STATUTORY RULES OF NORTHERN IRELAND

2006 No. 48

PENSIONS

TERMS AND CONDITIONS OF EMPLOYMENT

The Occupational and Personal Pension Schemes (Consultation by Employers) Regulations (Northern Ireland) 2006

Made - - - - 16th February 2006

Coming into operation 6th April 2006

The Department for Social Development makes the following Regulations in exercise of the powers conferred by Articles 2(5)(a) and (6), 7(5)(a), 236(1) and (2), 237(1), 238(2) and (4) and 287(1) and (3) of the Pensions (Northern Ireland) Order 2005(**1**).

Introductory

Citation and commencement

1. These Regulations may be cited as the Occupational and Personal Pension Schemes (Consultation by Employers) Regulations (Northern Ireland) 2006 and shall come into operation on 6th April 2006.

Interpretation

2. In these Regulations—

"the Information and Consultation Regulations" means the Information and Consultation of Employees Regulations (Northern Ireland) 2005(**2**)

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

"active member"—

(a) in relation to an occupational pension scheme, has the meaning given by Article 121 of the 1995 Order(**3**) (interpretation of Part II), and

(**1**) S.I.2005/255 (N.I. 1); Articles 236 and 238 are modified in respect of multi-employer schemes by regulation 2 of S.R. 2006 No. 4

(**2**) S.R. 2005 No. 47

(**3**) S.I. 1995/3213 (N.I. 22)

(b) in relation to a personal pension scheme, means any member in respect of whom employer contributions fall to be paid;

"affected members" has the meaning given by regulation 7(4);

"employer contributions", in relation to an occupational or personal pension scheme, means contributions payable by or on behalf of the employer in relation to the scheme on his own account (but in respect of one or more employees);

"member contributions", in relation to an occupational or personal pension scheme, means contributions, other than voluntary contributions, by or on behalf of active members of the scheme which are payable out of deductions from the member's earnings;

"listed change" has the meaning given by regulation 6(2);

"multi-employer scheme" has the meaning given by Article 280 of the Order (modification of this Order in relation to certain categories of schemes);

"personal pension scheme" has the meaning given by regulation 3(3);

"prospective member"—

(a) in relation to an occupational pension scheme, means any person who, under the terms of his contract of service or the rules of the scheme—

(i) is able, at his own option, to become a member of the scheme,

(ii) will become so able if he continues in the same employment for a sufficiently long period,

(iii) will be admitted to the scheme automatically unless he makes an election not to become a member, or

(iv) may be admitted to it subject to the consent of his employer;

(b) in relation to a personal pension scheme, means any person who, under the terms of his contract of service, is eligible if he becomes a member of the scheme for employer contributions to be paid in respect of him;

"relevant employer" has the meaning given by regulation 3(2).

Application of Regulations

Application

3.—(1) These Regulations apply to—

(a) in the case of an occupational pension scheme which is not a multi-employer scheme—

(i) any relevant employer, and

(ii) if there is a relevant employer, the trustees or managers of the scheme;

(b) in the case of a multi-employer scheme in relation to which there are one or more relevant employers—

(i) each relevant employer,

(ii) the trustees or managers of the scheme, and

(iii) any other person who, under the rules of the scheme, has the power to make a listed change affecting the scheme(**4**), and

(**4**) The persons referred to in regulation 3(1)(b)(iii) are specified by virtue of modifications of Articles 236 and 238 of the Pensions (Northern Ireland) Order 2005 made by regulation 2 of S.R. 2006 No. 4

(c) in the case of a personal pension scheme where direct payment arrangements exist in respect of one or more members of the scheme who are his employees, a relevant employer.

(2) For the purposes of these Regulations "relevant employer"—

(a) in the case of an occupational pension scheme, means an employer in relation to the scheme other than one who is excluded by regulation 4, and

(b) in the case of a personal pension scheme, means an employer in relation to the scheme other than one who is excluded by regulation 5.

(3) In these Regulations references to a personal pension scheme are to a personal pension scheme falling within paragraph (1)(c).

Excluded employers: occupational pension schemes

4.—(1) This regulation excludes—

(a) any employer in relation to a public service pension scheme;

(b) any employer in relation to a small occupational pension scheme;

(c) any employer in relation to an occupational pension scheme with fewer than two members;

(d) any employer in relation to an occupational pension scheme which is an employer-financed retirement benefits scheme;

(e) any employer in relation to an unregistered occupational pension scheme which has its main administration outside the member States, and

(f) any employer employing in Northern Ireland a number of employees which does not exceed the maximum number specified in paragraph (2).

(2) The maximum number is—

(a) 150 with effect from 6th April 2006 to 5th April 2007;

(b) 100 with effect from 6th April 2007 to 5th April 2008, and

(c) 50 with effect from 6th April 2008 onwards.

(3) For the purposes of paragraph (1)(f)—

(a) the number of people employed by an employer is to be determined using the same method of calculation as is set out in regulation 4 of the Information and Consultation Regulations (calculation of number of employees), but

(b) references in that regulation to the previous twelve months are to be taken as references to the period of twelve months ending with the date of the proposal to make a listed change to which regulation 6 of these Regulations applies.

(4) In this regulation—

"employer-financed retirement benefits scheme" has the meaning given by section 393A of the Income Tax (Earnings and Pensions) Act 2003(**5**);

"public service pension scheme" has the meaning given by section 1(1) of the Pension Schemes Act(**6**);

"small occupational pension scheme" means—

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

(**5**) 2003 c. 1; section 393A was inserted by section 249(3) of the Finance Act 2004 (c. 12)
(**6**) 1993 c. 49; section 1 is amended by Article 216(2) of the Pensions (Northern Ireland) Order 2005

(i) the provisions of the scheme provide that all decisions which fall to be made by the trustees are made by unanimous agreement by the trustees who are members of the scheme, or

(ii) the scheme has a trustee who is independent in relation to the scheme for the purposes of Article 23 of the 1995 Order(**7**) (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;

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

(i) the provisions of the scheme provide that any decision made by the company in its capacity as trustee are made by the unanimous agreement of all the directors who are members of the scheme, or

(ii) one of the directors is a trustee who 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, and

"unregistered occupational pension scheme" means an occupational pension scheme which is not registered under section 153 of the Finance Act 2004(**8**) (registration of pension schemes).

Excluded employers: personal pension schemes

5.—(1) This regulation excludes—

(a) any employer in relation to a personal pension scheme where no employer contributions fall to be paid towards the scheme, and

(b) any employer employing in Northern Ireland a number of employees which does not exceed the maximum number specified in regulation 4(2).

(2) Regulation 4(3) also applies for the purposes of paragraph (1)(b).

Restriction on decision-making pending completion of consultation

Consultation required before decisions to make listed changes affecting schemes

6.—(1) No person falling within regulation 3(1) may decide to make a listed change that affects an occupational or personal pension scheme unless such consultation as is required by regulation 7(3) has been carried out.

(2) For the purposes of these Regulations, a change affecting an occupational or personal pension scheme is a "listed change" if—

(a) in relation to an occupational pension scheme, it is listed in regulation 8, or

(b) in relation to a personal pension scheme, it is listed in regulation 9,

and it is not excluded by virtue of regulation 10.

(3) Paragraph (1) does not require consultation to be carried out in any of the four cases described in paragraphs (4) to (7).

(4) The first case is where the active or prospective members of the scheme to whom the listed change relates were notified before 6th April 2006 of the proposal to make the change.

(5) The second case is where, in relation to an occupational pension scheme—

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

(**8**) 2004 c. 12; section 153 was amended by paragraphs 2 and 3 of Schedule 10 to the Finance Act 2005 (c. 7)

(a) consultation has already been carried out under these Regulations in respect of a proposal to prevent the future accrual of benefits, as described in regulation 8(1)(c), and

(b) there is a further proposal as a result of that consultation to make a decision to reduce the rate of such accrual, as described in regulation 8(3)(d).

(6) The third case is where, in relation to an occupational pension scheme—

(a) consultation has already been carried out under these Regulations in respect of a proposal to remove the liability to make employer contributions, as described in regulation 8(1)(d), and

(b) there is a further proposal as a result of that consultation to make a decision to reduce such contributions, as described in regulation 8(2).

(7) The fourth case is where, in relation to a personal pension scheme—

(a) consultation has already been carried out under these Regulations in respect of a proposal to cease employer contributions, as described in regulation 9(a), and

(b) there is a further proposal as a result of that consultation to make a decision to reduce such contributions, as described in regulation 9(b).

Notifications to employers and duty to consult

7.—(1) Any person falling within regulation 3(1) who proposes to make a listed change affecting an occupational or personal pension scheme must give written notice of that change to each employer in relation to the scheme.

(2) Paragraph (1) does not apply—

(a) in any of the four cases described in regulation 6(4) to (7), or

(b) where the person proposing the change is a relevant employer in relation to—

(i) an occupational pension scheme which is not a multi-employer scheme, or

(ii) a personal pension scheme.

(3) If his employees appear to him to include affected members—

(a) any employer notified under paragraph (1) who is a relevant employer, and

(b) any relevant employer falling within paragraph (2)(b),

must consult about the listed change in accordance with regulations 11 to 16.

(4) For the purposes of these Regulations "affected members", in relation to a proposal to make a listed change affecting an occupational or personal pension scheme, means the active or prospective members of the scheme to whom the listed change relates.

Listed changes: occupational pension schemes

8.—(1) Listed changes that affect occupational pension schemes are—

(a) to increase the normal pension age specified in the scheme rules for members or members of a particular description;

(b) to prevent new members, or new members of a particular description, from being admitted to the scheme;

(c) to prevent the future accrual of benefits under the scheme for or in respect of members or members of a particular description;

(d) to remove the liability to make employer contributions towards the scheme in respect of members or members of a particular description;