STATUTORY RULES OF NORTHERN IRELAND

2006 No. 161

PENSIONS

The Occupational Pension Schemes (Payments to Employer) Regulations (Northern Ireland) 2006

Made - - - -	*27th March 2006*
Coming into operation	*6th April 2006*

The Department for Social Development makes the following Regulations in exercise of the powers conferred by Articles 37(3)(a), (b) and (g), (4), (5) and (8), 76(2), (3)(d) and (8), 122(3) and 166(1) to (3) of the Pensions (Northern Ireland) Order 1995(**1**), and now vested in it(**2**), and Article 228(6)(a) of the Pensions (Northern Ireland) Order 2005(**3**).

PART 1

Citation, commencement and interpretation

Citation and commencement

1. These Regulations may be cited as the Occupational Pension Schemes (Payments to Employer) Regulations (Northern Ireland) 2006 and shall come into operation on 6th April 2006.

Interpretation

2.—(1) In these Regulations—

"the 2005 Order" means the Pensions (Northern Ireland) Order 2005;

"earmarked scheme" means a money purchase scheme under which all the benefits are secured by one or more insurance policies specifically allocated to the provision of benefits to or in respect of individual members;

"effective date" means the date by reference to which the scheme's assets are valued and liabilities calculated by the person specified in regulation 6;

(**1**) S.I. 1995/3213 (N.I. 22)); Article 37 was substituted by Article 227 of the Pensions (Northern Ireland) Order 2005 (S.I. 2005/255 (N.I. 1)); Article 76 is amended by paragraph 56 of Schedule 10 to that Order

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

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

"excluded person" means a deferred member or pension credit member whose current address is not known to the trustees or managers of the scheme, and in respect of whom correspondence sent to the last known address of such a member, by the trustees or managers, has been returned;

"insurance policy" means—

(a) in relation to an earmarked scheme a contract on human life or a contract of annuity on human life, and

(b) in any other case, a contract on human life or a contract of annuity on human life, but excluding a contract which is linked to investment funds;

"money purchase benefits" means benefits the rate or amount of which is calculated by reference to a payment or payments made by the member or by any other person in respect of the member and which are not benefits the rate or amount of which is calculated by reference to the average salary of a member over the period of service on which the benefit is based;

"money purchase scheme" means a pension scheme under which all the benefits that may be provided, other than death benefits, are money purchase benefits;

"regulatory own funds scheme" means a scheme in which the scheme, and not any employer in relation to that scheme—

(a) underwrites any liability to cover against biometric risk;

(b) guarantees an investment performance, or

(c) guarantees a level of benefits;

"the Regulator" means the Pensions Regulator(**4**);

"relevant accounts" for the purposes of identifying and valuing the assets of a scheme are audited accounts for the scheme which—

(a) comply with the requirements imposed under Article 41(**5**) (provision of documents for members), and

(b) are prepared in respect of a period ending with the effective date of the valuation, and

"valuation certificate" means a valuation certificate which complies with regulation 7.

(2) In the application of—

(a) Article 37 (payment of surplus to employer), and

(b) these Regulations,

to a scheme which has no active members, references to the employer have effect as if they were references to the person who was the employer immediately before the occurrence of the event after which the scheme ceased to have such members.

(3) In these Regulations, any reference to a numbered Article is a reference to the Article of the Pensions (Northern Ireland) Order 1995 bearing that number.

(4) For the purposes of these Regulations and notwithstanding section 39(2) of the Interpretation Act (Northern Ireland) 1954(**6**), where a period of time is expressed to begin on, or to be reckoned to begin on, a particular day, that day shall be included in the period.

(**4**) *See* section 1 of the Pensions Act 2004 (c. 35)

(**5**) 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 22 of the Schedule to S.R. 2005 No. 434 and paragraph 46 of Schedule 10 and Schedule 11 to the Pensions (Northern Ireland) Order 2005

(**6**) 1954 c. 33 (N.I.)

PART 2

Schemes not in wind up

Schemes not in wind up

3.—(1) Subject to paragraph (2) and regulations 12 to 14, the prescribed requirements for the purposes of Article 37(3)(b) (payment of surplus to employer) are that the scheme is not in wind up, and—

(a) it is a scheme which—

(i) is subject to Part IV of the 2005 Order(**7**) (scheme funding), and

(ii) is not a regulatory own funds scheme, or

(b) it is a scheme that is an earmarked scheme.

(2) A scheme to which—

(a) paragraph (1)(a) applies must also comply with regulations 4 to 7 and 9 to 11, or

(b) paragraph (1)(b) applies must also comply with regulation 8.

Schemes that are subject to Part IV of the 2005 Order - determination of assets and liabilities

4.—(1) In the case of a scheme to which regulation 3(1)(a) applies, where the trustees propose to make a payment to the employer, either—

(a) the written valuation of the scheme's assets and liabilities required under Article 37(3)(a) (payment of surplus to employer) shall be prepared in accordance with this regulation and regulations 5 and 6, or

(b) where—

(i) an actuarial valuation has been prepared for the purposes of Part IV of the 2005 Order(**8**) (scheme funding), and

(ii) this valuation is valid for the purposes of regulation 9,

the trustees may use this valuation for the purposes of regulation 7(1) and Article 37(3)(a), ("a Part IV valuation").

(2) Where the trustees use a Part IV valuation—

(a) the value to be placed on the scheme's liabilities shall be the value placed by the actuary on the scheme's liabilities for the purposes of the actuary's estimate of the solvency of the scheme included in that valuation, in accordance with—

(i) regulation 7(6)(a), or

(ii) regulation 7(6)(b),

as the case may be, of the Occupational Pension Schemes (Scheme Funding) Regulations (Northern Ireland) 2005(**9**) (actuarial valuations and reports), and

(b) the value to be placed on the scheme's assets shall be the value placed by the actuary on the scheme's assets for the purposes of the actuary's estimate of the solvency of the scheme included in that valuation.

(**7**) Part IV was modified by Schedule 2 to S.R. 2005 No. 568 and regulation 5(1) of S.R. 2005 No. 570
(**8**) *See* Article 203(2)(a) of the Pensions (Northern Ireland) Order 2005
(**9**) S.R. 2005 No. 568

(3) Subject to paragraph (7), the assets of the scheme to be taken into account for the purposes of the written valuation specified in paragraph (1)(a) are the assets attributed to the scheme in the relevant accounts, excluding—

(a) any resources invested (or treated as invested by Article 40(**10**)) in contravention of Article 40(1) (restriction on employer-related investments);

(b) any amount treated as a debt under Article 207(3) of the 2005 Order (failure to make payments) which are unlikely to be recovered without disproportionate cost or within a reasonable time, and

(c) where it appears to the actuary that the circumstances are such that it is appropriate to exclude them, any rights under an insurance policy.

(4) Subject to paragraph (6), the liabilities of the scheme to be taken into account for the purposes of the written valuation specified in paragraph (1)(a) are any liabilities—

(a) in relation to a member of the scheme by virtue of—

(i) any right that has accrued to or in respect of him to future benefits under the scheme rules, or

(ii) any entitlement to the present payment of a pension or other benefit which he has under the scheme rules, and

(b) in relation to the survivor of a member of the scheme, by virtue of any entitlement to benefits, or right to future benefits which he has under the scheme rules in respect of the member.

(5) For the purposes of paragraph (4)—

"right" includes a pension credit right, and

"the survivor" of a member is a person who—

(a) is the widow, widower or surviving civil partner of the member, or

(b) has survived the member and has any entitlement to benefit, or right to future benefits, under the scheme in respect of the member.

(6) Where rights under an insurance policy are excluded under paragraph (3)(c), the liabilities secured by the policy shall be disregarded for the purposes of paragraph (4).

(7) Where arrangements are being made by the scheme for the transfer to or from it of accrued rights and any pension credit rights, until such time as the trustees or managers of the scheme to which the transfer is being made ("the receiving scheme") have received assets of the full amount agreed by them as consideration for the transfer, it shall be assumed—

(a) that those rights have not been transferred, and

(b) that any assets transferred in respect of the transfer of those rights are assets of the scheme making the transfer, and not the receiving scheme.

Schemes that are subject to Part IV of the 2005 Order - valuation of assets and liabilities

5.—(1) In the case of a valuation specified in regulation 4(1)(a), and subject to paragraph (2), the value to be given to the assets of a scheme for the purposes of Article 37(3)(a) (payment of surplus to employer) is the value given to those assets in the relevant accounts, less the amount of the external liabilities.

(**10**) Article 40 was amended by Article 152 of S.I. 2001/3649, Article 26 of S.I. 2004/355 and paragraph 45 of Schedule 10 to the Pensions (Northern Ireland) Order 2005

(2) The value to be given to any rights under an insurance policy not excluded under regulation 4(3) is the value the actuary considers appropriate in the circumstances of the case on the effective date.

(3) The value to be placed on the liabilities of the scheme shall be the actuary's estimate of the value of the liabilities of the scheme on the effective date.

(4) In paragraph (3), "estimate of the value of the liabilities of the scheme" means—

(a) an estimate by the actuary of the cost of purchasing annuities, of the type described in Article 74(3)(c)(**11**) (discharge of liabilities by purchase of annuities satisfying prescribed requirements) and on terms consistent with those in the available market, which would be sufficient to satisfy the liabilities taken into account under regulation 4(4), and

(b) other expenses which, in the opinion of the actuary, would be likely to be incurred in connection with the winding up of the scheme.

(5) Where the actuary considers that it is not practicable to make an estimate in accordance with paragraph (4)(a), he shall make an estimate of the value of the liabilities of the scheme on the effective date, in such manner as he considers appropriate in the circumstances of the case.

(6) Where the actuary's estimate of the liabilities of the scheme is made under paragraph (5), the valuation shall include a brief account of the principles adopted in making the estimate.

(7) In paragraph (1), "the external liabilities" of a scheme are such liabilities of the scheme (other than liabilities within regulation 4(4)) as are shown in the net assets statement in the relevant accounts, and their amount shall be taken to be the amount shown in that statement in respect of them.

(8) The assets of the scheme shall be valued, and the amount of the liabilities determined, by reference to the effective date.

Prescribed persons for the purposes of Article 37(3)(a)

6. The prescribed persons for the purposes of Article 37(3)(a) (payment of surplus to employer) are in the case of a scheme that is subject to Part IV of the 2005 Order (scheme funding)—

(a) where it is a scheme for which an actuary is required to be appointed under Article 47(1)(b) (professional advisers), the actuary appointed under that Article, or

(b) where it is a scheme which is exempt from the application of Article 47(1)(b) by virtue of regulations made under paragraph (5) of that Article—

(i) a Fellow of the Faculty of Actuaries(**12**), or

(ii) a Fellow of the Institute of Actuaries(**13**).

Schemes that are subject to Part IV of the 2005 Order – valuation certificate and amount of payment to employer

7.—(1) Where a written valuation prepared in accordance with regulation 4(1) shows that the value of the assets of the scheme is greater than the value of the scheme's liabilities, the prescribed person shall prepare a valuation certificate in the form prescribed in Schedule 1.

(2) Where paragraph (1) applies, the maximum payment that may be made to the employer is, in the case of a valuation prepared in accordance with—

(a) regulation 4(1)(a), the amount by which the value of the scheme's assets exceeds the value of the scheme's liabilities at the effective date of the valuation, or

(**11**) Article 74(3)(c) was amended by Article 60 of S.I. 2002/1555
(**12**) The Faculty of Actuaries is located at Faculty of Actuaries, Maclaurin House, 18 Dublin Street, Edinburgh EH1 3PP
(**13**) The Institute of Actuaries is located at Institute of Actuaries, Staple Inn Hall, High Holborn, London WC1V 7QJ