

Regulatory code of practice no. 10

# **Modification of subsisting rights**

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## **At a glance**

### **Key elements – what the code covers**

- Which schemes and types of modification the legislation applies to
- Trustees' duties and responsibilities in respect of:
  - communicating proposed scheme modifications to affected members;
  - the consent requirements;
  - the actuarial equivalence requirements;
  - the trustee approval requirement; and
  - the reporting requirement
- The Pensions Regulator's views as to what constitute 'reasonable periods' as set out in sections 67 to 67I of the legislation
- The Pensions Regulator's powers to intervene and power to declare a modification void.

### **Who do the provisions apply to?**

They apply to any person with power under scheme rules to modify a scheme. They apply to most private sector occupational pension schemes, but not to public service schemes.

### **Who else needs to be involved?**

The sponsoring employer, who will often propose scheme modifications and may have power under the scheme rules to make them, will need to be closely involved.

The scheme actuary will be involved, for example, in valuing existing subsisting rights and evaluating the effect of any proposed modification on affected members' accrued rights, providing actuarial equivalence statements where the actuarial equivalence route is followed, providing illustrations of the effects of proposed modifications upon member benefits, and evaluating the effect of any changes to proposed modifications.

## Introduction

1. Codes of practice are issued by the Pensions Regulator ('the regulator'), the body that regulates work-based pension arrangements (occupational pension schemes and certain aspects of stakeholder and other personal pensions).
2. The regulator's statutory objectives are to protect the benefits of pension scheme members, to reduce the risk of calls on the Pension Protection Fund (PPF), and to promote the good administration of work-based pension schemes.
3. The regulator has a number of regulatory tools, including issuing codes of practice, to enable it to meet its statutory objectives. The regulator will target its resources on those areas where members' benefits are at greatest risk.
4. Codes of practice provide practical guidelines on the requirements of pensions legislation and set out the standards of conduct and practice expected of those who must meet these requirements.<sup>1</sup> The intention is that the standards set out in the code are consistent with how a well-run pension scheme would choose to meet its legal obligations.

### The status of codes of practice

5. Codes of practice are not statements of the law and there is no penalty for failing to comply with them.<sup>2</sup> It is not necessary for all the provisions of a code of practice to be followed in every circumstance. Any alternative approach to that appearing in the code of practice will nevertheless need to meet the underlying legislative requirements, and a penalty may be imposed if these requirements are not met. When determining whether the legal requirements have been met, a court or tribunal must take any relevant codes of practice into account.<sup>3</sup>

### Purpose of this code of practice

6. The regulator is required by legislation to issue this code of practice.<sup>4</sup>
7. This code aims to assist anyone seeking to modify an occupational pension scheme to discharge their duties.

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<sup>1</sup> See section 90(1) of the Pensions Act 2004

<sup>2</sup> See section 90(4) of the Pensions Act 2004

<sup>3</sup> See section 90(5) of the Pensions Act 2004

<sup>4</sup> See sections 90(2)a and 90(2)h of the Pensions Act 2004

## **Terms used in this code**

8. In this code, legislative requirements are indicated by 'must', and code guidelines by 'should'.
9. Throughout this code (and its footnotes), unless stated otherwise all references to:
  - 'schemes' are to occupational pension schemes;<sup>5</sup>
  - 'sections' are to those of the Pensions Act 1995;
  - 'regulations' are to those of the Occupational Pension Schemes (Modification of Schemes) Regulations 2006 (SI 2006/759); and
  - 'trustees' are to the trustees of an occupational pension scheme.

## **Sections 67 to 67I of the Pensions Act 1995**

10. The provisions of sections 67 to 67I do not apply to public service schemes,<sup>6</sup> or schemes with fewer than two members, or a scheme which is not registered for the purposes of Part 4 of the Finance Act 2004.<sup>7</sup>
11. Likewise modifications for a purpose connected with debits in respect of pension sharing orders<sup>8</sup> and other prescribed modifications<sup>9</sup> are themselves exempt.
12. This code has no effect where the legislation does not apply.

## **To whom does this code of practice apply?**

13. It applies to anyone seeking to modify an occupational pension scheme, and to the trustees of such a scheme. It will also be of relevance to employers sponsoring such schemes, particularly if they have powers under the scheme documents to modify the scheme, to all advisers to pension schemes, and to administrators and practitioners in general.

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<sup>5</sup> See section 1 of the Pension Schemes Act 1993 as amended by the Pensions Act 2004

<sup>6</sup> Section 67(1)(a)

<sup>7</sup> Section 67(1)(b) and the Occupational Pension Schemes (Modification of Schemes) Regulations 2006, Regulation 2

<sup>8</sup> Section 67(3)(a)

<sup>9</sup> The Occupational Pension Schemes (Modification of Schemes) Regulations 2006, Regulation 3

### **Other relevant codes**

14. Code of practice No 3 – *Funding defined benefits* sets out what is expected of trustees of schemes subject to the scheme funding provisions of Part 3 of the Pensions Act 2004. Changes to scheme benefits are likely to have funding implications where a scheme is subject to Part 3.
15. Code of practice No 1 – *Reporting breaches of the law* sets out what is expected of trustees (and others) in reporting matters of material significance to the regulator.
16. Code of practice No 7 – *Trustee knowledge and understanding* will be relevant as it refers to the trustees having to be aware of their scheme documents, including the powers of amendment.

### **Northern Ireland**

***In this code of practice, references to the law that applies in Great Britain should be taken to include corresponding legislation in Northern Ireland. The annex to this code lists the corresponding references.***

## Initial considerations for trustees and employers

17. The rules of most occupational pension schemes contain a power of amendment which allows the rules to be modified. This power is normally vested in either the trustees or the employer, or requires agreement between them before the rules can be modified.
18. If a modification to scheme rules is being considered the trustees, and the employer if they are involved in the modification, need to be sure there is a power in the rules allowing them to make such a modification. They should also be sure any proposed modification would be a proper use of the power.
19. Most modifications affect the way members' benefits will build up in the future. Occasionally, a modification may have to be considered to benefits which members have already built up, which are known as the members' subsisting rights. This code deals with such modifications to subsisting rights, and the provisions governing such modifications are known as the subsisting rights provisions.<sup>10</sup>
20. It should be noted that the subsisting rights provisions place restrictions on the exercise of existing powers. If the power to make such modifications does not already exist, the modification will be unable to proceed unless a way can be found to amend the scheme rules concerned. The trustees, and the employer if they are involved in the modification, would need to take legal advice on this.
21. In some situations, trustees have the power to amend provisions of the scheme by resolution under section 68 of the Pensions Act 1995. These changes are not covered by the subsisting rights provisions.
22. When it is clear that there is a power in scheme rules to make the required modification, the trustees and the employer should then determine whether or not the subsisting rights provisions apply to their scheme (public service and certain prescribed schemes are exempt but may be subject to other requirements).<sup>11</sup>
23. If these requirements apply, the trustees must check whether the proposed modification is a *regulated modification*<sup>12</sup> within the meaning of the legislation.

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<sup>10</sup> Sections 67 – 67I

<sup>11</sup> Section 67(1)(a) & (b)

<sup>12</sup> Section 67A(2) (see glossary)

24. If the subsisting rights requirements do not apply,<sup>13</sup> or if the proposed modification is not a regulated modification, and there is power to make the modification in the rules, and making the modification would be a proper use of that power, then the trustees or the employer, or both, whoever can validly exercise that power, may make the modification.
25. If the proposed modification is a regulated modification, the trustees must determine whether it is a *protected modification*<sup>14</sup> or a *detrimental modification*<sup>15</sup> which is not a protected modification and identify all *affected members*.<sup>16</sup>
26. A protected modification can only be made with the informed consent of each affected member. Paragraphs 32 to 40 provide more information on the consent requirement.
27. A detrimental modification which is not a protected modification may be made either with the informed consent of each affected member or by the trustees ensuring the actuarial equivalence requirements are satisfied in the case of each affected member.
28. Where a detrimental modification which is not a protected modification is to be made, trustees can choose to request consents from members on the understanding that, where such consents are not forthcoming, the modification will proceed on the basis of actuarial equivalence, provided this is made clear to members when they are notified of the proposed modification.
29. Where both options are available, trustees can use either the consent route or actuarial equivalence route for one or more classes of members, and the other route for others. More information on the actuarial equivalence requirements can be found in paragraphs 51 to 58.
30. The trustees should consider seeking professional advice on any proposal to make a regulated modification to a scheme.
31. Regulated modifications to members' subsisting rights cannot be made unless they are formally approved by the trustees, even if the scheme documents give the employer, or some other body, exclusive power to make amendments to the rules. Before giving such approval, trustees should be sure all the legislative requirements have been met.

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<sup>13</sup> See paragraph 10

<sup>14</sup> Section 67A(3) (see glossary)

<sup>15</sup> Section 67A(4) (see glossary)

<sup>16</sup> Section 67A(5) (see glossary)

## The consent route

32. The consent route as set out in this code lays out the steps to be taken by any person wishing to modify a scheme by use of the consent requirement.
33. If the modification the trustees are considering is a protected modification it can only be made if the consent requirement is satisfied.
34. If the modification is a detrimental modification which is not a protected modification, it can be made if either the consent requirement or the actuarial equivalence requirement is satisfied in respect of the affected member.
35. The consent requirement consists of:
- the informed consent requirement (see paragraphs 36 to 40); and
  - the timing requirement (see paragraphs 48 to 50).

### The informed consent requirement

36. When seeking the consent of an affected member, trustees must ensure the member is provided with adequate information so that any consent given is informed consent.
37. The information must be provided in writing<sup>17</sup> and explain clearly:
- the nature of the proposed modification<sup>18</sup> and the effect of the proposed modification on the member's benefits;<sup>19</sup>
  - that the member may make representations to the trustees about the proposed modification;<sup>20</sup>
  - the reasonable opportunity the member has to make such representation;<sup>21</sup> and
  - that the consent requirements apply in the case of the member.<sup>22</sup>

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<sup>17</sup> Section 67B(4)(a)(i)

<sup>18</sup> Section 67B(4)(a)(i)

<sup>19</sup> Section 67B(4)(a)(i)

<sup>20</sup> Section 67B(4)(a)(ii)

<sup>21</sup> Section 67B(4)(a)(iii)

<sup>22</sup> Section 67B(4)(a)(iv)

38. The information provided to each member should include:

- a clear explanation, where it is intended a proposed modification will be made in respect of those members who consent even if some potentially affected members do not consent, that those members who do consent will have their benefits modified and that those members who do consent may be worse off than those members who do not;
- a clear explanation where, in the case of a detrimental modification which is not a protected modification, the intention is that the actuarial equivalence requirements will apply to those affected members who do not consent by a stated deadline, that the modification will apply to them whether they consent or not; and
- a statement that affected members should consider whether they need to take their own independent financial advice. This should include those situations where the employer is providing some form of incentive to accept a reduction in benefits.

39. If affected members ask for clarification of the proposals, trustees should arrange for any questions about the proposals to be answered in a timely manner.

40. Trustees should consider whether it would be practicable and cost effective to provide affected members with one or more named contacts with whom they could discuss the proposed modification.

### **Making representations**

41. Members must be given a reasonable opportunity to make representations to the trustees about the proposed modification.<sup>23</sup>

42. The regulator would normally expect a period of at least four weeks to be allowed for the members to make such representations, although it is accepted that this will vary with the complexity of the amendments proposed and the number and location of the members.

43. Nevertheless, affected members should not be made to feel under pressure to come to a decision without adequate time and opportunity to make their views known to the trustees and to ask questions about the proposal.

44. The trustees should give due consideration to any representations received.

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<sup>23</sup> Section 67B(4)(a)(ii)

45. Sufficient time should be allowed by the trustees for:

- advice to be obtained where necessary in relation to issues raised; and
- discussions with employers to take place where it may be appropriate to amend a proposed modification in the light of representations received.

### **Giving consent**

46. Where a member gives consent to a modification, it must be in writing.<sup>24</sup> 'In writing' includes fax or email where both parties agree.

47. Where a member does not give consent to a modification then that member's subsisting rights must remain unchanged unless the actuarial equivalence route is also available. The member's consent cannot be deemed or assumed, and a lack of response cannot be taken as consent. If some members do not consent to a modification, the modification may only proceed under the consent route for those members that have consented.

### **The timing requirement**

48. Where a modification is made with the consent of affected members, the modification must be implemented within a reasonable period after the affected members have given their consent.<sup>25</sup>

49. The regulator would normally expect the reasonable period from consent to a modification coming into effect to be no more than seven months from the date consent is received from a member, accepting this may vary with the period allocated for representations and any legal or other issues around implementation.

50. When considering implementing a modification, the trustees must have regard to the trustees' approval requirement as set out in paragraphs 71 to 73, and to the reporting requirement as set out in paragraphs 74 to 77.

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<sup>24</sup> Section 67B(4)(b)

<sup>25</sup> Section 67B(6)

## The actuarial equivalence route

51. The actuarial equivalence route as set out in this code lays out the steps to be taken by any person wishing to modify a scheme by use of the actuarial equivalence requirement.

52. If the modification the trustees are considering is a detrimental modification which is not a protected modification, it can be made if either the consent requirement or the actuarial equivalence<sup>26</sup> requirement is satisfied in respect of the affected member.

53. The actuarial equivalence<sup>27</sup> requirement consists of:

- the information requirement;
- the actuarial value requirement; and
- the actuarial equivalence statement requirement.

### The information requirement

54. Trustees must, before the modification is made, take all reasonable steps to provide members with information in writing<sup>28</sup> that is adequate to explain clearly:

- the nature of the modification;
- its effect on them;
- that they may make representations to the trustees concerning the modification, giving a reasonable opportunity for these to be made; and
- that the actuarial equivalence requirements apply to them.

55. Additionally, the trustees should include in the information provided to members:

- a brief explanation of what constitutes actuarial equivalence and how it has been achieved for the modification in question;
- a clear explanation where, in the case of a detrimental modification, the intention is that the actuarial equivalence requirements will apply to

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<sup>26</sup> See glossary

<sup>27</sup> Section 67C(3)

<sup>28</sup> Section 67C(4)

those affected members who do not consent by a stated deadline, that the modification will apply to them whether they consent or not; and

- a statement that affected members should consider whether they need to take their own independent financial advice.

56. If members ask for clarification of the proposals the trustees should arrange for any such questions to be answered as soon as reasonably practicable.

57. Trustees should consider whether it would be practicable and cost effective to provide members with one or more named contacts with whom they could discuss the proposed modification.

58. Trustees must take 'all reasonable steps'<sup>29</sup> to ensure the required information is provided to all affected members to whom the actuarial equivalence requirements apply (or might apply, in the case of those affected members who are subject to both the consent requirements and the actuarial equivalence requirements). What is reasonable will vary depending on the particular circumstances. For example:

- where affected members are still employed by the scheme's sponsoring employer, use of internal post or email may be appropriate;
- in the case of other members, the use of the post will usually be appropriate, though where contact has been lost and the changes are potentially material for some members, trustees should consider using relevant local newspapers to alert deferred members to the proposals and invite them to make contact with the scheme.

### **Making representations**

59. Members must be given a reasonable opportunity to make representations to the trustees about the proposed modification.<sup>30</sup>

60. The regulator would normally expect a period of at least four weeks to be permitted for the members to make such representations, although it is accepted that this will vary with the complexity of the amendments proposed and the number and location of the members.

61. Nevertheless, affected members should not be made to feel under pressure to come to a decision without adequate time and opportunity to make their views known to the trustees and to ask questions about the proposal.

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<sup>29</sup> Section 67C(4)

<sup>30</sup> Sections 67C(4)(b) & (c)

62. The trustees should give due consideration to any representations received.

63. Sufficient time should be allowed by the trustees for:

- advice to be obtained where necessary in relation to issues raised; and
- discussions with employers to take place where it may be appropriate to amend a proposed modification in the light of representations received.

### **Revising a modification which is subject to the actuarial equivalence requirement**

64. Where a proposed modification is revised after the information requirement has been fulfilled but before the trustees have determined it should be made (or given their approval to its being made by someone else) the trustees must consider whether the revised modification differs from the original in any material way. Where the differences are decided not to be material to the members concerned, the information requirement is taken as having been satisfied.<sup>31</sup>

65. In considering whether differences are material, trustees should:

- consider taking actuarial and legal advice as to what is material in this context; and
- note that changes to an original proposal which are not material, especially following representations, would not need to be treated as a new modification in respect of the information requirement.

66. However, if there is a material difference, it will be necessary for the trustees to recommence the procedure as if the revised modification were a new modification.

### **The actuarial value requirement**

67. Before making the decision to effect or give approval to a modification (see paragraphs 71 to 73), the trustees must have made adequate arrangements or taken adequate steps to secure that actuarial value<sup>32</sup> will be maintained.<sup>33</sup> This will involve the trustees in taking the advice of an actuary.

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<sup>31</sup> Section 67D(2)

<sup>32</sup> See glossary

<sup>33</sup> Section 67C(5)

## **The actuarial equivalence statement requirement**

68. The trustees must obtain an actuarial equivalence statement within a reasonable period after the effective date of the modification.<sup>34</sup>
69. The actuarial equivalence statement is a statement produced by an actuary, who will usually be the scheme actuary. This statement is to certify that at the time the proposed modification took effect, the actuarial value of each affected member's subsisting rights immediately after the change is no less than the actuarial value of that member's subsisting rights immediately before the change.<sup>35</sup>
70. Although the exact circumstances of each scheme could cause this period to be extended, it would normally be expected that the actuarial equivalence statement would be obtained within a month of the effective date of the change.

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<sup>34</sup> Section 67C(6)

<sup>35</sup> Section 67C(8)

## Trustees' approval

71. Before trustees can approve any regulated modification, whether they are exercising the power of amendment themselves or are asked to approve a modification proposed by someone else (usually the employer), they must always be sure that, for each affected member:

- where the modification is a protected modification, the informed consent requirements have been complied with;<sup>36</sup> or
- where the modification is not a protected modification, the informed consent requirements or the actuarial value requirements are satisfied.<sup>37</sup>

72. In respect of any regulated modification subject to the informed consent requirements, the trustees must not make the decision to effect the modification, or approve someone else's implementation of it, more than a reasonable period after the first member has given consent.<sup>38</sup>

73. This reasonable period should normally be no more than six months, accepting that this period could vary with the period allocated for representations, obtaining consent and any legal or other issues around implementation.

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<sup>36</sup> Section 67E(2)(a)

<sup>37</sup> Section 67E(2)(b)

<sup>38</sup> Section 67E(3)

## The reporting requirement

74. Once the trustees have decided to go ahead with a modification, or have given approval for someone else (usually the employer) to do so, they are required to satisfy the reporting requirement.<sup>39</sup>
75. In the case of any members to whom the consent requirements apply, members must be notified that the modification is to go ahead,<sup>40</sup> and this notice must be given within a reasonable period after the date of the trustees' decision<sup>41</sup> (but before the modification takes effect).<sup>42</sup>
76. In the case of any members to whom the actuarial equivalence requirements apply, this means taking all reasonable steps to notify them of the decision<sup>43</sup> within a reasonable period of the date of the trustees' decision<sup>44</sup> (and before the modification takes effect).<sup>45</sup> Similar considerations apply in deciding what steps are reasonable for the trustees to take as when satisfying the information requirement.
77. In both cases the regulator takes the view that the trustees should inform the relevant affected members as soon as is reasonably practicable. In view of the fact that trustees will already have addressed the issue of contacting affected members when satisfying the information requirement, trustees should usually aim to notify affected members within one month of making the decision.

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<sup>39</sup> Section 67F

<sup>40</sup> Section 67F(1)(a)

<sup>41</sup> Section 67F(2)(a)

<sup>42</sup> Section 67F(2)(b)

<sup>43</sup> Section 67F(1)(b)

<sup>44</sup> Section 67F(2)(a)

<sup>45</sup> Section 67F(2)(b)

## **Employers' responsibilities and the role of professional advisers**

### **Employers' responsibilities**

78. Even if, under scheme rules, the employer has sole power to make amendments and there is no requirement for trustee approval, sections 67 to 67I of the Pensions Act 1995, where they apply, override scheme rules<sup>46</sup> and must always be complied with.
79. This means no modification which adversely affects members' subsisting rights can be made by an employer (or anyone else with the power to amend):
- without the approval of the trustees; and
  - unless the procedures set out in the Act are followed.

### **The role of professional advisers**

80. When considering an amendment which will or might affect members' subsisting rights it is important for trustees to seek appropriate advice, in particular from legal and actuarial advisers, usually those already appointed to the scheme, at an early stage in the process.
81. Scheme administrators may also have a valuable role to play in advising on the practical implementation of any proposed changes to benefits, especially in relation to the time it will take to complete the implementation process.
82. Trustees should expect their professional advisers to alert them to any concerns they may have about a proposed modification and, depending upon the circumstances, the advisers (and the trustees) may need to consider making a report to the regulator.
83. There will usually be a need for the scheme's actuary to be involved in the modification process in order to:
- advise the trustees of the effects of any proposed modification on the members, and of the effects of any alteration to a proposed modification; and
  - advise the trustees of the effect on the funding of the scheme of a proposed modification.

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<sup>46</sup> Section 117

There will always be a need for an actuary to:

- provide any necessary actuarial equivalence statement

if the actuarial equivalence route is being followed.

### **The regulator's powers**

84. The regulator has the power to make an order declaring the extent to which a regulated modification is void.<sup>47</sup> The regulator also has the power to intervene to direct a person:

- not to make a regulated modification;<sup>48</sup>
- to satisfy the consent requirements or the actuarial equivalent requirements;<sup>49</sup>
- to satisfy the approval requirements; or
- to satisfy the reporting requirements.

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<sup>47</sup> Section 67G(1)

<sup>48</sup> Section 67H(2)(a)

<sup>49</sup> Section 67H(2)(b)

## A glossary of terms used in the code

85. The legislative definitions are to be found in the Pensions Act 1995 as amended, and section numbers quoted refer to that Act.

86. The following terms used in this code of practice have the following meanings:

**Actuarial equivalence** is a test of ‘actuarial value’ which compares benefits immediately before and after a modification. The value of the totality of a member’s subsisting rights immediately after the modification must be no less than the value of those rights immediately before the modification for the actuarial equivalence requirements to be met.<sup>50</sup>

To achieve actuarial equivalence, any adverse modification to a subsisting right must be balanced by one or more favourable modifications to other subsisting rights, so the overall actuarial value of the rights is not reduced.

**Actuarial value** of an affected member’s subsisting rights means the monetary value of the future benefits stemming from those rights as calculated by the scheme’s actuary, in accordance with the method prescribed by Regulations<sup>51</sup> and in accordance with any actuarial guidance current at the time.

An **affected member**<sup>52</sup> is a scheme member (including a pensioner) or a survivor of such a member whose rights would or might be affected by a protected modification or detrimental modification at the time it takes effect.

A **detrimental modification**<sup>53</sup> is a modification which on taking effect would or might adversely affect any subsisting right of a member or survivor of a member of the scheme.

A **protected modification**<sup>54</sup> is a modification which on taking effect would or might change the nature of the subsisting rights of a member or survivor of a member of a scheme from being other than money purchase to being money purchase, or replace a non-money purchase right with a money purchase right, or which would or might reduce the current rate of a pension being paid under the scheme, or is a modification of a prescribed description.

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<sup>50</sup> Section 67C(8)

<sup>51</sup> The Occupational Pension Schemes (Modification of Schemes) Regulations 2006, Regulation 5

<sup>52</sup> Section 67A(5)

<sup>53</sup> Section 67A(4)

<sup>54</sup> Section 67A(3)

A **regulated modification**<sup>55</sup> is a modification which is a protected modification or a detrimental modification or both.

A **survivor**<sup>56</sup> is the widow or widower of a member or other person who has survived a member and has entitlement to benefits (or future benefits) under the scheme in respect of the member.

Note that this definition is intended to allow for any effects of the Civil Partnership Act 2004.

A **subsisting right**<sup>57</sup> in relation to a member means either:

- a right which, at the time of the proposed amendment, has accrued to (or in respect of) the member. Such right is determined as if the member had opted to terminate their pensionable service immediately before that time; or
- an entitlement to the present payment of a pension or other benefit which they have at that time, under the scheme rules.

In relation to a survivor it means any entitlement to benefits, or right to future benefits, which they have at that time under the scheme rules in respect of the member.

Note that 'right' includes a pension credit right.

**Voidable** means the regulator is able to decide whether or not the modification will be valid, and/or whether all or only some parts of it may remain valid. It does not mean the modification is automatically void from the outset.

A **voidable modification**<sup>58</sup> is a modification where the following have not been complied with:

- if it is a protected modification, in the case of each affected member, the consent requirements; or
- if it is not a protected modification, the consent requirements or the actuarial equivalence requirements; or
- the trustee approval requirement; or
- the reporting requirement.

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<sup>55</sup> Section 67A(2)

<sup>56</sup> Section 67A(10)

<sup>57</sup> Sections 67A(6) and (7)

<sup>58</sup> Section 67G

Modifications made in contravention of an order or direction of the regulator are also voidable.

**Void** means ineffective from the outset, as if it had never happened.

A **void modification** is a modification which the regulator has ordered to be void and it will be void to the extent specified in the order.<sup>59</sup>

Where the regulator considers a voidable modification it may decide that it will make the modification entirely void, or that only some parts of it are void, allowing some of the changes to remain effective, or it may decide that in all the circumstances it is more appropriate to allow the changes to the scheme to remain.

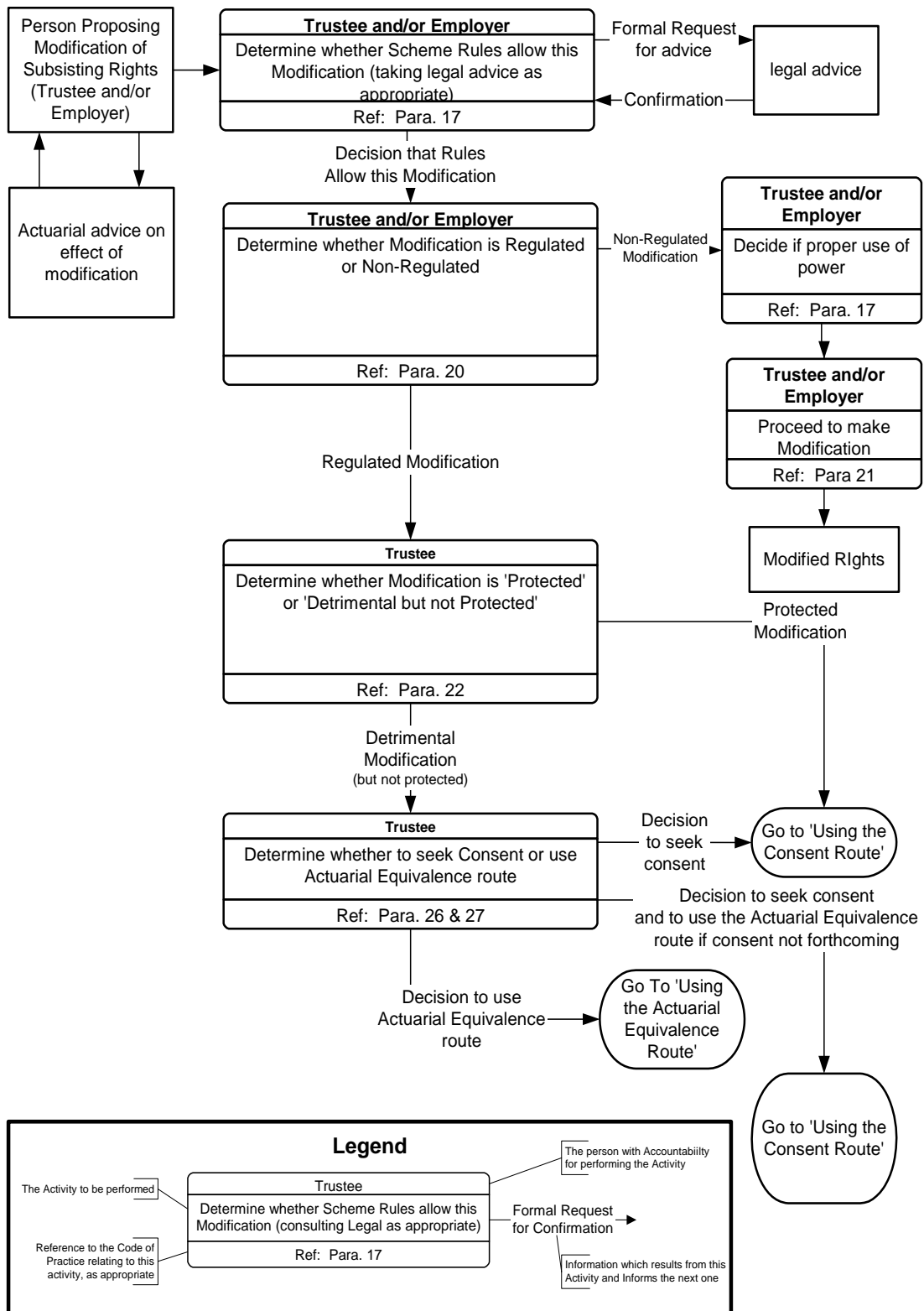
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<sup>59</sup> Section 67G(6)

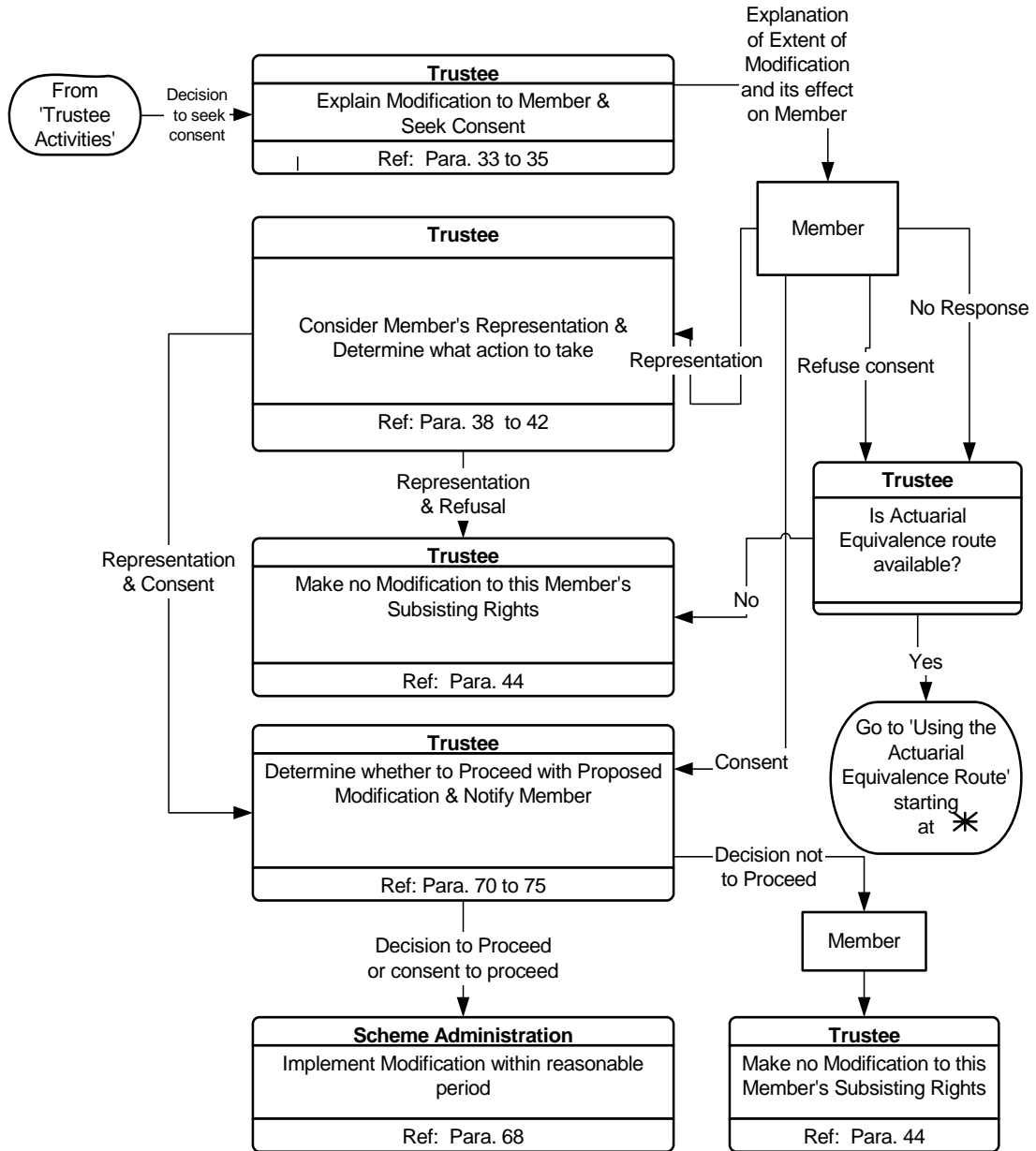
## Annex A: Corresponding Northern Ireland legislation

<i>GB Legislation</i>	<i>NI Legislation</i>
The Pensions Act 2004 (c.35)	The Pensions (Northern Ireland) Order 2005 (S.I. 2005/255 N.I. 1)
Section 5	Article 4
Section 90	Article 85
Part 3	Part IV
The Pensions Act 1995 (c.26)	The Pensions (Northern Ireland) Order 1995 (S.I. 1995/3213 N.I. 22)
Sections 67 to 67I	Articles 67 to 67I
Section 117	Article 114
Civil Partnership Act 2004 (c.33)	No corresponding legislation – UK extent
The Occupational Pension Schemes (Modification of Schemes) Regulations 2006 (SI 2006/759)	The Occupational Pension Schemes (Modification of Schemes) Regulations (Northern Ireland) 2006 (S.R. 2006 No. 149)
Pension Schemes Act 1993 (c.48)	Pension Schemes (Northern Ireland) Act 1993 (c.49)

## Activities when seeking to modify Subsisting Rights



# Using the Consent Route



# Using the Actuarial Equivalence Route

