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The text of this internet version of the Act has been prepared to reflect the text as made and as subsequently amended

RETIREMENT BENEFITS SCHEMES ACT 2000

(Chapter 14)

Arrangement of Sections

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AN ACT

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

WE, your Majesty's most dutiful and loyal subjects, the Council and Keys of the said Isle, do humbly beseech your Majesty that it may be enacted, and be it enacted, by the Queen'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 (that is to say):—

PART 1

PROMOTION OF RETIREMENT BENEFITS SCHEMES

1 Restrictions on promotion

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

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

PART 2

AUTHORISED RETIREMENT BENEFITS SCHEMES

Authorisation

2 Applications for authorisation

- (1) Any application for the registration of a scheme as an authorised scheme for the purposes of this Act shall be made by the trustee of the scheme.
- (2) Any such application-
 - (a) shall be made in such manner as the Supervisor may direct;
 - (b) shall contain or be accompanied by such information as he may require for the purpose of determining the application; and
 - (c) shall be accompanied by such fee as may be prescribed.
- (3) At any time after receiving an application and before determining it the Supervisor may require the applicant to furnish additional information.
- (4) The directions and requirements given or imposed under subsections (2) and (3) may differ as between different applications.

- (5) Any information to be furnished to the Supervisor under this section shall, if he so requires, be in such form or verified in such manner as he may specify.

3 Authorisation

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

in and from within the Island except where a registered schemes administrator is responsible for the administration of the scheme;

- (g) the scheme or its trustee or administrator do not comply with any requirements prescribed for the purposes of this paragraph.
- (8) An occupational scheme is not qualified to be an authorised scheme unless-
 - (a) the scheme is bona fide established for the sole purpose of providing relevant benefits in respect of service as an employee, being benefits payable to, or to the widow, children or dependants or personal representatives of, the employee;
 - (b) the scheme is recognised by the employer and the employees to whom it relates, and that every employee who is, or has a right to be, a member of the scheme has been given written particulars of all essential features of the scheme which concern him;
 - (c) the employer is a contributor to the scheme;
 - (d) the constitutional documents of the scheme do not in any circumstances permit, whether during the subsistence of the scheme or later, the repayment of an employee's contributions under the scheme other than as permitted by regulations.
- (9) A scheme may be registered as an authorised scheme under this Act notwithstanding that all the members or a significant proportion of them are outside the Island.
- (10) Where the Supervisor refuses an application for registration as an authorised scheme or exercises his power under subsection (3), he shall do so by giving the applicant written notice stating the reasons for his decision.

4 Revocation of authorisation

- (1) The Supervisor may, with the consent of the IPA, revoke the registration of an authorised scheme if it appears to him-
 - (a) that any of the requirements for registration are no longer satisfied;
 - (b) that it is undesirable in the interests of the members or potential members that the scheme should continue to be authorised; or
 - (c) without prejudice to paragraph (b), that the trustee or administrator of the scheme has contravened any provision of-
 - (i) this Act; or
 - (ii) the Insurance Act 2008; or
 - (iii) the Financial Services Act 2008;
 - (iv) and (v)
 - (vi) any rules, regulations or code made under any of those Acts or, in purported compliance with any such provision, has furnished the IPA, the Insurance Supervisor, the Supervisor or the Financial Supervision Commission with

false, inaccurate or misleading information; or

- (d) that the trustee or administrator of the scheme has contravened any condition, prohibition or requirement imposed under the Acts specified in paragraph (c)(i) to (v).
- (2) For the purposes of subsection (1)(b), the Supervisor may take into account any matter relating to the scheme, the trustee or administrator, a director or controller of the trustee or administrator or any person employed by or associated with the trustee or administrator in connection with the scheme.
- (3) The Supervisor may, with the consent of the IPA, revoke the registration of an authorised scheme at the request of the trustee or administrator of the scheme.
- (4) The Supervisor may refuse a request under subsection (3) if he considers that any matter concerning the scheme should be investigated as a preliminary to a decision on the question whether the registration should be revoked or that revocation would not be in the interests of the members.
- (5) In any case in which registration has been revoked under this section, the provisions of sections 6 to 20 shall continue to apply to the scheme in the same manner as they apply to an authorised scheme.

5 Representations against revocation

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

Constitution, officers, accounts, funding, etc.

6 Constitution and management

- (1) The Treasury may make regulations as to-
 - (a) the constitution and management of authorised schemes;
 - (b) the trustee, administrator, auditor, actuary and investment manager of any such scheme;
 - (c) the powers and duties of the trustee, administrator or the participating, or previously participating, employer of such a scheme;
 - (d) the rights and obligations of the members of any such scheme;

- (e) the annual accounts of such a scheme fund, and the statements, reports and information to be annexed to such accounts.
- (2) Without prejudice to the generality of subsection (1), regulations under this section may make provision-
 - (a) as to the management and valuation of the assets and obligations of the scheme;
 - (b) as to the expenses of the scheme and the means of meeting them;
 - (c) for the qualifications and experience, appointment, resignation, removal, powers and duties of the trustee and administrator of the scheme;
 - (d) for the qualifications and experience, appointment, resignation, removal, powers and duties of an actuary, auditor and investment manager for the scheme (in this Act referred to collectively as 'professional advisers');
 - (e) for restricting or regulating the investment and borrowing powers exercisable in relation to the scheme;
 - (f) requiring the keeping and maintenance of records with respect to the transactions and financial position of the scheme and for the keeping of records on the Island and for the inspection of records;
 - (g) requiring the preparation of periodical reports with respect to the scheme by the trustee, administrator or professional advisers, as the case may be, of the retirement benefits scheme, and the furnishing of those reports to the Supervisor and, if the regulations so require, to the members;
 - (h) requiring the trustee of a scheme-
 - (i) to obtain at prescribed times or on the happening of prescribed events such information and documents as are prescribed; and
 - (ii) to furnish that information and copies of those documents to the Supervisor and such persons as may be prescribed in the form, manner and at the time prescribed;
 - (i) restricting or regulating the manner in which a scheme deals with surplus funds;
 - (j) providing for the content, format and audit of the annual accounts of an authorised scheme;
 - (k) with respect to the amendment of the scheme;
 - (l) with respect to the payment (including time of payment), nature and amount of benefits which may or may not be paid to members and other beneficiaries of an authorised scheme;
 - (m) prohibiting, restricting or regulating the transfer of-
 - (i) any liability for the payment of any benefits to or from an authorised scheme;
 - (ii) any rights to any benefits to or from an authorised scheme.

- (3) Regulations under this section may make provision as to, and to the contents of, the documents constituting the scheme, and, without prejudice to the generality of that power, may include provision requiring any of the matters mentioned in subsection (2) to be dealt with in such documents as may be specified.
- (4) Regulations under this section shall be binding on the trustee, administrator, professional advisers and members independently of the contents of such documents and, in the case of the members, shall have effect as if contained in them.
- (5) Without prejudice to the generality of subsection (4), where regulations under this section conflict with any rule of law (whether at common law or contained in any enactment) relating to-
 - (a) the constitution, powers and management of trusts or bodies corporate;
 - (b) the powers and duties of trustees or the directors of bodies corporate;
 - (c) the rights and obligations of beneficiaries of trusts or members of bodies corporate, the regulations shall prevail.
- (6) Regulations under this section may provide that any person who is in contravention of a specified regulation is guilty of an offence.
- (7) Regulations under this section may contain such incidental and transitional provisions as the Treasury thinks necessary or expedient.

7 Technical funding requirement

- (1) Every occupational scheme to which this section applies is subject to a requirement (referred to in this Act as 'the technical funding requirement') that the value of the assets of the scheme shall not be-
 - (a) less than such amount; nor
 - (b) more than such amount,as may be prescribed in regulations for the purposes of this section.
- (2) This section applies to authorised occupational schemes other than-
 - (a) a money purchase scheme, or
 - (b) a scheme falling within a prescribed class or description.
- (3) For the purposes of this section and sections 8 to 10, 13 and 14, the liabilities and assets to be taken into account, and their amount or value, shall be determined, calculated and verified by a prescribed person and in the prescribed manner.
- (4) In calculating the value of any liabilities for those purposes, a provision of the scheme which limits the amount of its liabilities by reference to the amount of its assets is to be disregarded.

[S 7 not yet in force.]

8 Valuation and certification of assets and liabilities

- (1) The trustee of an authorised scheme to which section 7 applies must-
 - (a) obtain, within a prescribed period, an actuarial valuation from the scheme actuary and afterwards obtain such a valuation before the end of prescribed intervals, and
 - (b) on prescribed occasions or within prescribed periods, obtain a certificate prepared by the scheme actuary-
 - (i) stating whether or not in his opinion the contributions payable towards the scheme are adequate for the purpose of securing that the technical funding requirement will continue to be met throughout the prescribed period or, if it appears to him that it is not met, will be met by the end of that period, and
 - (ii) indicating any relevant changes that have occurred since the last actuarial valuation was prepared.
- (2) Subject to subsection (3), the trustee must-
 - (a) if the actuary states in such a certificate that in his opinion the contributions payable towards the scheme are not adequate for the purpose of securing that the technical funding requirement will continue to be met throughout the prescribed period or, if it appears to him that it is not met, will be met by the end of that period, or
 - (b) in prescribed circumstances,
obtain an actuarial valuation within the period required by subsection (4).
- (3) In a case within subsection (2)(a), the trustee is not required to obtain an actuarial valuation if-
 - (a) in the opinion of the scheme actuary, the value of the scheme assets is not less than the amount prescribed for the purposes of this subsection, and
 - (b) since the date on which the actuary signed the certificate referred to in that subsection, the schedule of contributions for the scheme has been revised under section 9(3)(b).
- (4) If the trustee obtains a valuation under subsection (2) he must do so-
 - (a) in the case of a valuation required by paragraph (a) of that subsection, within the period of 6 months beginning with the date on which the actuary's certificate was signed, and
 - (b) in any other case, within a prescribed period.
- (5) A valuation or certificate obtained under subsection (1) or (2) must be prepared in such manner, give such information and contain such statements as may be prescribed.
- (6) A trustee who fails to comply with this section is guilty of an offence.

[S 8 not yet in force.]

9 Schedules of contributions

- (1) The trustee and administrator of an occupational scheme to which section 7 applies must secure that there is prepared, maintained and from time to time revised a schedule (referred to in this section and in section 10 as a 'schedule of contributions') showing-
 - (a) the rates of contributions payable towards the scheme by or on behalf of the employer and the active members of the scheme, and
 - (b) the dates on or before which such contributions are to be paid.
- (2) The schedule of contributions for an occupational scheme must satisfy prescribed requirements.
- (3) The schedule of contributions for an occupational scheme-
 - (a) must be prepared before the end of a prescribed period beginning with the signing of the first actuarial valuation for the scheme,
 - (b) may be revised from time to time where the revisions are previously agreed by the trustee and administrator and the employer and any revision in the rates of contributions is certified by the actuary of the scheme, and
 - (c) must be revised before the end of a prescribed period beginning with the signing of each subsequent actuarial valuation.
- (4) The matters shown in the schedule of contributions for an occupational scheme-
 - (a) must be matters previously agreed by the trustee and administrator and the employer, or
 - (b) if no such agreement has been made as to all the matters shown in the schedule, must be-
 - (i) rates of contributions determined by the trustee and administrator, being such rates as in their opinion are adequate for the purpose of securing that the technical funding requirement will continue to be met throughout the prescribed period or, if it appears to them that it is not met, will be met by the end of that period, and
 - (ii) other matters determined by the trustee and the administrator;and the rates of contributions shown in the schedule must be certified by the actuary of the scheme.
- (5) An agreement for the purposes of subsection (4)(a) is one which is made by the trustee and administrator and the employer during the prescribed period beginning with the signing of the last preceding actuarial valuation for the scheme.
- (6) The actuary may not certify the rates of contributions shown in the schedule of contributions-
 - (a) in a case where on the date he signs the certificate it appears to him that the

technical funding requirement is met, unless he is of the opinion that the rates are adequate for the purpose of securing that the requirement will continue to be met throughout the prescribed period, and

- (b) in any other case, unless he is of the opinion that the rates are adequate for the purpose of securing that the requirement will be met by the end of that period.
- (7) The Supervisor may extend (or further extend) the period referred to in subsection (6), and where he refuses to extend (or further extend) the period he shall give written notice of the refusal together with a statement of reasons for the decision.
- (8) Where, in the case of any occupational scheme to which section 7 applies, this section is not complied with-
 - (a) section 33 applies to any trustee and administrator who has failed to take all such steps as are reasonable to secure compliance, and
 - (b) section 50 applies to any trustee and administrator who has failed to take all such steps.

[S 9 not yet in force.]

10 Determination of contributions: supplementary

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

[S 10 not yet in force.]

11 Schedule of payments to certain schemes

- (1) This section applies to authorised schemes which are-

- (a) occupational schemes which are money purchase schemes; and
 - (b) personal schemes,
- other than one falling within a prescribed class or description.
- (2) The trustee and the administrator of every scheme to which this section applies must secure that there is prepared, maintained and from time to time revised a schedule (referred to in this section and section 12 as a 'payment schedule') showing-
 - (a) in the case of a scheme referred to in subsection (1)(a), the rates of contributions payable towards the scheme by or on behalf of the employer and the active members of the scheme, and
 - (b) in all cases, such other amounts payable towards the scheme as may be prescribed, and
 - (c) the dates on or before which payments of contributions or other amounts are to be made (referred to in those sections as 'due dates').
 - (3) The payment schedule for a scheme must satisfy prescribed requirements.
 - (4) The matters shown in the payment schedule for a scheme-
 - (a) to the extent that the scheme makes provision for their determination, must be so determined, and
 - (b) otherwise-
 - (i) must be matters previously agreed between the employer and the trustee or administrator of the scheme, or
 - (ii) if no such agreement has been made as to all matters shown in the schedule (other than those for whose determination the scheme makes provision), must be matters determined by the trustee and the administrator of the scheme.
 - (5) If this section is not complied with-
 - (a) section 33 applies to any trustee and administrator who has failed to take all such steps as are reasonable to secure compliance, and
 - (b) section 50 applies to any trustee or administrator who has failed to take all such steps.

12 Schedules of payments: supplementary

- (1) Except in prescribed circumstances, the trustee and the administrator of a scheme to which section 11 applies must, where any amounts payable in accordance with the payment schedule have not been paid on or before the due date, give notice of that fact, within the prescribed period, to the Supervisor and to the members of the scheme.
- (2) Any such amounts which for the time being remain unpaid after that date (whether payable by the employer or not) shall, if not a debt due from the employer to the trustee or administrator apart from this subsection, be treated as such a debt.

- (3) Any amounts payable in accordance with the payment schedule by or on behalf of the employer must be paid on or before the due date and if this subsection is not complied with the employer shall be guilty of an offence.
- (4) If, in the case of a scheme to which section 11 applies, subsection (1) is not complied with the trustee and administrator shall both be guilty of an offence.
- (5) The administrator of a scheme to which section 11 applies shall keep a copy of the latest version of the payments schedule for that scheme at his principal place of business in the Island.
- (6) If an administrator fails to comply with subsection (5) section 50 applies to the administrator who has failed to comply.

13 Serious underprovision

- (1) Subsection (2) applies where, in the case of an occupational scheme to which section 7 applies, an actuarial valuation shows that, on the effective date of the valuation, the value of the scheme assets is less than the amount prescribed for the purposes of this subsection (the difference shown in the valuation being referred to in this section as 'the shortfall').

[Subs (1) amended by Life Assurance (Insurable Interest) Act 2004 Sch 2.]

- (2) The employer must-
 - (a) by making an appropriate payment to the trustee or administrator, or
 - (b) by a prescribed method,secure an increase in the value of the scheme assets which, taken with any contributions paid, is not less than the shortfall.
- (3) The required increase in that value must be secured-
 - (a) before the end of a prescribed period beginning with the signing of the valuation, or
 - (b) if the actuarial valuation was obtained by reason of such a statement in a certificate as is referred to in section 8(2), before the end of a prescribed period beginning with the signing of the certificate.
- (4) Except in prescribed circumstances, if the employer fails to secure the required increase in value before the end of the period applicable under subsection (3), the trustee or administrator must, within the period of 14 days beginning with the end of that period, give written notice of that fact to the Supervisor and to the members of the scheme.
- (5) If the employer fails to secure the required increase in value before the end of the period applicable under subsection (3), then so much of the shortfall as, at any subsequent time, has not been met by an increase in value under subsection (2) made-
 - (a) by making an appropriate payment to the trustee or administrator,

(b) by a prescribed method, or

(c) by contributions made before the end of that period,

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

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

[S 13 not yet in force.]

14 Serious overprovision

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

- (b) section 50 applies to any trustee or administrator who has failed to take all such steps.

[S 14 not yet in force.]

15 Annual accounts

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

16 Publication of scheme particulars

- (1) The Treasury may make regulations requiring the trustee of an authorised scheme to submit to the Supervisor and publish or make available to past, present and prospective members of the scheme a document ('scheme particulars') containing information about the scheme and complying with such requirements as are specified in the regulations.
- (2) Regulations under this section may require the trustee of an authorised scheme to submit and publish or make available revised or further scheme particulars if-
 - (a) there is a significant change affecting any matter contained in such particulars previously published or made available whose inclusion was required by the regulations; or
 - (b) a significant new matter arises the inclusion of information in respect of which would have been required in previous particulars if it had arisen when those particulars were prepared.
- (3) Regulations under this section may provide for the payment, by the person or persons who in accordance with the regulations are treated as responsible for any scheme particulars, of compensation to any person who has become or agreed to become a member in the scheme and suffered loss as a result of any untrue or misleading statement in the particulars or the omission from them of any matter required by the

regulations to be included.

- (4) Regulations under this section shall not affect any liability which any person may incur apart from the regulations.
- (5) If regulations under this section are not complied with-
 - (a) section 33 applies to any trustee who has failed to take all such steps as are reasonable to secure compliance, and
 - (b) section 50 applies to any trustee who has failed to take all such steps.

17 Professional advisers

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

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

- (A1) No trustee or administrator of an authorised scheme shall appoint a person as director, chief executive or manager; nor shall a person become controller of such a trustee or administrator, unless a written notice containing such particulars as may be prescribed is served on the Supervisor by-
- (a) in the case of a director, chief executive or manager, the trustee or administrator as the case requires; or
 - (b) in the case of a controller, the proposed controller,
not less than 28 days before the event.
- (1) The trustee of an authorised scheme shall, as soon as practicable, give written notice to the Supervisor of-
 - (a) any proposal to-
 - (i) alter the scheme;
 - (ii) appoint a new scheme administrator;
 - (iii) remove the scheme administrator;
 - (iv) appoint a professional adviser;
 - (v) remove a professional adviser, and

(b) the resignation of-

- (i) a professional adviser;
- (ii) the administrator of the scheme,

and the notice shall be accompanied by a statement of the reasons for such proposal or resignation.

- (2) The administrator of an authorised scheme shall, as soon as practicable, give written notice to the Supervisor of any proposal-
 - (a) for a trustee of the scheme to cease to hold office; or
 - (b) to replace the trustee,and the notice shall be accompanied by a statement of the reasons for the proposal.
- (3) Effect shall not be given to any proposal under subsection (1)(a) or under subsection (2) unless-
 - (a) the Supervisor has given his approval to the proposal; or
 - (b) one month has elapsed since the date on which the notice was given under subsection (1) or (2) without the Supervisor having given written notice to the trustee or, as the case requires, the administrator that the proposal is not approved together with a statement of reasons for the decision.
- (4) Where a professional adviser resigns from an authorised scheme, he shall notify the Supervisor in writing within 7 days of his reason for resigning.
- (5) A trustee who fails to comply with subsection (1) is guilty of an offence.
- (6) An administrator who fails to comply with subsection (2) is guilty of an offence.
- (7) A professional adviser who fails to comply with subsection (4) is guilty of an offence.

19 Directors, controllers, etc

- (1) If it appears to the Supervisor that any individual is not a fit and proper person-
 - (a) to be appointed as a director, chief executive or manager; or
 - (b) to become a controller,of the trustee or administrator of an authorised scheme or an authorised scheme of any specified description, the Supervisor, with the consent of the IPA, may direct that the individual shall not, without the written consent of the Supervisor, be appointed as such a director, chief executive or manager nor become such a controller.
- (2) If it appears to the Supervisor that any-
 - (a) director, chief executive or manager; or
 - (b) controller,of the trustee or administrator of an authorised scheme or an authorised scheme of any

specified description, is not a fit and proper person to continue as such, the Supervisor, with the consent of the IPA, may direct that the individual shall not, without the written consent of the Supervisor, continue as such a director, chief executive, manager or controller.

(3) The Supervisor shall give written notice to the individual concerned of any decision to make a direction under this section together with a statement of reasons for the decision and, except where the Supervisor is satisfied that urgent action is necessary, the notice shall be served on the individual not less than 28 days before the date on which the direction is to take effect.

(4) Any consent by the Supervisor under subsection (1) or (2) may be-

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

and the Supervisor shall give written notice to the individual concerned of any decision to exercise the powers conferred by paragraph (a), (b) or (c) together with a statement of reasons for the decision.

(5) Any individual who-

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

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

(6) In this section-

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

'manager' means an individual employed by the body corporate concerned who, under the immediate authority of a director or its chief executive-

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

20 Avoidance of exclusion clauses

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

PART 3
SCHEMES FROM OTHER JURISDICTIONS

21 Schemes authorised, etc in designated countries

- (1) Subject to subsections (4) and (5), a scheme which is managed in and authorised under the law of a designated country or territory outside the Island is a recognised scheme if-
 - (a) the scheme is of a class specified by an order made by the Treasury; and
 - (b) it is registered in a register maintained under section 45.
- (2) In this section, 'designated country or territory' means any country or territory designated for the purposes of this section by an order made by the Treasury.
- (3) The Treasury shall not make an order under subsection (1) or (2) unless it is satisfied that adequate protection is afforded to members.
- (4) A scheme shall not be a recognised scheme under this section unless the trustee of the scheme gives written notice to the Supervisor that he wishes it to be registered as a recognised scheme.
- (5) The notice given by the trustee under subsection (4)-
 - (a) shall contain the name and address of a person in the Island who is authorised to accept on behalf of the trustee any process or any notices or other documents required or authorised to be served on him under this Act; and
 - (b) shall contain or be accompanied by such information and documents as may be prescribed; and
 - (c) shall be accompanied by such fee as may be prescribed.
- (6) Sections 6 and 16 shall have effect in relation to a recognised scheme under this section as they have effect in relation to an authorised scheme.
- (7) Regulations under sections 6 and 16 as applied by subsection (6) may make provision whereby compliance with any requirements imposed by or under the law of a designated country or territory is treated as compliance with any requirement of the regulations.
- (8) An order under subsection (1) may contain such transitional provisions as the Treasury thinks necessary or expedient.

22 Revocation of recognised status

- (1) The Supervisor, with the consent of the IPA, may at any time direct that a scheme shall cease to be a recognised scheme by virtue of section 21 if it appears to him-
 - (a) that it is undesirable in the interests of the members or potential members that the scheme should continue to be recognised; or
 - (b) without prejudice to paragraph (a), that the trustee or administrator of the scheme has contravened any provision of-

- (i) this Act; or
 - (ii) the Insurance Act 2008; or
 - (iii) the Financial Services Act 2008;
 - (iv) and (v)
 - (vi) any rules, regulations or code made under any of those Acts or, in purported compliance with any such provision, has furnished the IPA, the Insurance Supervisor, the Supervisor or the Financial Supervision Commission with false, inaccurate or misleading information; or
- (c) that the trustee or administrator of the scheme has contravened any condition, prohibition or requirement imposed under the Acts specified in paragraph (b)(i) to (v).
- (2) For the purposes of subsection (1)(a) the Supervisor may take into account any matter relating to the scheme, the trustee or administrator, a director or controller of the trustee or administrator or any person employed by or associated with the trustee or administrator in connection with the scheme.
 - (3) The Supervisor may give such a direction as is mentioned in subsection (1) at the request of the trustee or administrator of the scheme; but he may refuse to do so if he considers that any matter concerning the scheme should be investigated as a preliminary to a decision on the question whether the direction should be given or the recognition revoked or that the direction or revocation would not be in the interests of the members.
 - (4) Where the Supervisor proposes to give such a direction as is mentioned in subsection (1), he shall give the trustee written notice of his intention to do so, stating the reasons for which he proposes to act and giving particulars of the rights conferred by subsection (5).
 - (5) A person on whom a notice is served under subsection (4) may, within 21 days of the date of service, make written representations to the Supervisor and, if desired, oral representations to the Supervisor.
 - (6) The Supervisor shall have regard to any representations made in accordance with subsection (5) in determining whether to give a direction under subsection (1).

23 Facilities, information and assets in the Island

- (1) The Treasury may make regulations requiring the trustee of recognised schemes to maintain in the Island such facilities as it thinks desirable in the interests of members and as are specified in the regulations.
- (2) The Supervisor may by notice in writing together with a statement of reasons for the decision require the trustee of any recognised scheme to include such explanatory information as is specified in the notice in any investment advertisement issued or caused to be issued by him in the Island in which the scheme is named.

- (3) The Supervisor may direct the trustee of a recognised scheme in writing together with a statement of reasons for the direction, to maintain in the Island, or transfer to and keep in the custody of a person specified in the direction, assets of the scheme of such value and description as may be directed.
- (4) No assets kept in the custody of any person pursuant to a direction given under subsection (3) shall, so long as the direction is in force-
 - (a) be removed from that person; or
 - (b) be made the subject of any mortgage, charge or lien, except with the prior written consent of the Supervisor.
- (5) Any person who fails to comply with regulations made under this section, a direction given under this section or who contravenes subsection (4), shall be guilty of an offence.
- (6) Any mortgage, charge or lien created in contravention of subsection (4) shall be void against a person winding up the scheme and any creditor of the scheme.

PART 4

GENERAL REGISTER OF SCHEMES

24 Registration of retirement benefits schemes

- (1) The Treasury may by regulations make provision-
 - (a) requiring-
 - (i) the trustee or administrator of a scheme; and
 - (ii) any person constituting or establishing, or concerned in constituting or establishing a scheme,

to cause the scheme to be registered in a register to be established under this section of all or any specified class of schemes;
 - (b) for the compilation and maintenance of a register of schemes;
 - (c) for conferring on the IPA such functions relating to the compilation and maintenance of the register as may be specified in the regulations;
 - (d) for requiring the trustee or administrator of a scheme to provide such information to its members, at such intervals and in such form, as may be prescribed;
 - (e) for contravention of, or failure to comply with any provision contained in regulations under any such provision to be an offence under this Act.
- (2) The register-
 - (a) may consist of one or more parts, as may be prescribed;
 - (b) shall be organised in such manner, and contain such information relating to schemes, as may be prescribed; and

- (c) subject to the regulations, may be kept in such manner and form as the IPA thinks fit.
- (3) The regulations may make provision-
 - (a) for the register, or extracts from the register, or for copies of the register or of extracts from the register, to be open to inspection by, and
 - (b) for copies of the register, or of extracts from it, to be supplied to, such persons, in such manner, at such times, upon payment of such fees, and subject to such other terms and conditions, as may be prescribed.
- (4) The regulations may require-
 - (a) any person who is or has been-
 - (i) a trustee or administrator of a scheme, or
 - (ii) the employer in relation to employment of any description or category to which an occupational scheme relates, and
 - (b) such other persons as may be prescribed, to provide the IPA with such information for the purposes of the register in such form and within such time as may be prescribed.
- (5) Subsections (2) to (4) are without prejudice to the generality of subsection (1).
- (6) The inclusion of a scheme in a register established under this section shall not be taken to imply that the scheme is authorised under section 3 nor recognised under section 21.

PART 5

POWERS OF SUPERVISION, INVESTIGATION, INTERVENTION, etc.

25

26 Inspection and investigation

Schedule 5 to the Insurance Act 2008 shall have effect in relation to the inspection and investigation powers of the Supervisor.

27

28

29 Injunctions

- (1) If, on the application of the Supervisor, the High Court is satisfied that-
 - (a) there is a reasonable likelihood that a particular person will do any act which constitutes a misuse or misappropriation of assets of a scheme, or
 - (b) that a particular person has done any such act and that there is a reasonable likelihood that he will continue or repeat the act in question or do a similar act,

the court may grant an injunction restraining him from doing so.

- (2) If on the application of the Supervisor, the High Court is satisfied-
- (a) that there is a reasonable likelihood that a particular person will contravene any provision of this Act or any regulations under this Act;
 - (b) that a particular person has contravened any such provision and that there is a reasonable likelihood that he will continue or repeat the contravention; or
 - (c) that a particular person has contravened any such provision and that there are steps that could be taken for remedying the contravention,

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

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

30 Restitution

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

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

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

31 Directions

- (1) If it appears to the Supervisor-
- (a) that any of the requirements for the registration of a scheme as an authorised scheme are no longer satisfied;
 - (b) that the exercise of the power conferred by this subsection is desirable in the interests of members or potential members in any scheme; or
 - (c) without prejudice to paragraph (b), that the trustee or administrator of, or a professional adviser to, any scheme has contravened any provision of-
 - (i) this Act; or

- (ii) the Insurance Act 2008; or
 - (iii) the Financial Services Act 2008;
 - (iv) and (v)
 - (vi) any rules, regulations or code made under any of those Acts or, in purported compliance with any such provision, has furnished the IPA, the Insurance Supervisor, the Supervisor or the Financial Supervision Commission with false, inaccurate or misleading information; or
- (d) that the trustee or administrator of the scheme has contravened any condition, prohibition or requirement imposed under the Acts specified in paragraph (c)(i) to (v),

the Supervisor, with the consent of the IPA, may give a direction under subsection (2).

- (2) A direction under this subsection may-
- (a) require the trustee and administrator of the scheme not to admit new members to the scheme from a date specified in the direction until such further date as is specified in that or another direction;
 - (b) require the trustee and administrator of the scheme to cause it to be wound up by such date as is specified in the direction or, if no date is specified, as soon as practicable;
 - (c) require the trustee and administrator of the scheme to take such other action as the Supervisor considers to be desirable in the interests of the members of the scheme.
- (3) The revocation of the registration of a scheme as an authorised scheme shall not affect the operation of any direction under subsection (2) which is then in force and a direction may be given under that subsection in relation to a scheme in the case of which the registration of an authorised scheme has been revoked.
- (4) If it appears to the Supervisor-
- (a) that the exercise of the power conferred by this subsection is desirable in the interests of members or potential members in a recognised scheme;
 - (b) without prejudice to paragraph (a), that the trustee or administrator of, or a professional adviser to, such a scheme has contravened any provision of-
 - (i) this Act; or
 - (ii) the Insurance Act 2008; or
 - (iii) the Financial Services Act 2008;
 - (iv) Collective Investment Schemes Act 2008;
 - (v)
 - (vi) any rules, regulations or code made under any of those Acts or, in purported

compliance with any such provision, has furnished the IPA, the Insurance Supervisor, the Supervisor or the Financial Supervision Commission with false, inaccurate or misleading information; or

- (c) has contravened any condition, prohibition or requirement imposed under this Act, the Insurance Act 2008, the Collective Investment Schemes Act 2008 or the Financial Services Act 2008,

the Supervisor, with the consent of the IPA, may direct that the scheme shall not be a recognised scheme for a specified period or until the occurrence of a specified event or until specified conditions are complied with.

- (5) For the purposes of subsections (1)(b) and (4)(a) the Supervisor may take into account any matter relating to the scheme, the trustee or administrator, a director or controller of the trustee or administrator or any person employed by or associated with the trustee or administrator in connection with the scheme.
- (6) The Supervisor, with the consent of the IPA, may, either on his own initiative or on the application of the trustee or administrator of, or a professional adviser to, the scheme concerned, withdraw or vary a direction given under this section if it appears to the Supervisor that it is no longer necessary for the direction to take effect or continue in force or, as the case may be, that it should take effect or continue in force in a different form.
- (7) A trustee, administrator or professional adviser who is in contravention of a direction given in accordance with this section shall be guilty of an offence.
- (8) A direction under this section requiring a scheme to be wound up may include such directions with respect to the manner and timing of the winding up as the Supervisor thinks appropriate having regard to the purposes of the direction.
- (9) The winding up of a scheme in pursuance of a direction under this section is as effective in law as if it had been made under powers conferred by or under the scheme.
- (10) A direction under this section may be made and complied with in relation to a scheme-
- (a) in spite of any enactment or rule of law, or any rule of the scheme, which would otherwise operate to prevent the winding up, or
 - (b) without regard to any such enactment, rule of law or rule of the scheme as would otherwise require, or might otherwise be taken to require, the implementation of any procedure or the obtaining of any consent, with a view to the winding up.

32 Notice of directions

- (1) The power to give a direction under section 31 in relation to a scheme shall be exercisable by written notice served by the Supervisor on the trustee or administrator and any such notice shall take effect on such date as is specified in the notice.
- (2) If the Supervisor refuses to withdraw or vary a direction on the application of the trustee or administrator of the scheme concerned he shall serve that person with a

written notice of refusal.

- (3) A notice giving a direction, or varying it otherwise than on the application of the trustee or administrator concerned, or refusing to withdraw or vary a direction on the application of such a person shall state the reasons for which the direction was given or varied or, as the case may be, why the application was refused.
- (4) The Supervisor may give public notice of a direction given by him under section 31 and of any withdrawal or variation of such a direction; and any such notice may, if the Supervisor thinks fit, include a statement of the reasons for which the direction was given, withdrawn or varied.

33 Removal of trustee, administrator, etc

- (1) In any case in which the Supervisor has power to give a direction under section 31(2) in relation to an authorised scheme or, by virtue of subsection (3) of that section, in relation to a scheme which has been such a scheme, the Supervisor, with the consent of the IPA, may by order-
 - (a) direct the removal of the trustee or administrator, or both the trustee and administrator, of the scheme and replace either or both of them with a person or persons nominated by him and appearing to him to satisfy the requirements of section 3; or
 - (b) if it appears to him that no, or no suitable, person satisfying those requirements is available, direct the removal of the trustee or administrator, or both the trustee and administrator, and appoint an appropriate person to wind up the scheme.
- (2) The Supervisor may make such order as he thinks fit under this section; and may, revoke any such order as is mentioned in subsection (1)(b) and substitute such an order as is mentioned in subsection (1)(a).
- (3) The Supervisor shall give written notice of the making of an order under this section to the trustee and administrator of the scheme concerned and take such steps as he considers appropriate for bringing the making of the order to the attention of the members.
- (4) An order under subsection (1)(a) shall have effect to-
 - (a) discharge either or both the trustee and the administrator of the scheme concerned; and
 - (b) appoint the nominated person or persons in his or their place, and any such appointee shall have the same powers, authorities, and discretions and may in all respects act in the same manner as the person or persons replaced.
- (5) An order under subsection (1) may contain such supplemental provisions as the Supervisor thinks fit.
- (6) Section 18 shall not apply in respect of a trustee or administrator appointed by an order

made on an application under subsection (1)(b).

34 Appointment of inspector

- (1) The Supervisor, with the consent of the IPA, may appoint one or more competent inspectors to investigate and report, in such manner as the Supervisor may direct, on the affairs of, or of the trustee or administrator of, any scheme if the Supervisor is satisfied that it is in the interests of the members to do so or that the matter is of public concern.
- (2) An inspector appointed under subsection (1) to investigate the affairs of, or of the trustee or administrator of, any scheme may also, if he thinks it necessary for the purposes of that investigation, investigate the affairs of, or of the trustee or administrator of, any other such scheme as is mentioned in that subsection whose trustee or administrator is the same person as the trustee or administrator of the first-mentioned scheme.
- (3) Sections 134 and 135 of the Companies Act 1931 (powers of inspectors and proceedings on report by inspectors) shall apply in relation to an inspector appointed under this section as they apply in relation to an inspector appointed under section 134 of that Act, but with the modifications specified in subsection (4).
- (4) In the provisions applied by subsection (3) for any reference to a company or its affairs there shall be substituted a reference to the scheme under investigation and the affairs mentioned in subsections (1) and (2) and any reference to an officer or director of the company shall include a reference to any officer or director of the trustee or administrator of the scheme.
- (5) An inspector appointed under this section may, and if so directed by the Supervisor shall, make interim reports to the Supervisor and on the conclusion of his investigation shall make a final report to him.
- (6) Any such report shall be written or printed as the Supervisor may direct and he may, if he thinks fit-
 - (a) furnish a copy, on request and on payment of a reasonable fee, to the trustee or administrator or any member of a scheme under investigation or any other person whose conduct is referred to in the report; and
 - (b) cause the report to be published.

35 Use of powers for the benefit of certain Government Departments

The powers conferred on the Supervisor and the IPA by sections 25 to 34 may be exercised for the purpose of-

- (a) assisting the Treasury and the Assessor of Income Tax to discharge their functions in relation to income tax; or
- (b) assisting the Department of Social Care to discharge its functions in relation to occupational and personal pension schemes.

PART 6
RETIREMENT BENEFITS SCHEME ADMINISTRATORS

36 Register of scheme administrators

- (1) No person shall act as a scheme administrator for, or in relation to, a scheme, unless that person-
 - (a) is registered in a register kept in accordance with regulations under section 45 and has paid to the Supervisor the prescribed registration fee; or
 - (b) is exempted from registration by regulations.
- (2) An applicant for registration shall provide such documents and information as may be required by the Supervisor.
- (3) No person shall be registered unless he satisfies the Supervisor that-
 - (a) he is a fit and proper person;
 - (b) he carries on business as a scheme administrator at a place of business in the Island; and
 - (c) he complies with such other requirements as are prescribed in regulations.
- (4) The Supervisor may-
 - (a) refuse to register any applicant for registration;
 - (b) cancel any registration at any time.
- (5) Where a person carries on a business which in any respect is or in the opinion of the Supervisor appears to be of a similar character to the business carried on by a registered schemes administrator, that person upon a declaration made by the Supervisor in writing shall be subject to the provisions of this Part and shall be deemed to be acting as a registered schemes administrator.
- (6) Any person who-
 - (a) contravenes subsection (1); or
 - (b) takes or uses any style, title or description which consists of or includes the expression 'registered schemes administrator' when he is not registered; or
 - (c) takes or uses any style, title or description falsely implying, or otherwise pretends, that he is registered,shall be guilty of an offence.
- (7) Regulations may include provisions specifying practices to be followed by registered schemes administrators in carrying on the affairs of a scheme and in particular provisions concerning-

- (a) the keeping of accounts and other records, their form, content, inspection and audit;
 - (b) the financial resources of registered schemes administrators;
 - (c) the treatment to be afforded to money received by registered schemes administrator;
 - (d) the form and content of advertisements (whether printed or broadcast) by registered schemes administrators (including matters which must be, as well as matters which may not be included in the advertisements).
- (8) The fees to be paid in respect of registration and the continuation of registration shall be prescribed under the Fees and Duties Act 1989.
- (9) Where the Supervisor exercises his power under subsection (4), he shall do so by giving the applicant written notice stating the reasons for his decision.

PART 7 MISCELLANEOUS

37

37A Regulatory objectives

Sections 1 and 2 of the Insurance Act 2008 shall apply in respect of the exercise by the Authority and the Supervisor of functions under this Act as they apply in respect of functions under that Act, and the references in that Act to 'policyholder', 'insurance industry', 'insurance business' and 'insurers' shall be construed accordingly.

38 Appeals to the Retirement Benefits Schemes Tribunal

- (1) For the purposes of this Act there shall be a tribunal known as the Retirement Benefits Schemes Tribunal (in this Act referred to as 'the Tribunal').
- (2) The Tribunal shall consist of-
 - (a) a chairman appointed in accordance with the Tribunals Act 2006; and
 - (b) 2 members selected in accordance with regulations made under section 9(b) of the Tribunals Act 2006 from a panel appointed in accordance with that Act.
- (3) Any person who is aggrieved by a decision of the Supervisor to-
 - (a) refuse to register a scheme under section 3;
 - (b) register a scheme subject to conditions under section 3(3);
 - (c) make an authorisation subject to new conditions under section 3(3)(a);
 - (d) vary any existing conditions under section 3(3)(b);
 - (e) revoke an authorisation under section 4;
 - (f) refuse to extend (or further extend) a period under section 9(7), 13(7) or 14(5);

- (g) issue a direction under section 14(2);
 - (h) refuse to give approval under section 18(3);
 - (i) issue a direction under section 19(1) or (2);
 - (j) vary or revoke a consent under section 19(4)(b) or (c);
 - (k) issue a direction under section 22(1);
 - (l) issue a notice or direction under section 23(2) or (3);
 - (m) issue a direction under section 31;
 - (n) refuse to withdraw or vary a direction under section 31(1);
 - (o) refuse to register an administrator under section 36(4)(a);
 - (p) cancel the registration of an administrator under section 36(4)(b);
 - (q) disqualify a person under section 41; or
 - (r) refuse to revoke a disqualification order under section 41,
- may appeal, in accordance with rules made under section 8 of the Tribunals Act 2006, to the Tribunal.
- (4) On the determination of an appeal under this section the Tribunal shall confirm, vary or revoke the decision in question.
 - (5) Any variation or revocation of a decision shall not affect the previous operation of that decision or anything duly done or suffered under it.
 - (6) Without prejudice to subsection (7), any decision of the Tribunal on an appeal under this section shall be binding on the Supervisor and the applicant.
 - (7) An appeal shall lie to the High Court, in accordance with rules of court, on a question of law from any decision of the Tribunal.

39 Retirement Benefits Schemes Ombudsman

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

[S 39 not yet in force.]

40

41 **Blowing the whistle**

- (1) If the trustee, administrator, auditor, actuary or investment manager of any scheme has reasonable cause to believe that-
 - (a) any duty relevant to the administration of the scheme imposed by any enactment or rule of law on any person acting in connection with the scheme has not been or is not being complied with, and
 - (b) the failure to comply is likely to be of material significance in the exercise by the Supervisor of any of his functions,he must immediately give a written report of the matter to the Supervisor.
- (2) No duty to which the auditor, actuary or investment manager of any scheme is subject shall be regarded as contravened merely because of any information or opinion contained in a written report under this section.
- (3) No duty to which any person is subject shall be regarded as contravened merely because of any information or opinion contained in a report under this section; but this subsection does not apply to any information disclosed in such a report by the legal adviser of a scheme if he would be entitled to refuse to produce a document containing the information in any proceedings in any court on the grounds that it was the subject of legal professional privilege.
- (4) Any person who fails to comply with subsection (1) is guilty of an offence.
- (5) If it appears to the Supervisor that a trustee, administrator, auditor, actuary or investment manager has failed to comply with subsection (1), the Supervisor, with the consent of the IPA, may by notice in writing, together with reasons for the decision, disqualify him for being the trustee, administrator, auditor, actuary or, as the case may be, investment manager of any scheme specified in the notice.
- (6) A notice under subsection (5) may specify the scheme to which the failure relates, all schemes falling within any class or description of scheme or all schemes.
- (7) The Supervisor, with the consent of the IPA, may, on the application of any person disqualified under this section who satisfies the Supervisor that he will in future comply with those subsections, by notice in writing revoke the disqualification; but a revocation made at any time cannot affect anything done before that time and where the Supervisor refuses to revoke a disqualification he shall give written notice of the refusal together with reasons for the decision.
- (8) A trustee, administrator, auditor, actuary or investment manager of a scheme who becomes disqualified under this section shall, while he is so disqualified, cease to be the trustee, administrator, auditor, actuary or, as the case may be, investment manager of any scheme specified in the notice disqualifying him.

- (9) A person who, while he is disqualified under this section, purports to act as trustee, administrator, auditor, actuary or investment manager of a scheme specified in the notice disqualifying him is guilty of an offence.
- (10) An offence under subsection (9) may be charged by reference to any day or longer period of time; and a person may be convicted of a second or subsequent offence under that subsection by reference to any period of time following the preceding conviction of the offence.

Information, etc.

42 Publication of information and advice

- (1) The IPA may publish information or give advice, or arrange for the publication of information or the giving of advice, in such form and manner as it considers appropriate with respect to-
 - (a) the operation of this Act and any public document made under it, including in particular the rights of members of any scheme, the duties of trustee, administrator and any other person involved in the management or administration of a scheme, and the steps to be taken for enforcing those rights or complying with those duties;
 - (b) any matter relating to the functions of the IPA or the Supervisor under any enactment;
 - (c) any other matters about which it appears to it to be desirable to publish information or give advice for the protection of members or any class of members in schemes.
- (2) The IPA may offer for sale copies of information published under this section and may, if it thinks fit, make a reasonable charge for advice given under this section at any person's request.
- (3) This section shall not be construed as authorising the disclosure of restricted information within the meaning of section 43 in any case in which it could not be disclosed apart from the provisions of this section.

43 Restrictions on disclosure of information

Schedule 6 to the Insurance Act 2008 shall have effect in relation to the restrictions on disclosure of information.

44

PART 8 SUPPLEMENTAL

45 Public registers

- (1) The Supervisor shall, on behalf of the IPA, keep at his principal office registers to which this section applies containing such particulars and information as may be prescribed.
- (2) Any person shall be entitled to inspect the registers during ordinary office hours.

- (3) This section applies to the registers of-
- (a) authorised schemes;
 - (b) recognised schemes; and
 - (c) scheme administrators.

46 False and misleading statements

A person commits an offence if-

- (a) for the purposes of or in connection with any application under this Act; or
- (b) in purported compliance with any requirement imposed on him by or under this Act, he furnishes information which he knows to be false or misleading in a material particular or recklessly furnishes information which is false or misleading in a material particular.

47 Defence in criminal proceedings

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

48 Criminal penalties

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

- (a) on summary conviction to a fine not exceeding £5,000 or to a term of custody not exceeding 6 months, or to both;
- (b) on conviction on indictment, to a fine or to a term of custody not exceeding 2 years, or to both.

49 Offences by bodies corporate

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

50 Civil penalties

- (1) A summary fixed penalty (in this section referred to as a 'penalty') may be imposed on-
 - (a) the trustee, administrator or professional adviser of a scheme; or
 - (b) the employer of a member of a scheme,by the IPA if that person has acted in contravention of a prescribed provision of this Act or a public document under this Act.
- (2) Where the IPA intends to impose a penalty, it shall give notice in writing to the person concerned giving particulars of the alleged contravention and of the amount of the penalty.
- (3) Within 14 days of the service of the notice under subsection (2), the person concerned shall either-
 - (a) pay the penalty to the Treasury; or
 - (b) apply to the High Bailiff for a review of the imposition of the penalty and serve a copy of the application on the IPA.
- (4) Subsection (3) does not confer a right to apply to the High Bailiff for a review of the amount of a penalty.
- (5) An application under subsection (3)(b) shall be in such form, within such period, and subject to such conditions as may be prescribed.
- (6) On the determination of a review under this section, the High Bailiff may either-
 - (a) confirm the decision of the IPA to impose a penalty; or
 - (b) revoke the decision if he is satisfied that the person concerned has not acted in contravention of this Act or a public document under this Act as alleged in the notice served on the person concerned under subsection (2).
- (7) On the determination of a review under this section, the High Bailiff may-
 - (a) order the applicant to pay the costs of the IPA in relation to the review;
 - (b) order the IPA to pay the costs of the applicant in relation to the review;
 - (c) make no order as to costs.
- (8) The decision of the High Bailiff under this section is final.
- (9) Where the High Bailiff has confirmed a decision of the IPA to impose a penalty, the permitted person shall pay that penalty together with any costs awarded under subsection (7)(a) within 14 days of the determination of the review.
- (10) Where a permitted person fails to comply with either paragraph (a) or (b) of subsection (3) or with subsection (9), the penalty may be collected by the Treasury as a civil debt due to it.
- (11) The Treasury may by order make such provisions as it considers to be necessary to give

effect to this section and, but without prejudice to the generality of that power, may-

- (a) prescribe the provisions of this Act and public documents under it for the purposes of subsection (1);
- (b) prescribe forms, periods and conditions for the purposes of subsection (5);
- (c) prescribe the amount of penalties which may be levied under this section or the method by which they may be calculated;
- (d) regulate the practice and procedure to be adopted in a review by the High Bailiff under this section.

(12) Any amount received in respect of a penalty levied under this section shall be paid into and form part of the General Revenue.

(13) This section is in addition to and not in derogation of any other provision which applies this section, confers a power or provides for contravention to be an offence.

51 Regulations and orders

(1) The Treasury may make such regulations as are necessary or desirable to carry the provisions of this Act into effect and, but without prejudice to the generality of that power, may-

- (a) direct that sections 6 and 16 apply to such schemes or classes of schemes (other than authorised schemes or recognised schemes) as may be specified in the regulations;
- (b) require the administrator of a scheme to pay such periodical fees in respect of that scheme as may be specified, and such fees may be fixed fees or may be calculated by reference to such factors or circumstances as may be specified;
- (c) make provision whereby compliance with or contravention of any specified requirements imposed by or under the law of a country prescribed for this purpose is treated as compliance with or contravention of any specified requirement of this Act or any public document made under this Act;
- (d) exempt any person or scheme from this Act or any provision of it;
- (dd) provide for any of the provisions of this Act to apply (to such extent as may be prescribed), or to apply with prescribed modifications (in spite of anything in those provisions)-
 - (i) to money purchase or other schemes falling within a prescribed class or description; or
 - (ii) for the purpose of taking account of pension sharing orders under Part 1 of the Matrimonial Proceedings Act 2001; or
 - (iii) for the purpose of taking account of the law of countries outside the Island where authorised schemes have members or operations in such countries as well as in the Island;

- (e) create offences.
- (2) The generality of subsection (1) is not prejudiced by any other provision in this Act which enables the Treasury to make regulations.
- (3) Without prejudice to the generality of the power contained in subsection (1), regulations made under that subsection may regulate the issue, form and content of advertisements or other documents relating to schemes and in particular-
 - (a) may prohibit the issue of advertisements of schemes of particular descriptions or by persons of particular descriptions; and
 - (b) may make provision with respect to matters which must be, as well as to matters which may not be, included in advertisements.
- (4) Any person who issues an advertisement in contravention of regulations made under this section shall be guilty of an offence.
- (5) Any orders (with the exception of an order of a court or an order appointing a day or days for the commencement of this Act) or regulations made under this Act shall be laid before Tynwald as soon as practicable after they are made and, if Tynwald at the sitting before which the order or regulation, as the case may be, are laid or at the next following sitting fails to approve the order or regulations, they shall thereupon cease to have effect.

52 Financial provision

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

53 Principal terms defined

In this Act-

'employee' means a person gainfully employed in the Island or elsewhere either under-

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

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

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

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

'**relevant benefits**' means any pension, lump sum, gratuity or such other benefit as may be prescribed, given or to be given on retirement or death, or in anticipation of retirement, or, in connection with past service, after retirement or death, or to be given on or in anticipation of or in connection with any change in the nature of the service of the employee in question, except that it does not include any benefit which is to be afforded solely by reason of the disablement by accident of a person occurring during his service or of his death by accident so occurring and for no other reason, and in this definition, retirement includes reaching the age of 50 notwithstanding the continuation of employment, self-employment or service;

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

54 Interpretation - general

In this Act-

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

'**administrator**' means the person responsible for the management of a scheme;

'**advertisement**' includes every form of advertising whether in a publication or by the display of notices or by means of circulars or other documents or by an exhibition of photographs or cinematograph films or by way of sound broadcasting, television, telecommunications or any electronic media;

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

'**controller**' means-

- (a) a managing director of a body corporate of which the body corporate concerned is a subsidiary;
- (b) a chief executive of a body corporate of which the body corporate concerned is a subsidiary;
- (c) an individual in accordance with whose directions or instructions one or more of the directors of a body corporate of which the body corporate concerned is a subsidiary are accustomed to act unless the director or directors are accustomed so

to act by reason only that they do so on advice given by that person in a professional capacity;

- (d) an individual who either alone or with any associate or associates is entitled to exercise or control the exercise of 15% or more of the voting power at any general meeting of the body corporate concerned or of another body corporate of which it is a subsidiary;

'director' includes-

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

'investment manager' means a person who manages the investments held for the purposes of a scheme;

'IPA' means the Insurance and Pensions Authority;

'member' means a member, however described, of a scheme;

'money purchase scheme' means a scheme under which the rate or amount of benefits is calculated by reference to-

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

'occupational scheme' has the meaning given in section 53;

'personal scheme' has the meaning given in section 53;

'professional advisers' has the meaning given by section 6(2)(d);

'recognised scheme' means a scheme which is registered in accordance with section 21;

'registered schemes administrator' has the meaning given by section 36;

'regulations' means regulations made under section 51;

'retirement benefits scheme' has the meaning given in section 53;

'Review Committee'

'scheme' has the meaning given by section 1(1)(a);

'Supervisor' shall be construed in accordance with paragraph 3 of Schedule 1;

'technical funding requirement' has the meaning given by section 7;

'trustee' means-

- (a) in relation to a trust scheme, the trustee of the scheme; and

(b) in any other case, the administrator of the scheme.

55 Amendments and repeals

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

56 Short title and commencement

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

Schedule 1 -

Schedule 2 - Amendment of Enactments

Companies Act 1982

1. In section 17A, in subsection (1), for 'Supervisor' substitute 'Insurance and Pensions Authority'.

2 – 9

Schedule 3 - Repeal of Enactments

<i>Chapter/S.D. No.</i>	<i>Short title</i>	<i>Extent of repeal</i>
ACTS		
1982 c.2	Companies Act 1982	In section 17A(3), the definition of "Supervisor" is repealed
PUBLIC DOCUMENTS		
SD 610/96	Insurance and Pensions Authority Order 1996	Articles 2 to 6