STATUTORY RULES OF NORTHERN IRELAND

2006 No. 148

PENSIONS

The Occupational Pension Schemes (Member-nominated Trustees and Directors) Regulations (Northern Ireland) 2006

Made - - - - 21st March 2006
Coming into operation in accordance with regulation 1(1)

The Department for Social Development makes the following Regulations in exercise of the powers conferred by Articles 218(8)(c), 219(10), 220(2) and 287(2) and (3) of the Pensions (Northern Ireland) Order 2005(**1**).

Citation, commencement and interpretation

1.—(1) These Regulations may be cited as the Occupational Pension Schemes (Member-nominated Trustees and Directors) Regulations (Northern Ireland) 2006 and shall come into operation on 6th April 2006, immediately prior to the coming into operation of the provisions of Article 2(6) of, and Part 6 of the Schedule to, the Pensions (2005 Order) (Commencement No. 7) Order (Northern Ireland) 2005(**2**).

(2) In these Regulations—

"associated" shall be construed in accordance with paragraph (4);

"connected" shall be construed in accordance with paragraph (4);

"direct payment paid-up insurance scheme" means a scheme under which—

(a) no further contributions are payable;

(b) the benefits that may be provided in respect of an individual are determined by reference to the value of the whole or a specified part of the rights under a contract of insurance, and

(c) the benefits in respect of any member are, in accordance with an agreement made between the insurer and the trustees of the scheme (or a subsequent agreement made with any person for the provision of those benefits in respect of the member, by that person), to be paid by the insurer (or that person) directly to the member or to a person entitled to benefits in respect of that member;

(**1**) S.I. 2005/255 (N.I. 1)
(**2**) S.R. 2005 No. 543 (C. 37); Articles 16 to 18, 20 and 21 of the Pensions (Northern Ireland) Order 1995 (S.I. 1995/3213 (N.I. 22)) were amended by paragraphs 34 and 38 of Schedule 9 to the Welfare Reform and Pensions (Northern Ireland) Order 1999 (S.I. 1999/3147 (N.I. 11)), respectively. Articles 16 to 21 of the Pensions (Northern Ireland) Order 1995 are repealed by Schedule 11 to the Pensions (Northern Ireland) Order 2005 with effect from 6th April 2006

"former old code scheme" means a registered pension scheme which was formerly approved under section 208 of the Income and Corporation Taxes Act 1970(**3**) (approved superannuation funds) and under the provisions of which—

(a) no further contributions are payable, and

(b) the entitlement in respect of each member is to a benefit consisting of a specified fixed amount which may not be altered unless—

(i) the member retires otherwise than at his normal pension age, or

(ii) another person becomes entitled to a benefit in respect of him;

"independently selected" in relation to a trustee of a scheme or a director of a company which is a trustee of a scheme, means selected as a trustee (or, as the case may be, a director)—

(a) by some or all of the members of the scheme (otherwise than wholly or mainly by members who are directors of companies which are employers in relation to the scheme), or

(b) by an organisation which represents some or all of the members of the scheme (other than wholly or mainly members who are such directors);

"insurer" (subject to paragraph (5)) means—

(a) a person who has permission under Part IV of the Financial Services and Markets Act 2000(**4**) (permission to carry on regulated activities) to effect or carry out contracts of long-term insurance, or

(b) an EEA firm of the kind mentioned in paragraph 5(d) of Schedule 3 to that Act (EEA passport rights), which has permission under paragraph 15 of that Schedule (grant of permission) (as a result of qualifying for authorisation under paragraph 12 of that Schedule) to effect or carry out contracts of long-term insurance;

"registered pension scheme" has the meaning given in section 150(2) of the Finance Act 2004(**5**) (meaning of "pension scheme");

"relevant centralised scheme" means a scheme in which—

(a) membership is open to employees of more than one employer under a single scheme;

(b) at least two of the employers are not associated or connected, and

(c) in the case of a scheme which has one or more trustees and in which each trustee is a company—

(i) the scheme rules do not provide that the power to appoint or remove all the directors is exercisable solely by one employer, and

(ii) at least one-third of the directors of the company or each of those companies are independent or independently selected, or

(d) in the case of a scheme where at least one of the trustees is not a company, either—

(i) the scheme rules do not provide that the power to appoint or remove all the trustees is exercisable solely by one employer, or

(ii) at least one-third of the trustees are persons who—

(aa) have no legal or beneficial interest in the assets of any of the employers or of the scheme (otherwise than as trustees) and are neither connected nor associated with any of the employers, and

(bb) have been independently selected;

(**3**) 1970 c. 10; section 208 was repealed by Schedule 14 to the Finance Act 1971 (c. 68) with effect from 6th April 1980
(**4**) 2000 c. 8
(**5**) 2004 c. 12

"relevant executive pension scheme" means a scheme—

(a) in relation to which the company is the only employer and the sole trustee, and

(b) the members of which are either current or former directors of the company and which includes at least one-third of the current directors;

"relevant small occupational pension scheme" means—

(a) a scheme with fewer than 12 members, where all the members are trustees of the scheme, and either—

(i) the scheme rules provide that all decisions are made only by the trustees who are members of the schemes, by unanimous agreement, or

(ii) the scheme has an independent trustee who is independent in relation to the scheme for the purposes of Article 23 of the 1995 Order(**6**) (power to appoint independent trustees) and is registered in the register maintained by the Regulator in accordance with regulations made under paragraph (4) of that Article, or

(b) a scheme with fewer than 12 members where all the members are directors of a company which is the sole trustee of the scheme and either—

(i) the scheme rules provide that all decisions are made only by the members of the scheme by unanimous agreement, or

(ii) one of the directors of the company is independent in relation to the scheme for the purposes of Article 23 of the 1995 Order and is registered in the register maintained by the Regulator in accordance with regulations made under paragraph (4) of that Article;

"relevant wholly insured scheme" means a scheme under which there is a sole trustee and all the benefits are secured by contracts of insurance or annuity contracts, some or all of which are with an insurer who—

(a) is, or is connected, with the sole trustee of the scheme, but

(b) is not, and is not connected with, the employer;

"section 615(6) scheme" means a scheme with such a superannuation fund as is mentioned in section 615(6) of the Income and Corporation Taxes Act 1988(**7**) (exemption from tax in respect of certain pensions);

"small insured scheme" means a scheme—

(a) with fewer than 12 members, and

(b) in which all the scheme benefits are secured with an insurer under a contract of insurance or annuity contract.

(3) For the purposes of paragraph (2), a director is independent in relation to a scheme only if he—

(a) has no direct legal or beneficial interest in the assets of any of the employers or of the scheme, and

(b) is neither connected nor associated with any of the employers.

(4) For the purposes of these Regulations Articles 4 and 7 of the Insolvency Order(**8**) (associated and connected persons) shall apply as they apply for the purposes of that Order.

(5) The definition of insurer in paragraph (2) shall be read with—

(a) section 22 of the Financial Services and Markets Act 2000 (the classes of activity and categories of investment), and

(**6**) Article 23 was substituted by Article 32(3) of the Pensions (Northern Ireland) Order 2005

(**7**) 1988 c. 1; section 615(6) was amended by paragraph 11 of Schedule 10 to the Finance Act 1999 (c. 16)

(**8**) Article 4 was amended by paragraph 80 of Schedule 29 to the Civil Partnership Act 2004 (c. 33)

(b) any relevant order under that section, or

(c) Schedule 2 to that Act (regulated activities).

(6) References to "employer" and "employers" in paragraphs (c)(i) and (d) of the definition in paragraph (2) of "relevant centralised scheme" and in paragraph (3) do not include companies which carry on the business of acting as trustee of, or providing administrative services to, the scheme and no other business.

(7) In these Regulations, any reference to a numbered Article is a reference to the Article of the Pensions (Northern Ireland) Order 2005 bearing that number.

Exemptions from requirement to have member-nominated trustees

2. For the purposes of Article 218(8)(c) (requirement for member-nominated trustees) a scheme is of a prescribed description if the scheme—

(a) has fewer than two members;

(b) is a scheme to which Article 22 of the 1995 Order(**9**) (circumstances in which independent trustees provisions apply) applies;

(c) is an occupational pension scheme within the meaning given by section 1 of the Pension Schemes Act(**10**) (categories of pension schemes), but which is not a registered pension scheme;

(d) is a relevant small occupational pension scheme;

(e) is a relevant centralised scheme;

(f) is a direct payment paid-up insurance scheme;

(g) is a former old code scheme;

(h) is a section 615(6) scheme;

(i) is established under section 48 of the Northern Ireland Act 1998(**11**) (pensions of members), or which was established under Part II of the Ministerial Salaries and Members' Pensions Act (Northern Ireland) 1965(**12**) or Article 3 of the Assembly Pensions (Northern Ireland) Order 1976(**13**);

(j) is a scheme where the sole trustee, or all the trustees are independent within the meaning given by Article 23(3) of the 1995 Order;

(k) is a stakeholder pension scheme within the meaning of Article 3 of the 1999 Order(**14**);

(l) is a small insured scheme, or

(m) is independent of the employer by virtue of the employer having been dissolved or liquidated prior to 6th April 2005.

Prescribed exemptions from requirement to have member-nominated directors of corporate trustees

3. For the purposes of Article 219(10) (requirement for member-nominated directors of corporate trustees) a scheme is of a prescribed description if the scheme—

(**9**) Article 22 was amended by section 43(1) of the Child Support, Pensions and Social Security Act (Northern Ireland) 2000 (c. 4 (N.I.)) and Article 32(2) of, and paragraph 34 of Schedule 10 to, the Pensions (Northern Ireland) Order 2005

(**10**) Section 1 is amended by Article 216 of the Pensions (Northern Ireland) Order 2005

(**11**) 1998 c. 47

(**12**) 1965 c. 18 (N.I.); Part II was amended by the Members' Pensions (Northern Ireland) Order 1976 (S.I. 1976/426 (N.I. 8)). *See also* section 33(1) of the Northern Ireland Constitution Act 1973 (c. 36)

(**13**) S.I. 1976/1779

(**14**) Article 3 was amended by Article 262(2) to (4) of the Pensions (Northern Ireland) Order 2005