repeals section 26 of the 2000 Act (as this section is to be replaced with the inspection and investigation provisions in new sections 34A to 34G).
  35. *Clause 35* substitutes section 29 of the 2000 Act. Substituted section 29 extends the grounds upon which the High Court may grant an injunction to include the actual or potential contravention of a public document made under the 2000 Act, a condition imposed under it or a direction given under it.

36. *Clause 36* substitutes section 30 of the 2000 Act. Substituted section 30 extends the grounds upon which the High Court may currently grant a restitution order to include the misuse or misappropriation of scheme assets, the contravention of any provision, direction or condition referred to in section 29(2) of the 2000 Act or the contravention of restrictions on employer-related investments.
37. *Clause 37* inserts new section 30A into the 2000 Act. New section 30A enables the Authority to issue a public statement under the 2000 Act on certain specified grounds. The proposed new section is broadly equivalent to section 13 of the *Financial Services Act 2008*.
38. *Clause 38* substitutes section 31 of the 2000 Act. Substituted section 31 includes updating and clarificatory provisions in relation to directions. For example, the power to issue directions will apply to all categories of registered schemes and the grounds for issuing a direction are extended so to include breach of relevant legislation by an employer. It also enables the Authority to take regulatory action for a breach of the relevant requirements (rather than a breach constituting a criminal offence).
39. *Clause 39* substitutes section 32 of the 2000 Act. Substituted section 32, which deals with giving notice of directions, reflects changes made elsewhere in this Bill (see especially substituted section 31).
40. *Clause 40* substitutes section 33 of the 2000 Act. Substituted section 33 enables the Authority to make an application to the High Court for an order to remove and appoint scheme functionaries. This is a different approach to existing section 33, which currently enables the Authority to make an order to remove and replace the trustees and administrators of authorised schemes, such orders requiring Tynwald approval.
41. *Clause 41* amends section 34 of the 2000 Act. The changes include replacing references to “inspector” with “authorised person” to mirror the term used in the *Financial Services Act 2008*.
42. *Clause 42* inserts new sections 34A to 34G into the 2000 Act to replace the existing inspection and investigation powers under section 26 (which is repealed by this Bill). New section 34A enables the Authority to issue a notice requiring specified persons to provide the Authority with information or documents relevant to its functions. New section 34B enables a person authorised by the Authority to carry out an on-site inspection to investigate whether scheme provisions are being complied with. New section 34C enables a person authorised by the Authority to carry out an on-site inspection to determine whether an employers’ obligations in connection with a scheme are being complied with. New section 34D sets out the powers of the authorised person whilst carrying out an inspection, including the power to require persons to produce documents and the power to take copies of documents. It also provides that private homes can only be inspected with a warrant. New section 34E provides that a person commits an offence if they fail to provide requested information or produce requested documents. Altering, suppressing, concealing or destroying requested documents also constitutes an offence. New section 34F enables a justice of the peace to issue a warrant if there

are reasonable grounds to believe that relevant documents are on any premises and have not been produced, are at risk of being hidden, tampered with or destroyed, or relate to an offence etc. A warrant would allow an authorised person to enter and search premises, take possession or copies of documents, and require explanations etc. A warrant would be valid for one month. New section 34G provides interpretation in relation to new sections 34A to 34F.

43. *Clause 43* amends section 35 of the 2000 Act to include reference to the proposed new sections 34A to 34G.
44. *Clause 44* repeals Part 6 of the 2000 Act. At present authorised schemes must have a registered schemes administrator. The vast majority of authorised schemes have a professional pension provider act as the administrator. Under the revised regulatory framework provided for by this Bill, pension providers that act as an administrator by way of business are required to hold a licence under the *Financial Services Act 2008* (and are thus subject to business conduct and prudential regulation under that Act, subject to any prescribed exemptions). Therefore, to avoid duplication of registration under the 2000 Act and licensing under the *Financial Services Act 2008*, section 36 of the 2000 Act is repealed.
45. *Clause 45* amends section 38 of the 2000 Act, which is concerned with appeals to the Financial Services Tribunal, to correct a small number of minor anomalies and to make consequential amendments to reflect other changes to the 2000 Act.
46. *Clause 46* amends section 41 of the 2000 Act, which is concerned with whistleblowing, to introduce a number of changes:
  - reporting timeframe: the current provision requires immediate reporting, whereas the amended provision requires reporting “as soon as reasonably practicable”;
  - specified persons: amended section 41 extends the scope of persons subject to the duty to report breaches of the law to include employers in relation to occupational schemes;
  - non-disclosure agreements: amended section 41 provides that the statutory duty to report breaches overrides any agreements or contracts that attempt to prevent a person from providing information to the Authority (except in relation to legally privileged information);
  - consequences of breaches: amended section 41 allows the Authority to take regulatory action in cases of non-compliance, rather than a breach constituting a criminal offence.
47. *Clause 47* inserts new section 41A into the 2000 Act. New section 41A confirms that obligations to disclose information under the 2000 Act do not apply in relation to legally privileged information.
48. *Clause 48* amends section 42 of the 2000 Act to enable the Authority to issue information and guidance in relation to employers and professional advisers as well as the persons currently specified in section 42.

49. *Clause 49* substitutes section 43 of the 2000 Act. Substituted section 43 provides that Schedule 5 to the *Financial Services Act 2008* has effect in relation to the disclosure of restricted information (reflecting the revised regulatory framework under which pension providers are subject to regulation under the *Financial Services Act 2008* while pension schemes are regulated under the 2000 Act).
50. *Clause 50* substitutes section 45 of the 2000 Act. Substituted section 45 updates the scheme register provisions to reflect data protection considerations, to require the register to be kept in electronic form and to expressly provide the Authority's power to publish the register (or part of it).
51. *Clause 51* substitutes section 51 of the 2000 Act. Substituted section 51 provides that the Authority (rather than the Treasury) has the power to make regulations to give effect to the 2000 Act. A number of other amendments to existing section 51 are also made, including:
- providing that the Authority may make regulations prescribing any matter that is to be prescribed under the 2000 Act (save for regulations to be made by the Treasury under section 24);
  - introducing a statutory duty to consult;
  - providing that certain orders and regulations made under the 2000 Act are subject to Tynwald approval, rather than the affirmative procedure, so a higher level of Tynwald scrutiny is appropriate (e.g. in respect of changes to the definitions in sections 53 and 54).
52. *Clause 52* inserts new section 51A into the 2000 Act. New section 51A contains supplementary provisions allowing the Authority to take regulatory action for a breach of regulations or orders made under the 2000 Act.
53. *Clause 53* inserts new section 52A into the 2000 Act. New section 52A enables fees to be to be specified in an order made by the Authority, including fees in relation to registration of schemes, annual fees and fees payable on returns submitted to the Authority.
54. *Clause 54* amends the definition of "retirement benefits scheme" in section 53 of the 2000 Act so as to provide that the Authority has the power to make regulations under that provision.
55. *Clause 55* amends section 54 of the 2000 Act to make various amendments to the definitions specified in that section (including the insertion of new defined terms) which are required consequent upon the provisions of this Bill.
56. *Clause 56* makes amendments the *Financial Services Act 2008*, including:
- amending section 3 of that Act to include services to or in relation to retirement benefits schemes as a type of "financial services activity";
  - making consequential amendments to Schedule 5 to that Act to reflect substituted section 43 of the 2000 Act in relation to the disclosure of information.
57. *Clause 57* makes amendments the *Insurance Act 2008*, including:

- reflecting that the inspection and investigation powers in relation to schemes in Schedule 5 to that Act are to be replaced with the powers in new sections 34A to 34G of the 2000 Act;
  - consequentially amending Schedule 6 to that Act to reflect substituted section 43 of the 2000 Act in relation to the disclosure of information.
58. *Clause 58* contains a transitional provision.
59. The resulting Act is not expected to have any financial or human resource implications.
60. In the opinion of the member moving the Bill its provisions are compatible with the Convention rights within the meaning of the *Human Rights Act 2001*.



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## RETIREMENT BENEFITS SCHEMES (AMENDMENT) BILL 2026

**A BILL** to amend the *Retirement Benefits Schemes Act 2000* so as to enhance consumer protection and enable more effective regulation of the pensions industry; to make related amendments to the *Financial Services Act 2008* and the *Insurance Act 2008*; and for connected purposes.

**BE IT ENACTED** by the King's Most Excellent Majesty, by and with the advice and consent of the Council and Keys in Tynwald assembled, and by the authority of the same, as follows: —

### 1 Short title

The short title of this Act is the Retirement Benefits Schemes (Amendment) Act 2026.

### 2 Commencement

(1) This Act (except this section and sections 1 and 3) comes into operation on such day or days as the Isle of Man Financial Services Authority ("**the Authority**") may by order appoint and different days may be appointed for different provisions and for different purposes.

Tynwald procedure – laying only.

(2) An order under subsection (1) may make such consequential, incidental, supplemental and transitional provisions as appear to the Authority to be necessary for the purposes of the order.

### 3 Retirement Benefits Schemes Act 2000 amended

The *Retirement Benefits Schemes Act 2000* ("**the Act**") is amended in accordance with this Act.

### 4 Section 1 amended

(1) Section 1 of the Act is amended as follows.

(2) For subsection (3) substitute —

«(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.».
- (3) In subsection (4), for “the Treasury” substitute «the Authority».
- (4) In subsection (6) —
  - (a) for “The Treasury” substitute «The Authority»; and
  - (b) for “specified” substitute «prescribed».
- (5) For subsection (7) substitute —
  - «(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.».

## 5 Section 2 substituted

For section 2 of the Act (applications for authorisation) substitute —

### «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.».

## 6 Section 3 substituted

For section 3 of the Act (authorisation) substitute —

### «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*.».

## 7 Section 4 substituted

For section 4 of the Act (revocation of authorisation) substitute —

### «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 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.».

## 8 Section 5 amended

- (1) Section 5 of the Act (representations against revocation) is amended as follows.
- (2) For subsection (1) substitute —
  - «(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).».

## 9 Section 6 amended

- (1) Section 6 of the Act (constitution and management) is amended as follows.
- (2) In subsection (1), for “The Treasury” substitute «The Authority».

- (3) In subsection (7), for “the Treasury thinks necessary or expedient” substitute «the Authority thinks necessary».

## 10 Section 7 substituted

For section 7 of the Act (technical funding requirement) substitute —

### «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.».

## 11 Sections 7A to 7C inserted

After section 7 of the Act (as substituted) insert —

### «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.».

## 12 Section 8 substituted

For section 8 of the Act (valuation and certification of assets and liabilities) substitute —

### «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.».

### 13 Sections 8A and 8B inserted

After section 8 of the Act (as substituted) insert —

#### «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.».

## 14 Section 9 substituted

For section 9 of the Act (schedules of contributions) substitute —

### «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.».

## 15 Section 10 substituted

For section 10 of the Act (determination of contributions: supplementary) substitute —

### «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.».

## 16 Sections 10A to 10E inserted

After section 10 of the Act (as substituted) insert —

### «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 substituting 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.».

## **17 Section 11 amended**

- (1) Section 11 of the Act (schedule of payments to certain schemes) is amended as follows.

- (2) In subsection (1), for “prescribed class or description” substitute «class or description prescribed by the Authority in regulations».
- (3) In subsection (2)(b), after “prescribed” insert «by the Authority in regulations».
- (4) In subsection (3), for “prescribed requirements” substitute «requirements prescribed by the Authority in regulations».
- (5) For subsection (5) substitute —  
| «(5) Where this section is not complied with, the Authority may take  
| such regulatory action as it considers appropriate.».

## 18 Section 12 amended

- (1) Section 12 of the Act (schedule of payments: supplementary) is amended as follows.
- (2) In subsection (1) —
  - (a) for “prescribed circumstances” substitute «circumstances prescribed by the Authority in regulations»; and
  - (b) for “prescribed period” substitute «period prescribed by the Authority in regulations».
- (3) In subsection (3), omit “and if this subsection is not complied with the employer shall be guilty of an offence”.
- (4) Immediately after subsection (3) insert —  
| «(3A) Section 50 applies to an employer that fails to comply with  
| subsection (3).»;
- (5) In subsection (4), for “the trustee and administrator shall both be guilty of an offence” substitute «, the Authority may take such regulatory action as it considers appropriate».
- (6) For subsection (5), substitute —  
| «(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).».
- (7) For subsection (6), substitute —  
| «(6) Where subsection (5) is not complied with, the Authority may take  
| such regulatory action as it considers appropriate.».

**19 Section 13 repealed**

Section 13 of the Act (serious underprovision) is repealed.

**20 Section 14 repealed**

Section 14 of the Act (serious overprovision) is repealed.

**21 Section 15 substituted**

For section 15 of the Act (annual accounts) substitute —

**«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).».

**22 Sections 15A and 15B inserted**

After section 15 of the Act (as substituted) insert —

**«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.».

### 23 Section 16 amended

- (1) Section 16 of the Act (publication of scheme particulars) is amended as follows.
- (2) In subsection (1) –

- (a) for “The Treasury” substitute «The Authority»; and
  - (b) for “specified” substitute «prescribed».
- (3) For subsection (5) substitute —
- «(5) Where regulations under this section are not complied with, the Authority may take such regulatory action as it considers appropriate.».

## 24 Section 17 substituted

For section 17 of the Act (professional advisers) substitute —

### «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.».

## 25 Sections 17A to 17C inserted

After section 17 of the Act (as substituted) insert —

### «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.».

## **26 Section 18 substituted**

For section 18 of the Act (alteration of schemes and changes of trustee, administrator and professional advisers) substitute —

### **«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.».

**27 Section 19 substituted**

For section 19 of the Act (directors, controllers, etc.) substitute —

**«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.».

## 28 Section 19A inserted

After section 19 of the Act (as substituted) insert —

### «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.».

## 29 Section 21 amended

- (1) Section 21 of the Act (schemes authorised etc. in designated countries) is amended as follows.
- (2) For subsection (1) substitute —
  - «(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.».
- (3) In subsection (2), for “the Treasury” substitute «the Authority».
- (4) In subsection (3), for “The Treasury” substitute «The Authority».
- (5) For subsections (4) and (5) substitute —
  - «(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) In subsection (8), for “the Treasury thinks necessary or expedient” substitute «the Authority thinks necessary».

### 30 Section 23 amended

- (1) Section 23 of the Act (facilities, information and assets in the Island) is amended as follows.
- (2) In subsection (1), for “The Treasury” substitute «The Authority».
- (3) For subsection (5) substitute —
- «(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.».

### 31 Heading of Part 4 substituted

For the heading of Part 4 of the Act (general register of schemes) substitute «**PART 4 – SCHEME TRACING**».

### 32 Section 24 amended

- (1) Section 24 of the Act (registration of retirement benefit schemes) is amended as follows.
- (2) For the heading substitute «**Scheme tracing register**».

### 33 Section 25A inserted

At the beginning of Part 5 of the Act (powers of supervision, investigation, intervention, etc.) insert the following section —

#### «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.».

### 34 Section 26 repealed

Section 26 of the Act (inspection and investigation) is repealed.

### 35 Section 29 substituted

For section 29 of the Act (injunctions) substitute —

#### «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.».

### 36 Section 30 substituted

For section 30 of the Act (restitution) substitute —

#### «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.».

### 37 Section 30A inserted

After section 30 of the Act (as substituted) insert —

#### «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.».

### 38 Section 31 substituted

For section 31 of the Act (directions) substitute —

#### «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.».

### 39 Section 32 substituted

For section 32 of the Act (notice of directions) substitute —

#### «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 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.».

#### 40 Section 33 substituted

For section 33 of the Act (removal of trustee, administrator etc.) substitute —

#### «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.».

#### 41 Section 34 amended

- (1) Section 34 of the Act (appointment of inspector) is amended as follows.
- (2) In the heading, for “**inspector**” substitute «**authorised person**».
- (3) In subsection (1) —
- (a) for “inspectors” substitute «authorised persons»; and
- (b) for “on the affairs of, or of the trustee or administrator of, any scheme” substitute «on the affairs of any scheme or a trustee or administrator of the scheme».
- (4) For subsection (2) substitute —
- «(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.».
- (5) For subsection (3) substitute —
- «(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).».
- (6) In subsection (4), at the end insert «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)».
- (7) In subsection (5) —
- (a) for “inspector” substitute «authorised person»; and
- (b) for “his” substitute «the».

#### 42 Sections 34A to 34G inserted

After section 34 of the Act (as amended) insert —

**«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.».

**43 Section 35 amended**

In section 35 of the Act (powers exercisable in aid of income tax and pension scheme functions) for “sections 25 to 34” substitute «sections 25 to 34G».

**44 Part 6 repealed**

Part 6 of the Act (retirement benefits scheme administrators) comprising section 36 of the Act (register of scheme administrators) is repealed.

**45 Section 38 amended**

- (1) Section 38 of the Act (appeals to the Financial Services Tribunal) is amended as follows.
- (2) For subsection (3) substitute —
  - «(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”).».

#### 46 Section 41 amended

- (1) Section 41 of the Act (blowing the whistle) is amended as follows.
- (2) For the heading substitute «**Duty to report breaches of the law**».
- (3) For subsections (1) to (4) substitute —
  - «(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.».

#### 47 Section 41A inserted

After section 41 of the Act insert —

##### «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*.».

#### 48 Section 42 amended

- (1) Section 42 of the Act (publication of information and advice) is amended as follows.
- (2) For paragraph (a) of subsection (1) substitute —
- «(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;».

#### 49 Section 43 substituted

For section 43 of the Act (restrictions on disclosure of information) substitute —

##### «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.».

#### 50 Section 45 substituted

For section 45 of the Act (public registers) substitute —

##### «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.

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

- (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>.».

## 51 Section 51 substituted

For section 51 of the Act (regulations and orders) substitute —

### «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;

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

- (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.».

## 52 Section 51A inserted

After section 51 of the Act (regulations and orders) —

### «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.».

## 53 Section 52A inserted

After section 52 of the Act (financial provision) insert —

**«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.».

**54 Section 53 amended**

- (1) Section 53 of the Act (principal terms defined) is amended as follows.
- (2) In the definition of “**retirement benefits scheme**”, after “prescribed” insert «by the Authority in regulations».

**55 Section 54 amended**

- (1) Section 54 of the Act (interpretation – general) is amended as follows.
- (2) For the definition of “**administrator**” substitute —
 

«“**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;».

(3) For the definition of “**controller**” substitute —

«“**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;».

(4) For the definition of “**director**” substitute —

«“**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».
- (5) Omit the definitions of **“registered schemes administrator”** and **“technical funding requirement”**.
- (6) In alphabetical sequence, insert the following terms and their definitions —
- «**“actuarial report”** has the meaning given by section 8(2)(c);»;
- «**“actuarial valuation”** has the meaning given by section 8(2)(a);»;
- «**“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;»;
- «**“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)»;

«**“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)»;

«**“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);»;
- «**technical provisions**” has the meaning given by section 7(3);»;
- «**trust scheme**” means a scheme established under irrevocable trusts;».
- (7) Designate the existing text (amended as set out in the preceding subsections) subsection (1).
- (8) After subsection (1) insert —
- «(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.».

## 56 Financial Services Act 2008 amended

- (1) The *Financial Services Act 2008* is amended as follows.
- (2) In section 3(2), after paragraph (a) insert —
- «(aa) any service to or in relation to a retirement benefits scheme;».
- (3) In Schedule 5 —
- (a) insert «or the *Retirement Benefits Schemes Act 2000*” between “the *Collective Investment Schemes Act 2008*” and “or any public document” in paragraph 1(2);
- (b) insert «or the *Retirement Benefits Schemes Act 2000*” immediately before the semicolon in paragraph 2(1)(c);
- (c) for paragraph 2(1)(f) substitute —
- «(f) for the purpose of enabling or assisting the Authority to discharge its functions under this Act or any other enactment;»;
- (d) immediately after paragraph 2(1)(da) insert —
- «(db) for the purpose of enabling or assisting the Treasury to discharge its functions in relation to occupational pension schemes and personal pension schemes;
- (dc) in respect of a person who provides services to the Authority in the discharge of its functions under any enactment, for the purpose of enabling or assisting that person to provide those services;
- (dd) in respect of a person who provides services to the Treasury in the discharge of its functions under this Act or the *Retirement Benefits Schemes Act 2000*, for the purpose of enabling or assisting that person to provide those services;»;

- (e) insert «or section 43 of the *Insurance Act 2008*» between “under section 25” and “to discharge” in paragraph 2(1)(e);
- (f) in paragraph 2(1)(l), for “section 15 and Schedule 2 to this Act” substitute «section 15 of and Schedule 2 to this Act, sections 34A to 34F of the *Retirement Benefits Schemes Act 2000*,»;
- (g) for paragraph 2(1)(m) substitute —
  - «(m) for the purpose of enabling or assisting in the discharge of the functions of the auditor of —
    - (i) a permitted person;
    - (ii) a retirement benefits scheme; or
    - (iii) a trustee or an administrator of a retirement benefits scheme (whether in the Island or elsewhere);»;
- (h) after paragraph (t), insert —
  - «(ta) for the purpose of enabling or assisting the Pensions Ombudsman, or a Deputy Pensions Ombudsman appointed under Part X of the Pension Schemes Act 1993 (of Parliament) as it applies in the Island, in the discharge of that person’s functions;»; and
- (i) for paragraph 2(4) substitute —
  - «(4) Paragraph 1 does not preclude the disclosure —
    - (a) of any information contained in any notice or copy of a notice or copy of a notice served under this Act, the *Collective Investment Schemes Act 2008* or the *Retirement Benefits Schemes Act 2000*, notice of the contents of which has not been given to the public, by the person on whom it was served or any person obtaining the information directly or indirectly from the person on whom it was served; or
    - (b) of any information contained in any register or list required to be kept under this Act, the *Collective Investment Schemes Act 2008* or the *Retirement Benefits Schemes Act 2000*.».

## 57 Insurance Act 2008 amended

- (1) The *Insurance Act 2008* is amended as follows.
- (2) In Schedule 5 —
  - (a) in paragraph 1(1), omit paragraphs (j) and (k);
  - (b) omit paragraph 1(6);
  - (c) in paragraph 2(5) —
    - (i) between the comma and “section 52” insert «or»; and
    - (ii) omit “or section 46 of the *Retirement Benefits Schemes Act 2000*”;

- (d) in paragraph 3(7) —
    - (i) between the comma and “section 52” insert «or»; and
    - (ii) omit “or section 46 of the *Retirement Benefits Schemes Act 2000*”; and
  - (e) in paragraph 5(6), in the definition of “relevant Act” —
    - (i) for the comma in “means this Act,” substitute «or»; and
    - (ii) omit “*Retirement Benefits Schemes Act 2000* or”.
- (3) In Schedule 6 —
- (a) for paragraph 1(2) substitute —
    - «(2) Subject to subparagraph (4), information is restricted information for the purposes of this paragraph if it is obtained by the primary recipient for the purposes of, or in discharge of such person’s functions under, this Act or any public document made under this Act (whether or not by virtue of any requirement to supply it made under those regulations).»;
  - (b) for paragraph 2(1)(e) substitute —
    - «(e) with a view to the institution of or otherwise for the purposes of any civil proceedings arising under or by virtue of this Act»;
  - (c) for paragraph 2(1)(g) substitute —
    - «(g) in respect of a person who provides services to the Authority in the discharge of its functions under any enactment, for the purpose of enabling or assisting that person to provide those services»;
  - (d) after paragraph 2(1)(g), insert —
    - «(ga) in respect of a person who provides services to the Treasury in the discharge of its functions under this Act, for the purpose of enabling or assisting that person to provide those services»;
  - (e) omit paragraph 2(1)(j);
  - (f) omit paragraph 2(1)(p);
  - (g) in paragraph 2(1)(q), for “paragraph 5(5) of Schedule 5 of this Act” substitute «section 36 of and Schedule 5 to this Act»;
  - (h) for paragraph 2(1)(r) substitute —
    - «(r) for the purpose of enabling or assisting an auditor of an insurer, an insurance manager or an insurance intermediary to discharge that person’s functions»;
  - (i) omit paragraph 2(1)(y); and
  - (j) for paragraph 2(6) substitute —
    - «(6) Paragraph 1 does not preclude the disclosure —

- (a) of any information contained in any notice or copy of a notice served under this Act, notice of the contents of which has not been given to the public, by the person on whom it was served or any person obtaining the information directly or indirectly from the person on whom it was served;
- (b) of any information contained in any register required to be kept under this Act.».

## 58 Transitional provision

- (1) This section applies to —
  - (a) section 7 of the Act, as substituted (see section 11);
  - (b) sections 7A to 7C of the Act, as inserted (see section 12);
  - (c) section 8 of the Act, as substituted (see section 13);
  - (d) sections 8A and 8B of the Act, as inserted (see section 14);
  - (e) section 9 of the Act, as substituted (see section 15); and
  - (f) sections 10A and 10B of the Act, as inserted (see section 17).
- (2) Anything done prior to the commencement of the sections referred to in subsection (1) (as substituted or inserted as the case may be) in accordance with a provision in Part 3 of the Pensions Act 2004 (of Parliament) has effect as if done under a substantially similar provision referred to in subsection (1).