



Circular Number: Circular 18/2020

Circular Title: Recognition of same sex marriages/civil partnerships under Public Service 'Original' Spouses' and Children's Contributory Pension Schemes

To: HR Manager / Personnel Officer / Pensions Manager in each Department and Office

A Dhuine Uasail

I am directed by the Minister for Public Expenditure and Reform to refer to implementation of **Part VIIA of the *Pensions Act 1990***, as inserted by Part 3, section 27 of the *Social Welfare, Pensions and Civil Registration Act 2018*, which allows for a right of entitlement to pension benefit in respect of same sex couples where the scheme member was unable to enter a marriage or civil partnership prior to reaching a certain age or date of retirement.

This Circular should be circulated to all Offices and Bodies under your aegis.

Date: 30 November 2020

File Reference: P26-013-2016

Purpose: To advise all Government Departments/Offices and public service bodies of the legal obligations arising from Part VIIA of the *Pensions Act 1990*, which applies to same sex couples (one partner being a member of a public service pension scheme) where the individuals concerned entered a same sex marriage or civil partnership after retirement and within three years of enactment of the legislation that enabled them to do so.

The Circular gives guidance to HR Units and pension administrators on how to manage cases that are submitted under the legislation, including in relation to the payment of contributions that are required for the purpose of obtaining entitlement to benefits.

Applicable to: The Circular will be of limited application as it is relevant only to the category of individuals named in the legislation, who are either:


- former members of 'original' public service spouses' and children's ('S&C') schemes; or
- former pensionable public servants who elected not to join an original S&C scheme when the membership option was made available to them.

The Circular will not be relevant to members and former members of the 'revised' S&C schemes nor the Single Public Service Pension Scheme as both provide for marriages or civil partnerships that are entered into post-retirement.

Relevant Legislation: Part VIIA of the *Pensions Act 1990*, which was inserted by Part 3, section 27 of the *Social Welfare, Pensions and Civil Registration Act 2018*.

Effective From: **31 December 2018**, the effective date of *Part VIIA of the Pensions Act 1990*.

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Circular 18/2020: Recognition of same sex marriages/civil partnerships under Public Service ‘Original’ Spouses’ and Children’s Contributory Pension Schemes

Introduction

1. Section 27 of the *Social Welfare, Pensions and Civil Registration Act 2018* (the ‘2018 Act’) inserted a new Part VIIA into the *Pensions Act 1990* (the ‘1990 Act’) to provide for a right of entitlement to pension benefit under occupational pension schemes in respect of same sex couples where the scheme member was unable to enter a marriage or civil partnership prior to reaching a certain age or date of retirement.
2. Specifically, Part VIIA of the 1990 Act applies to same sex couples (one partner being a member of a public service pension scheme) in circumstances where:
 - (a) the couple could not have entered into a legally recognised relationship within the State; or
 - (b) in the case of such couples who entered into a legally recognised relationship in another jurisdiction, it was not possible for that relationship status to be recognised under Irish law;because the relevant legislation to provide for legal recognition of same sex relationships in Ireland, namely, the *Civil Partnership and Certain Rights and Obligations of Cohabitants Act 2010* and the *Marriage Act 2015*, had not been enacted.
3. While the latter legislation enabled the legal recognition of same sex relationships in Ireland, by virtue of the requirement under public service ‘original’ spouses’ and children’s contributory pension (S&C) schemes that marriage/civil partnership have taken place before retirement, members of such schemes who had retired prior to enactment of the legislation could not have their marriage/civil partnership entered into subsequent to retirement recognised under those schemes. (For background detail on public service S&C schemes, see [Appendix 1.](#))¹
4. Part VIIA of the 1990 Act, which took effect on 31 December 2018 and has direct impact on public service pension schemes, overwrites, subject to satisfaction of certain specified

¹ In summary, the ‘original’ S&C schemes (or equivalent schemes, such as the Widows’ and Orphans’ Pension Scheme in the local authorities) were first introduced in the late 1960s and later extended to the rest of the public service; the ‘revised’ schemes, introduced from the mid-1980s onwards for most public service groups, provide for a number of contingencies that are not covered in the original schemes, including post-retirement marriages/civil partnerships. As the requirement that a marriage/civil partnership have taken place pre-retirement does not apply under the revised schemes, nor under the Single Public Service Pension Scheme, those schemes are not affected by the legislation.

conditions, the requirement identified in paragraph 3 for the category of individuals named in the legislation.

5. In addition, the legislation also applies to same sex couples (one partner being a member of a public service pension scheme) in circumstances in which the former public servant elected not to join an original S&C scheme when such schemes were introduced into the public service, and did not subsequently become a member of a revised scheme.
6. This Circular provides guidance to public service HR Units and pension administrators (hereinafter: 'pension administrators') on the implementation of Part VIIA of the 1990 Act, including in relation to the payment of contributions that are required for the purpose of obtaining entitlement to benefits. Note that the Circular does not detail the full content of the legislation, and does not purport to offer a legal interpretation of it. (See a more complete summary of the legislative provisions at [Appendix 2](#).)
7. Where a public service body operates an occupational pension scheme which is set up differently to the structure referred to in this Circular, the body is advised to study the legislative provisions in detail and to propose any modifications to the pension terms to ensure compliance with the legislation generally. There is no requirement for pension administrators whose pension scheme is structured in line with the mechanisms outlined in this Circular to take further action.

Entitlement to receive benefits

8. In order for a former public servant to come within the category of individuals named in the legislation, he or she must be, or have been:
 - a former member of an original public service S&C scheme; or
 - a former pensionable public servant who elected not to join an original S&C scheme when the membership option was made available to them.

Note that the legislation does not provide for a right to pension benefits in respect of persons who are not, or never were, members of a public service pension scheme. Note also that reference to 'member' includes a member who has died.

9. Under the legislation, the right of entitlement of a former public servant to pension benefits is specifically linked, and limited, to:

- a) the individual having been in a committed relationship with another person of the same sex at the time he or she reached the date of retirement,²
- b) he or she having, within a period of three years from the date of enactment of the relevant legislation enabling legal recognition of same sex relationships in Ireland (i.e. the *Civil Partnership and Certain Rights and Obligations of Cohabitants Act 2010* and the *Marriage Act 2015*), entered into a civil partnership or marriage with that other person or had their foreign civil partnership or marriage legally recognised within the State under that legislation,³ and
- c) payment being made in respect of the contributions, and any interest applied in respect of those contributions, that are required to be paid into the scheme for the purpose of obtaining entitlement to those benefits.

10. As regards details of the committed relationship at paragraph 9 a), pension administrators are advised that section 81L(3) of the 1990 Act states:

‘information in respect of the relationship ... shall be provided by the member or person referred to ... and shall be attested as to the truth of that information by a statutory declaration made by that member or person’.

- 11. Once a former public servant is deemed to satisfy the specified conditions at paragraphs 8 - 10, their spouse/civil partner shall be entitled to apply, on the death of the member, for a pension under the relevant original S&C scheme provided that the required scheme contributions have been paid. In any case in which it is determined that the spouse/civil partner is not eligible to receive a pension under the original S&C scheme but would have so qualified had his or her partner instead been a member of the revised S&C scheme, this Department would have no objection to their case being treated as if they had, in fact, been a member of the revised scheme.
- 12. It should be noted that other than in relation to the condition of entitlement specifically addressed by Part VIIA of the 1990 Act, the legislation does not have the effect of nullifying the operation, or application, of any or all other S&C scheme rules.
- 13. Where a former public servant has died before 31 December 2018 but satisfies the specified conditions at paragraphs 8 – 10 above, the relevant benefits shall be calculated as and from that date. In such a case, the surviving spouse can apply to avail of the Circular

² The legislation also addresses itself to scheme rules that fix as a condition for entitlement to benefits the age by which the member shall have married or entered into a civil partnership – this rule is not relevant to the vast majority of public service pension schemes and so is not referred to further in this Circular.

³ Where a civil partnership was entered into on a date later than three years following enactment of the 2010 Act, that civil partnership would not qualify under the legislation. However, if the same couple then entered into a marriage within three years of enactment of the 2015 Act, that marriage would qualify.

even if the deceased public servant had not commenced the process of repaying the contributions owing.

Payment of contributions/Information on contributions owing

14. In order for an entitlement to benefits to be established, the required scheme member contributions under the relevant S&C scheme must be paid, along with any interest to be applied.
15. A former public servant who comes within the scope of the legislation or, on the death of the public servant, his or her spouse/civil partner may, at any time, apply to the pension administrators for a written statement as to whether all of the contributions required have been paid or, where some or all of those contributions have not been paid, or were refunded to the former public servant, of the amount to be paid in respect of those contributions.
16. The calculation of the contributions due should be done in accordance with the rules of the relevant S&C scheme, which usually refer to both 'periodic' and 'non-periodic' contributions (see [Appendix 1](#)). It is likely that a former member of an original S&C scheme who comes within the scope of the legislation will have received a full refund of periodic contributions on finishing employment (on the basis that he or she was unmarried at the time), and will not have had any non-periodic contributions deducted from lump sum/gratuity. In such cases, the member contributions owing shall comprise:
 - a) the amount of periodic contributions that were refunded; plus
 - b) the amount of non-periodic contributions that would have been deducted from lump sum/gratuity, had the individual been married on finishing employment, in respect of reckonable service for which periodic contributions were not paid,⁴

together with the interest to be applied to both amounts.

In the case of a former pensionable public servant who comes within the scope of the legislation and who had elected not to join an original S&C scheme when the membership option was made available, the contribution liability should be calculated as if the individual had, in fact, been a former member of an original S&C scheme from the appropriate membership date. In that regard, an estimate should be prepared of the amount of periodic contributions that would have been deducted from salary during his or her employment and of the non-periodic contributions that would have been deducted from lump sum/gratuity on finishing employment, as set out at a) and b) above.

⁴ Note that in case of ill health retirement, particular care should be taken in checking reckonable service for calculation purposes as reckonable service in ill-health cases takes account of notional service up to normal retirement age - thus, it will not be the service on which the retired public servant's own pension is based.

17. Section 81M(4) of the 1990 Act provides that the pension administrators '*may apply a rate of interest in respect of the amount to be paid in respect of contributions that are required for obtaining those benefits*':

- where contributions were previously refunded to the member or a personal representative of the member, the rate of interest shall be applied from the date of the refund to the date on which the calculation of the amount is made;
- where contributions were not paid by the member, the rate of interest shall be applied from the date the contributions were due to be paid to the date on which the calculation is made.

Section 81M(5) states that the rate of interest '*shall be the rate of interest specified in the rules of the scheme or an amount specified by an actuary for the scheme.*'

18. Under the civil service pension schemes, compound interest is applied to the recoupment of previously refunded pension contributions and the recoupment of gratuities (e.g. marriage gratuities). The rates of compound interest are set out in Circular 15/2014 (<https://circulars.gov.ie/pdf/circular/per/2014/15.pdf>):

- Up to 31 March 1971: 3% per annum
- From 1 April 1971 to 13 November 2000: 6% per annum
- From 14 November 2000 to 30 November 2014: 4% per annum
- From 1 December 2014 onwards: 3.5% per annum

For the calculation of interest to be applied to the amount of member contributions that are required for the purpose of obtaining entitlement to benefits under Part VIIA of the 1990 Act, given that the specific wording used in section 81M does not provide for compound interest, it has been decided to apply the same interest rates as in Circular 15/2014 but as simple interest rather than as compound interest.

Interest shall be charged on the amount at 16 a) from the date the amount of periodic contributions were refunded, and on the amount at 16 b) from the date of payment of lump sum/gratuity.

19. In cases processed within a period of one year following the date of issue of this Circular, the application of interest as set out in paragraph 18 shall cease on 8 May 2017, the date on which the Department for Employment Affairs and Social Protection published the text (as part of a General Scheme of Bill) for what was to become section 27 of the *Social Welfare, Pensions and Civil Registration Act 2018*. Where the total contribution liability has not been discharged in full within one year of date of issue of the Circular, or an agreed arrangement to pay by instalments is not being implemented (see paragraph 22), interest shall be applied to the remaining balance of the amount of the contribution liability for the full period to date of calculation.

20. It is recommended that in the application of interest on the contribution liability due, the administrators of other public service S&C schemes should follow, having due regard to any differences in scheme structure and rules, an equivalent approach to that set out for the civil service pension schemes in paragraphs 18 – 19. Alternatively, they should ensure that the approach they implement is consistent with that applied to the recoupment of refunded pension contributions and gratuities under the terms of the relevant pension scheme(s), while meeting the requirements of section 81M subsections (4) and (5) of the 1990 Act.
21. In any case in which a former public servant dies before the total contribution liability has been discharged, or he or she is already deceased, the Department shall not object to the remaining contribution liability being met by means of providing that the individual's surviving spouse/civil partner shall not qualify for immediate payment of pension but is subject to a 'waiting period' before payment commences, to take account of the outstanding contribution liability.⁵

For example, if the annual pension entitlement for the spouse/civil partner was calculated as €16,000 and the balance of the contribution liability owing was €12,000, the waiting period for payment of the pension would equal nine months.

22. Where a former public servant or, on the death of the public servant, his or her spouse/civil partner, has been notified of the contributions required to be paid, with interest, for the purpose of obtaining entitlement to benefits, he or she may make payment at any time to the pension administrators. Pension administrators may facilitate individuals who wish to make payment by instalments. Depending on the period of time that passes from the original notification of the contribution liability and the degree of engagement with the repayment process, it may be necessary for the pension administrators to revisit the calculation of the contribution liability.
23. In respect of any application received for payment of benefits where the required scheme contributions have not been paid (or in respect of any application received for a statement as to whether or not scheme contributions are owing), the pension administrators may, in accordance with section 81M(7) of the 1990 Act, request further information and documents from the individual concerned for the purposes of processing their application.

Miscellaneous

24. Pension administrators are asked to assess each individual case submitted under the Circular to ensure that the correct calculation is made of the S&C scheme contribution

⁵ Note that the concept of the 'waiting period' before commencement of dependant's pension is not provided for in Part VII of the 1990 Act. Such an approach was used in the mid-1980s when retired civil servants were given the once-off option to join the revised civil service S&C scheme.

liability, together with the interest to be applied, and, subsequently, to ensure that the relevant amounts have been duly paid before confirming entitlement to benefits. They will need to examine the information available on the individual's pension or personnel file and, if necessary, seek relevant documentation from him or her, or their spouse/civil partner, on, for example, details of S&C scheme contributions refunded. Where the individual's former employer no longer exists (e.g. in case of wind-up or amalgamation with another public service body), steps should be taken to follow-up with the body or bodies to whom the pension/personnel file may have passed.

25. It is understood from the Revenue Commissioners that pension recipients who discharge their contribution liability by making lump sum payments may, in certain circumstances, qualify for some income tax relief on foot of these payments. Individuals wishing to enquire about the extent of income tax relief (if any) allowable on foot of lump sum payments should contact their local Revenue tax office (see "Contact Us" on the www.revenue.ie webpage).
26. Pension administrators are advised that every individual who makes an application under Part VIIA of the 1990 Act and who pays an amount in respect of the contributions required to obtain the entitlement to benefits, and the interest applied to same, should be asked to sign a written undertaking acknowledging that their decision to join the relevant S&C scheme is irrevocable and that the payment made will not be refunded to them under any circumstances.

Further information

27. Part VIIA of the 1990 Act is transitional in nature and is designed to specifically address a relatively small number of cases. Against that backdrop, pension administrators should note that the legislation does not impose a general obligation on pension schemes to issue communications on its potential impact for different classes of individual. Thus, it should be sufficient to include reference to this Circular in any regular periodic communication with pensioners. Ultimately, this will be a matter for each individual scheme to decide.
28. Any queries from Departments/Offices regarding this Circular should be directed to this Department's Public Service Pensions Policy Unit (pensions@per.gov.ie) under the subject line 'S&C Circular 18/2020'. Other public service bodies should consult in the first instance with their parent Department/Office.
29. All individuals should consult the Personnel (HR) Unit/pension scheme administrators of the public service body with which they were last employed.

APPENDIX 1:

Public Service Spouses' and Children's Contributory Pension Schemes

Background

Generally, for any public service group, the rules governing benefits for dependants are set out in a spouses' and children's contributory pension (S&C) scheme that stands separate to, but is interlinked with, the main pension scheme, and that is usually codified as a separate legal document (usually a statutory instrument or staff circular).

In the civil service, the S&C scheme rules are summarised at Chapter 16 of the *Superannuation Handbooks and Guidance Notes for Established and Non-Established Civil Servants* (www.cspensions.gov.ie/superAnnHBs.asp), with the original legal documentation referenced at Appendix 1 of the Handbooks.

When the 'original' widows' and orphans' contributory pension schemes were first developed in the public service, later renamed as spouses' and children's schemes on both men and women becoming eligible to join, membership was made optional for serving staff and mandatory for new entrants.

The 'revised' S&C schemes, introduced from the mid-1980s onwards for most public service groups, provided for a number of contingencies that were not covered in the original schemes, for example, to cover all children of a member, regardless of the member's marital status, and to include the spouses of post-retirement marriages.

Membership of the revised schemes was made optional for serving staff and mandatory for new entrants.

In order to finance the increased costs arising from the wider class of beneficiary under the revised schemes, more restrictive conditions were introduced on the refund of contributions at retirement (for example, elimination of refund where a member had not married). As a result, many public servants, including those in same sex relationships, who believed that they could not expect to benefit from membership of those schemes, decided to remain as members of the original schemes and so be eligible on retirement for a refund of contributions.

Legislation passed in 2010 and 2015 enabled the legal recognition of same sex relationships in Ireland. By virtue of the requirement under the original S&C schemes that marriage/civil partnership have taken place before retirement, members of such schemes who retired prior to enactment of that legislation, could not have their marriage/civil partnership subsequent to retirement recognised under those schemes. This matter has been addressed by Part 3, section 27 of the *Social Welfare, Pensions and Civil Registration Act 2018*.

Explanation of contribution arrangements under S&C schemes

The contribution arrangements that apply under the civil service S&C schemes, as well as the majority of equivalent schemes in the public service, are summarised below. The arrangements are the same under both the 'original' and the 'revised' scheme rules; the only difference is in relation to refund of contributions, as indicated in the third bullet point. Note that contributions are made on reckonable service up to a maximum of 40 years.

- **Periodic contributions during service** - 1.5% deduction from salary on a continuous basis; for members appointed before 6 April 1995, periodic contributions are made on basic salary and any acting up allowances, but excluding other allowances in the nature of pay; for those appointed on or after 6 April 1995, periodic contributions are made on basic salary and any pensionable emoluments in the nature of pay held from time to time.
- **Non-periodic contributions made at retirement or on death in service** – these are payable by deduction from retirement lump sum, preserved lump sum, death gratuity or preserved death gratuity, as appropriate, by members who, on finishing service, are married*, or were married* at some time during membership of the scheme. The scheme rules lay down the precise periods to be covered but, in general, they relate to periods of reckonable service in respect of which the member has not paid periodic contributions – for example, service given prior to introduction of the S&C scheme; cases of death in service or early retirement on ill-health grounds where the member is credited with notional service to maximum retirement age; other notional service such as awards under schemes of professional added years.

Non-periodic contributions are also payable in respect of pensionable allowances held at retirement by members appointed before 6 April 1995.

The non-periodic contribution rate is:

- 1% of retiring salary for each year of relevant service, less any years in respect of which periodic contributions were paid.
- In the case of pensionable allowances, the contribution is calculated at 1% of pensionable allowances for each year of relevant service
- **Refund of contributions** – where a member of an original S&C scheme is unmarried at the time of finishing service, has remained unmarried throughout his or her period of membership of the S&C scheme, and does not transfer service to another organisation, a full refund of contributions is payable. In general, a revised S&C scheme member will only receive a refund for periodic contributions made in excess of 40 years, or if they have less than two years' service at time of leaving.

* 'Married' includes entering a civil partnership.

APPENDIX 2:

Information note on Part VIIA of the *Pensions Act 1990*, as inserted by Part 3, section 27 of the *Social Welfare, Pensions and Civil Registration Act 2018*

An outline is provided below on the detailed provisions of Part VIIA of the *Pensions Act 1990* in the context of civil/public service pension schemes. Where relevant, additional information is given on the application of Part VIIA to public service spouses' and children's contributory pension schemes.

Section 81(K): interpretation

- 'Member' refers to someone who is entitled to benefit under the defined benefit pension scheme concerned as well as to a former member who has died.
- 'Retires' means the day on which a benefit under the defined benefit scheme becomes payable to the member. It includes the early retirement of a member.

Section 81(L): conditions for entitlement

Subsection (1) provides for an entitlement to benefits for a spouse or civil partner ('beneficiaries') on the death of the member where the rules of the relevant S&C scheme contain a condition that a member must have married or entered into a civil partnership with the beneficiary by a certain age or on or before the day the member retires.

Where the member has been in a committed relationship with a person of the same sex and, on or prior to the day on which the member attained the relevant age or retired, he or she was unable to marry or enter a civil partnership with that person as the *Marriage Act 2015* or the *Civil Partnership and Certain Rights and Obligations of Cohabitants Act 2010* had not come into operation, the member shall be deemed to satisfy the relevant condition in the following circumstances:

- (i) that on or before the day on which the member reached the age or date of retirement the member was in a committed relationship with a person of the same sex; and
- (ii) that the member married or entered into a civil partnership with that person, within 36 months of the coming into operation of the *Marriage Act 2015* ("the Act of 2015) or the *Civil Partnership and Certain Rights and Obligation of Cohabitants Act 2010* ("the Act of 2010"), as the case may be, or, where the scheme member married or entered in a civil partnership outside the State, prior to the coming into operation of this section, he or she had that marriage or civil partnership recognised by the State under section 12 of the Act of 2015 or under section 5 of the Act of 2010, as the case may be.

Subsection (2) provides that the beneficiary of a member, who satisfies the conditions set out in subsection (1), will be entitled to a benefit from the scheme, provided that the required contributions and any contributions due under section 81M have been paid into the scheme.

Subsection (3) sets out that information relating to the relationship between the member and the beneficiary shall be provided and attested to as the truth by way of a statutory declaration.

Subsection (4) provides that reference in subsection (1)(c)(ii) to a member being unable to enter a marriage or civil partnership includes complying with the three month notice requirements under the Acts of 2010 and 2015.

Subsection (5) sets out that, where a member has died before this section comes into operation and the member satisfies the conditions set out in subsection (1), the relevant benefits shall be calculated from the day this section comes into operation (i.e. 31 December 2018).

Section 81M: Obligation to pay contributions

Subsection (1) provides for the making of an application by the spouse/civil partner of a member to the scheme administrators for payment of benefit and, where the contributions that are required to be paid into the scheme have not been paid, provides that the administrators shall notify the individual of the contributions that are due to be paid together with any interest applying in respect of same.

Subsection (2) provides for the making of an application by a member or, on the death of the member, by their spouse/civil partner for the provision of information in respect of the payment of contributions, and any interest applying in respect of same, that are required to be paid to the scheme in order to obtain entitlement to benefits.

Subsection (3) provides where the member of a scheme or the spouse/civil partner of a member has been notified, under subsection (1), or received a statement, under subsection (2), of the contributions, and the interest to be applied in respect of those contributions, required to be paid to the scheme to obtain a right of entitlement to benefits, that the scheme member or his or her spouse/civil partner may make a payment at any time to the scheme administrators.

Subsection (4) sets out that the process to be applied by the administrators of a scheme for the calculation of the rate of interest in respect of contributions to be paid to the scheme for entitlement to benefit. Where contributions were previously refunded to the member or a personal representative of the member, the rate of interest shall be applied from the date of the refund to the date on which the calculation of the amount is made.

Where contributions were not paid by the member, the rate of interest shall be applied from the date the contributions were due to be paid to the date on which the calculation is made.

Under subsection (5), the rate of interest to be applied by the administrators shall be the rate specified in the rules of the scheme or by an actuary of the scheme.

Subsection (6) provides that the notification issued by the administrators of the scheme under subsection (1), or the statement issued under subsection (2), shall specify the rate of interest applied in respect of the contributions required to be paid to the scheme to obtain entitlement to pension benefits and, where a different rate of interest is applied for different periods, the administrators shall specify the different rates of interest applied for each such period.

Subsection (7) allows the administrators of a scheme to request further information and documents in respect of an application made to them under this section.

Section 81N: Enforcement of entitlement of beneficiary

Subsection (1) provides that where the administrators do not pay the spouse/civil partner of a member the relevant pension scheme benefits, the requirements of section 27 having been met, the applicant may apply to the Circuit Court for an order for payment.

Subsection (2) sets out that any application to the Circuit Court must be made within 12 months of the death of the member or, where the member has died before the coming into operation of this section, the day in which this Part comes into operation.

Subsection (3) provides that the Circuit Court may make an order directing the administrators of a scheme to pay the relevant benefits due where certain requirements have been met.