STATUTORY RULES OF NORTHERN IRELAND

2008 No. 132

PENSIONS

The Occupational Pension Schemes (Employer Debt and Miscellaneous Amendments) Regulations (Northern Ireland) 2008

Made - - - -	*18th March 2008*
Coming into operation	*6th April 2008*

The Department for Social Development makes the following Regulations in exercise of the powers conferred by Articles 68(2)(e), 75(1)(b), (5) and (10), 75A(1) to (8), 115(1)(a) and (b), 116, 122(3) and 166(2) and (3) of the Pensions (Northern Ireland) Order 1995(**1**), and now vested in it(**2**), and Articles 2(5)(a), 64(2)(a) and (3)(a), 88(2)(q), 110(5), 211, 280(1)(b) and 287(1) to (3) of, and paragraph 2(d) of Schedule 1 to, the Pensions (Northern Ireland) Order 2005(**3**).

Citation and interpretation

1.—(1) These Regulations may be cited as the Occupational Pension Schemes (Employer Debt and Miscellaneous Amendments) Regulations (Northern Ireland) 2008.

(2) In these Regulations "the Employer Debt Regulations" means the Occupational Pension Schemes (Employer Debt) Regulations (Northern Ireland) 2005(**4**).

Commencement and transitional provisions

2.—(1) Subject to the transitional provisions in paragraphs (3) to (8), these Regulations shall come into operation on 6th April 2008 ("the commencement date").

(2) Notwithstanding those provisions, regulation 5(12) of the Employer Debt Regulations, as substituted by regulation 5 of these Regulations, shall apply when the amount of a debt arising under Article 75(2) or (4) (deficiencies in the assets) falls to be calculated after the commencement date.

(3) Paragraph (4) shall apply where before the commencement date—

(**1**) S.I. 1995/3213 (N.I. 22); Article 75 was amended by Article 248 of the Pensions (Northern Ireland) Order 2005 (S.I. 2005/255 (N.I. 1)) and is modified by S.R. 2005 No. 168; Article 75A was inserted by Article 249 of that Order; Article 116 was amended by paragraph 62 of Schedule 10 and Schedule 11 to that Order and paragraph 6 of Schedule 5 to the Pensions Act (Northern Ireland) 2008 (c. 1 (N.I.))

(**2**) *See* Article 8(b) of S.R. 1999 No. 481

(**3**) S.I. 2005/255 (N.I. 1)

(**4**) S.R. 2005 No. 168; relevant amending Regulations are S.R. 2005 No. 387 and S.R. 2007 No. 64

(a) a person ceased to employ at least one active member in relation to a scheme at a time when at least one other person continued to employ persons in the description of employment to which the scheme related, and

(b) that event was not an employment-cessation event, under regulation 6(4) of the old Regulations (multi-employer schemes: general), in relation to the scheme.

(4) The definition of "employment-cessation event", as contained in regulation 6(4) of the old Regulations, shall continue to apply after the commencement date, in the case of a person to whom paragraph (3) applies, until—

(a) immediately after such time as that person has ceased to employ persons in the description of employment to which the scheme relates at a time when at least one other person continues to employ such persons, or

(b) such time as that person employs an active member.

(5) The old Regulations shall continue to apply on and after the commencement date in relation to a debt arising under Article 75(2) or (4) where—

(a) the applicable time, in relation to the debt arising under Article 75(2) or (4), is before the commencement date, or

(b) the employment-cessation event occurred before the commencement date.

(6) The old Regulations shall continue to apply on and after the commencement date where a scheme commenced winding-up before the commencement date.

(7) Paragraph (8) shall apply where—

(a) an agreement is entered into before, on or within 12 months after the commencement date on the basis that a scheme's apportionment rule will apply after the commencement date in relation to a specific employment-cessation event, or in relation to a debt arising as a result of the commencement of winding-up of the scheme;

(b) the scheme's apportionment rule was in force before the date on which these Regulations were laid before the Assembly, and

(c) the transaction to which the agreement related was considered before that date by the managing body of at least one of the parties to the agreement or of a connected or associated person of such a party.

(8) The old Regulations shall continue to apply on and after the commencement date in relation to that employment-cessation event, or in relation to the winding-up of the scheme, where the employment-cessation event, or the commencement of winding-up, takes place during the period of 12 months beginning on and including the commencement date.

(9) In paragraph (7)—

(a) a "scheme's apportionment rule" means a scheme rule for the purposes of regulation 6(2)(b) of the old Regulations, which makes provision for the difference between the value of a scheme's assets and the amount of its liabilities to be apportioned among the employers in different proportions from those which would otherwise arise;

(b) "managing body" means—

(i) in relation to a company or other corporate body, its board of directors or governing body;

(ii) in relation to a partnership, its partners;

(iii) in relation to an individual, that individual;

(c) "connected or associated person" has the meaning given by Article 120.

(10) In this regulation—

(a) any reference to a numbered Article is a reference to the Article of the Pensions (Northern Ireland) Order 1995 bearing that number;

(b) references to the old Regulations are to the Employer Debt Regulations as they existed before the commencement date.

Application of the Employer Debt Regulations

3. In regulation 1(2) of the Employer Debt Regulations (application) for sub-paragraph (a) substitute—

"(a) any employer in relation to any debt which has arisen under Article 75(1) (deficiencies in the assets) to the trustees or managers of the scheme before that date;".

Interpretation of the Employer Debt Regulations

4.—(1) Regulation 2 of the Employer Debt Regulations (interpretation) shall be amended in accordance with paragraphs (2) to (5).

(2) In paragraph (1)—

(a) after the definition of "the 2005 Order" insert—

""actuarial valuation" has the same meaning as in Part IV of the 2005 Order;";

(b) after the definition of "the actuary" insert—

""amount A" means the amount calculated in accordance with paragraph 4 of Schedule 1A;

"amount B" means the amount calculated in accordance with either sub-paragraph (2) or (3) of paragraph 5 of Schedule 1A;";

(c) after the definition of "the applicable time" insert—

""approved withdrawal arrangement" means an arrangement that meets the funding test and is approved by the Authority under regulation 7;

"approved withdrawal arrangement share" means an amount that is—

(a) a cessation employer's share of the difference;

(b) less than amount A, and

(c) payable by a cessation employer pursuant to an approved withdrawal arrangement;

"assessment period" has the meaning given in Article 116 of the 2005 Order;";

(d) after the definition of "the Board for Actuarial Standards"(**5**) insert—

""cessation employer" means an employer in relation to the scheme in respect of whom an employment-cessation event has occurred;

"cessation expenses" are all expenses which, in the opinion of the trustees or managers of a scheme, are likely to be incurred by the scheme in connection with an employment-cessation event occurring to an employer in relation to the scheme;

"the corresponding assets" means the assets transferred in connection with the transfer from the scheme in respect of any relevant transfer liabilities;";

(e) after the definition of "the Deficiency on Winding Up Regulations" insert—

(**5**) The definition of "the Board for Actuarial Standards" was inserted by paragraph 14(a)(i) of the Schedule to S.R. 2007 No. 64

""defined contribution employer" means an employer to whom all the liabilities attributable in relation to a scheme are liabilities in respect of money purchase benefits or in respect of supplementary benefits provided on an ancillary basis in the form of payments on death;

"departing employer" means—

(a) a cessation employer, or

(b) an employer in respect of whom an insolvency event has occurred;";

(f) in the definition of "employer" after "and regulations" insert "6,";

(g) for the definition of "employment-cessation event" substitute—

""employment-cessation event", in relation to a multi-employer scheme, means an event which is not a relevant event and which, subject to regulation 6A, occurs on the date on which—

(a) an employer has ceased to employ at least one person who is an active member of the scheme, and

(b) at least one other employer who is not a defined contribution employer continues to employ at least one active member of the scheme;";

(h) after the definition of "employment-cessation event" insert—

""frozen scheme" means a scheme which has ceased to have active members;

"the guarantee time" means the earliest time when an event specified in paragraph 3 of Schedule 1A occurs;

"guarantors" means such one or more of the parties to a withdrawal arrangement or an approved withdrawal arrangement as are specified in the arrangement as the persons who have given guarantees in relation to amount B for the purposes of the arrangement;

"liability proportion" means "K/L" where—

(a) "K" equals the amount of a scheme's liabilities attributable to an employer in accordance with regulation 6(4), and

(b) "L" equals the total amount of the scheme's liabilities attributable to employment with the employers;

"liability share" means an amount equal to the liability proportion of the total difference between the value of the assets and the amount of the liabilities of the scheme;";

(i) for the definition of "multi-employer scheme" substitute—

""multi-employer scheme" means a scheme (or a section of a scheme treated pursuant to regulation 8 as a separate scheme) in relation to which there is more than one employer;";

(j) after the definition of "multi-employer scheme" insert—

""protected liabilities" has the same meaning as for the purposes of a valuation under Article 162 of the 2005 Order (valuations to determine scheme underfunding);

"recovery plan" means a recovery plan that complies with the requirements in Article 205 of the 2005 Order and the Scheme Funding Regulations;

"regulated apportionment arrangement" is an arrangement under the scheme rules that—

(a) provides for the amount that would have been the employer's liability share to be changed;

(b) where the employer's liability share is reduced, apportions all or part of the amount that would have been the employer's liability share to one or more of the remaining employers;

(c) may provide for when the amount apportioned is to be paid;

(d) is entered into before, on or after the applicable time;

(e) sets out the amount of an employer's regulated apportionment arrangement share, and

(f) meets the conditions in regulation 7A;

"regulated apportionment arrangement share" means the amount under a regulated apportionment arrangement that is an employer's share of the difference;

"relevant accounts" means the audited accounts for the scheme that comply with the requirements imposed under Article 41(**6**) (provision of documents for members);

"the relevant transfer deduction" means the amount of the relevant transfer liabilities less the value of the corresponding assets;

"the relevant transfer liabilities" means the liabilities attributable to a departing employer that are transferred after the applicable time to an occupational or personal pension scheme or are otherwise secured;

"schedule of contributions" means the most recent schedule of contributions that is adopted in relation to the scheme for the purposes of Part IV of the 2005 Order;

"scheme apportionment arrangement" means an arrangement under the scheme rules that—

(a) provides for the employer to pay a scheme apportionment arrangement share instead of the employer's liability share;

(b) where that amount is less than the employer's liability share, apportions all or part of the amount that would have been the employer's liability share to one or more of the remaining employers;

(c) may provide for when the amount apportioned is to be paid;

(d) is entered into before, on or after the applicable time;

(e) sets out the amount of an employer's scheme apportionment arrangement share;

(f) the trustees or managers consent to, and

(g) meets the funding test;

"scheme apportionment arrangement share" means the amount under a scheme apportionment arrangement that is an employer's share of the difference;

"scheme's apportionment rule" means a scheme rule which makes provision for the difference between the value of a scheme's assets and the amount of its liabilities to be apportioned among the employers in different proportions from those which would otherwise arise;

(**6**) Article 41 was amended by paragraph 10(1) of Schedule 5 to the Child Support, Pensions and Social Security Act (Northern Ireland) 2000 (c. 4 (N.I.)), paragraph 46 of Schedule 10 and Schedule 11 to the Pensions (Northern Ireland) Order 2005 and paragraph 22 of the Schedule to S.R. 2005 No. 434