STATUTORY RULES OF NORTHERN IRELAND

2005 No. 570

PENSIONS

The Occupational Pension Schemes (Regulatory Own Funds) Regulations (Northern Ireland) 2005

Made - - - -	*16th December 2005*
Coming into operation	*30th December 2005*

The Department for Social Development, being a Department designated(**1**) for the purposes of section 2(2) of the European Communities Act 1972(**2**), in relation to personal and occupational pensions, in exercise of the powers conferred on it by that section and Articles 55(2)(h), 202(1)(b), 211 and 287(2) and (3) of the Pensions (Northern Ireland) Order 2005(**3**) and of all other powers enabling it in that behalf, hereby makes the following Regulations:

Citation and commencement

1. These Regulations may be cited as the Occupational Pension Schemes (Regulatory Own Funds) Regulations (Northern Ireland) 2005 and shall come into operation on 30th December 2005.

Interpretation

2.—(1) In these Regulations—

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

"the 1995 Order" means the Pensions (Northern Ireland) Order 1995(**4**);

"actuarial valuation" has the meaning given by Article 203(2)(a) (actuarial valuations and reports);

"the actuary", in relation to a scheme, means the actuary appointed under Article 47(1)(b) of the 1995 Order (professional advisers) in relation to that scheme;

"biometric risk"(**5**) means liability risks linked to death, disability and longevity;

"the commencement date" means 30th December 2005;

(**1**) *See* Schedule 2 to the European Communities (Designation) (No. 7) Order 2004 (S.I.2004/3328)
(**2**) 1972 c. 68
(**3**) S.I. 2005/255 (N.I. 1)
(**4**) S.I. 1995/3213 (N.I. 22)
(**5**) Under Article 6 of Directive 2003/41/EC of 3rd June 2003 on the activities and supervision of institutions for occupational retirement provision "biometrical risks" are defined as meaning risks linked to death, disability and longevity; there is no definition in the Directive of the term "biometric risk" which appears in Article 17 of the Directive

"the effective date" of an actuarial valuation is the date by reference to which the assets are valued and the technical provisions and regulatory own funds requirement calculated;

"employer" has the meaning given by Article 2(2) (general interpretation);

"the Regulator" means the Pensions Regulator(**6**);

"the regulatory own funds requirement" has the meaning given by regulation 3;

"the relevant accounts" of a scheme are audited accounts for the scheme—

(a) which comply with the requirements imposed under Article 41 of the 1995 Order(**7**) (provision of documents for members), and

(b) which are prepared for the purpose of an actuarial valuation in respect of a period ending with the effective date of the valuation;

"schedule of contributions" has the meaning given by Article 206(2) (schedule of contributions);

"the Scheme Funding Regulations" means the Occupational Pension Schemes (Scheme Funding) Regulations (Northern Ireland) 2005(**8**);

"the Taxes Act" means the Income and Corporation Taxes Act 1988(**9**);

"technical provisions" has the meaning given by Article 201(2) (schedule of contributions).

(2) In these Regulations, any reference to a numbered Article is a reference to the Article of the Order bearing that number.

(3) The Interpretation Act (Northern Ireland) 1954(**10**) shall apply to these Regulations as it applies to an Act of the Assembly.

Regulatory own funds requirement

3.—(1) An occupational pension scheme to which paragraph (3) applies must hold, on a permanent basis, additional assets above the aggregate of the scheme's technical provisions in order to absorb discrepancies between the anticipated and actual expenses and profits of the scheme ("the regulatory own funds requirement").

(2) The additional assets required under paragraph (1) must be—

(a) no less than the amount calculated in accordance with regulation 4, and

(b) free of all foreseeable liabilities.

(3) This paragraph applies to a scheme, where 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.

(4) Where any requirement of this regulation is not complied with, Article 10(3) to (9) of the 1995 Order(**11**) (civil penalties) shall apply to a trustee or manager who has failed to take all reasonable

(**6**) *See* section 1 of the Pensions Act 2004 (c. 35)
(**7**) 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.)) and paragraph 22 of the Schedule to S.R. 2005 No. 434 and is amended by paragraph 46 of Schedule 10, and Schedule 11, to the Pensions (Northern Ireland) Order 2005
(**8**) S.R. 2005 No. 568
(**9**) 1988 c. 1
(**10**) 1954 c. 33 (N.I.)
(**11**) Article 10 was amended by paragraph 9 of Schedule 2 to the Welfare Reform and Pensions (Northern Ireland) Order 1999 (S.I. 1999/3147 (N.I. 11)) and Schedule 11 to the Pensions (Northern Ireland) Order 2005

steps to ensure compliance as if this regulation were made under Part II of that Order (occupational pensions).

Calculation of the amount of the regulatory own funds requirement

4.—(1) The amount of the regulatory own funds requirement is the aggregate of—

(a) a sum equal to 4% of the technical provisions of the occupational pension scheme, plus

(b) a sum equal to 0.3% of the capital at risk for members of the scheme in respect of which the capital at risk is not a negative figure, and where the capital at risk is as calculated in paragraph (2).

(2) For the purposes of paragraph (1)(b), "capital at risk" means—

(a) to the extent that the benefit payable on death in respect of a member of the scheme comprises a lump sum benefit, the amount of that lump sum payable on death, and

(b) to the extent that the benefit payable on death comprises the purchase of an annuity, payment of a sum by instalments or any other kind of periodical payments, the present value of that benefit calculated in a way consistent with the determination of the scheme's technical provisions,

less the scheme's technical provisions in relation to those members.

(3) Where any requirement of this regulation is not complied with, Article 10(3) to (9) of the 1995 Order (civil penalties) shall apply to a trustee or manager who has failed to take all reasonable steps to ensure compliance as if this regulation were made under Part II of that Order (occupational pensions).

Modification of Part IV of the Order and the Scheme Funding Regulations

5.—(1) Part IV of the Order (scheme funding) shall be modified in its application to an occupational pension scheme that is subject to the regulatory own funds requirement so that it applies as if—

(a) in Article 200 (pension schemes to which Part IV applies)—

(i) in paragraph (1) for "occupational pension scheme other than—" there were substituted "occupational pension scheme except a scheme of a kind specified in regulation 15 of the Occupational Pension Schemes (Regulatory Own Funds) Regulations (Northern Ireland) 2005 (exemptions).";

(ii) sub-paragraphs (a) and (b) of paragraph (1) were omitted, and

(iii) paragraph (2) were omitted;

(b) in Article 203 (actuarial valuations and reports)—

(i) in paragraph (1)(a) the words after "one year" were omitted;

(ii) in paragraph (2)(a) for "scheme's assets and calculating its technical provisions" there were substituted "scheme's assets, and calculating its technical provisions and the amount of the regulatory own funds requirement";

(iii) sub-paragraphs (c) and (d) of paragraph (2) were omitted;

(iv) in paragraph (3) the word "and" at the end of sub-paragraph (a), and sub-paragraph (b) were omitted;

(v) in paragraphs (4), (6) and (7) the words "or report" were omitted, and

(vi) in paragraph (5) the words "or reports" were omitted;

(c) in Article 205 (recovery plan)—

(i) in paragraph (1) for "they must within the prescribed time—" there were substituted "they must take such steps as are necessary to ensure that the statutory funding objective (within the meaning of Article 201(1)) is met within two years after that date.";

(ii) sub-paragraphs (a) and (b) of paragraph (1) were omitted, and

(iii) paragraphs (2) to (6) were omitted;

(d) in Article 206(6)(b)(i) (schedule of contributions) for "by the end of the period specified in the recovery plan" there were substituted "within two years after that date";

(e) in Article 210(1)(d) (powers of the Regulator) the words after "Article 205" were omitted.

(2) The Scheme Funding Regulations shall be modified in their application to an occupational pension scheme that is subject to the regulatory own funds requirement so that they apply as if—

(a) in regulations 6(2) and (3)(a) (statement of funding principles), 7(2)(a) (actuarial valuations and reports), 9(1) and (2)(a) (schedule of contributions) and 13 (period for obtaining employer's agreement) for "15 months" there were substituted "12 months";

(b) paragraph (5) of regulation 7, and regulation 8 (recovery plan) were omitted;

(c) in regulation 10 (content and certification of schedules of contributions)—

(i) in paragraph (2) for "five years after the date on which the schedule is certified or, in a case where—" there were substituted "two years after the date on which the schedule is certified." and the words "that longer period." were omitted;

(ii) sub-paragraphs (a) and (b) of paragraph (2) were omitted;

(iii) in paragraph (4) for "give effect to a recovery plan" there were substituted "comply with Article 205 (recovery plan) or any regulatory own funds requirement", and

(d) regulations 17 (exemptions – general) and 18 (exemption connected with winding up) were omitted.

Certification of additional assets requirement

6.—(1) If an occupational pension scheme is subject to the regulatory own funds requirement, the calculation of the amount of the regulatory own funds requirement must be certified by the actuary.

(2) An actuarial valuation of the scheme must include the actuary's certification of the calculation of the amount of the regulatory own funds requirement in the form set out in the Schedule.

(3) If the actuary cannot certify the calculation of the amount of the regulatory own funds requirement, he must report the matter in writing to the Regulator within a reasonable period after the end of the period within which the actuarial valuation must be received by the trustees or managers.

(4) Where the actuary fails to take all reasonable steps to ensure compliance with this regulation, Article 10(3) to (9) of the 1995 Order (civil penalties) shall apply as if this regulation were made under Part II of that Order (occupational pensions).

Restoration of regulatory own funds

7.—(1) If, having obtained an actuarial valuation and certification of the calculation of the regulatory own funds requirement for an occupational pension scheme, it appears to the trustees or managers of that scheme that the regulatory own funds requirement was not met as at the effective date of the actuarial valuation, the trustees or managers must take such steps as are necessary to ensure that the regulatory own funds requirement is met within two years after the effective date of that valuation.

(2) The trustees or managers must send the Regulator a report of the steps to be taken under paragraph (1) within a reasonable period after having obtained the actuarial valuation and certification of the calculation of the amount of the regulatory own funds requirement.

(3) Where paragraph (1) or (2) is not complied with, the Regulator may by order exercise either or both of the following powers—

(a) it may modify the scheme as regards the future accrual of benefits;

(b) it may impose a schedule of contributions specifying—

(i) the rates of contributions payable towards the scheme by, or on behalf of, the employer and the active members of the scheme, and

(ii) the dates on, or before, which such contributions are to be paid.

(4) Where paragraph (1) or (2) is not complied with, Article 10(3) to (9) of the 1995 Order (civil penalties) shall apply to a trustee or manager who has failed to take all reasonable steps to ensure compliance as if this regulation were made under Part II of that Order (occupational pensions).

Certification of schedule of contributions

8.—(1) If an occupational pension scheme is subject to the regulatory own funds requirement, the certification of the schedule of contributions for the scheme must also include certification of the schedule of contributions in respect of the additional assets requirement in the form set out in the Schedule.

(2) Where paragraph (1) is not complied with, Article 10(3) to (9) of the 1995 Order (civil penalties) shall apply to a trustee or manager who has failed to take all reasonable steps to ensure compliance as if this regulation were made under Part II of that Order (occupational pensions).

Statement of funding principles

9. The policy of the trustees or managers of a scheme for securing that the regulatory own funds requirement in relation to the scheme is met is a prescribed matter for the purposes of Article 202(1)(b) (statement of funding principles).

Postponement

10.—(1) If an occupational pension scheme had insufficient assets on 23rd September 2005 to comply with the regulatory own funds requirement, compliance with regulation 3(1) is postponed until 22nd September 2010 ("the postponement period") after which date compliance with the regulatory own funds requirement cannot be further postponed.

(2) If compliance with regulation 3(1) is postponed in accordance with paragraph (1), the trustees or managers must notify the Regulator of the postponement and the postponement period within a reasonable period after the effective date of the first valuation under Part IV of the Order (scheme funding).

(3) During the postponement period a trustee or manager must not—

(a) accept any contributions from a European employer under Article 263 (occupational pension scheme receiving contributions from European employer);

(b) apply for authorisation by the Regulator to accept any contributions from a European employer under Article 264 (general authorisation to accept contributions from European employers), or

(c) apply for approval by the Regulator in relation to a particular European employer under Article 265 (approval in relation to particular European employer).