STATUTORY RULES OF NORTHERN IRELAND

2005 No. 568

PENSIONS

The Occupational Pension Schemes (Scheme Funding) Regulations (Northern Ireland) 2005

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

The Department for Social Development, in exercise of the powers conferred by Article 68(2)(e) of the Pensions (Northern Ireland) Order 1995(**1**), and now vested in it(**2**), and Articles 64(2)(a), 200(1)(b) and (2), 201(3) and (4)(b) and (c), 202(1)(b) and (3), 203(1)(b), (4) and (6), 205(1) and (4) to (6), 206(3)(a) and (b) and (4), 207(2), 208(2) and (5), 209(2) and (3), 210(4), 211 and 287(2), (3) and (4) 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 (Scheme Funding) 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 and any reference to a numbered Article is a reference to the Article of the Order bearing that number;

"the Taxes Act 1988" means the Income and Corporation Taxes Act 1988(**4**);

"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;

"the commencement date" means 30th December 2005;

"insurance policy" means an insurance policy which is a contract on human life or a contract of annuity on human life, but excluding a contract which is linked to investment funds;

(**1**) S.I. 1995/3213 (N.I. 22)
(**2**) *See* Article 8(b) of S.R. 1999 No. 481
(**3**) S.I. 2005/255 (N.I. 1)
(**4**) 1988 c. 1

"pension credit rights" has the meaning given by Article 121(1) of the 1995 Order(**5**);

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

"the relevant accounts", for the purposes of identifying and valuing the assets 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 in respect of a period ending with the effective date of the valuation.

(2) In these Regulations "scheme" must be read in appropriate cases in accordance with the modifications of Part IV of the Order made by paragraphs 1, 4, 5 and 7 of Schedule 2 (multi-employer sectionalised schemes, partly foreign schemes and schemes with a partial government guarantee), and "employer" and "member" must be construed accordingly.

Determination of assets and liabilities

3.—(1) The assets of a scheme to be taken into account for the purposes of Part IV of the Order are the assets attributed to the scheme in the relevant accounts, excluding—

(a) any resources invested (or treated as invested by or under Article 40 of the 1995 Order) in contravention of Article 40(1) of the 1995 Order (restriction on employer-related investments);

(b) any amounts treated as a debt due to the trustees or managers under Article 75(2) or (4) of the 1995 Order(**8**) (deficiencies in the assets) or Article 207(3) (amounts due in accordance with a schedule of contributions) 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.

(2) The liabilities of a scheme to be taken into account for the purposes of Part IV of the Order 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.

(3) For the purposes of paragraph (2)—

"right" includes a pension credit right;

"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.

(**5**) The definition of "pension credit rights" was inserted by paragraph 50(3) of Schedule 9 to the Welfare Reform and Pensions (Northern Ireland) Order 1999 (S.I. 1999/3147 (N.I. 11))

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

(**7**) Article 41 was amended by paragraph 10 of Schedule 5 to the Child Support, Pensions and Social Security Act (Northern Ireland) 2000 (c. 4 (N.I.)) and is amended by paragraph 46 of Schedule 10 to the Pensions (Northern Ireland) Order 2005

(**8**) Article 75 was amended by Article 248 of the Pensions (Northern Ireland) Order 2005

(4) Where rights under an insurance policy are excluded under paragraph (1)(c), the liabilities secured by the policy shall be disregarded for the purposes of paragraph (2).

(5) 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 the 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 of the receiving scheme.

Valuation of assets and determination of the amount of liabilities

4.—(1) Subject to paragraph (2), the value to be given to the assets of a scheme for the purposes of Part IV of the Order is the value given to those assets in the relevant accounts, less the amount of the external liabilities.

(2) The value to be given to any rights under an insurance policy taken into account under regulation 3(1) is the value the actuary considers appropriate in the circumstances of the case.

(3) In paragraph (1), "the external liabilities" of a scheme are such liabilities of the scheme (other than liabilities within regulation 3(2)) 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.

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

Calculation of technical provisions

5.—(1) Subject to paragraphs (2) and (3), it is for the trustees or managers of a scheme to determine which method and assumptions are to be used in calculating the scheme's technical provisions.

(2) The method used in calculating a scheme's technical provisions must be an accrued benefits funding method.

(3) In determining which accrued benefits funding method and which assumptions are to be used, the trustees or managers must—

(a) follow the principles set out in paragraph (4), and

(b) in the case of a scheme under which the rates of contributions payable by the employer are determined—

(i) by or in accordance with the advice of a person other than the trustees or managers, and

(ii) without the employer's agreement,

take account of the recommendations of that person.

(4) The principles to be followed under paragraph (3) are—

(a) the economic and actuarial assumptions must be chosen prudently, taking account, if applicable, of an appropriate margin for adverse deviation;

(b) the rates of interest used to discount future payments of benefits must be chosen prudently, taking into account either or both—

(i) the yield on assets held by the scheme to fund future benefits and the anticipated future investment returns, and

(ii) the market redemption yields on government or other high-quality bonds;

(c) the mortality tables used and the demographic assumptions made must be based on prudent principles, having regard to the main characteristics of the members as a group and expected changes in the risks to the scheme, and

(d) any change from the method or assumptions used on the last occasion on which the scheme's technical provisions were calculated must be justified by a change of legal, demographic or economic circumstances.

Statement of funding principles

6.—(1) A statement under Article 202 must include the following matters, in addition to those specified in that Article—

(a) any funding objectives provided for in the rules of the scheme, or which the trustees or managers have adopted, in addition to the statutory funding objective;

(b) whether there are arrangements for a person other than the employer or a member of the scheme to contribute to the funds held by the scheme and, if there are such arrangements, the circumstances in which they apply;

(c) whether there is a power to make payments to the employer out of funds held for the purposes of the scheme and, if there is such a power, the circumstances in which it may be exercised;

(d) whether there are discretionary powers to provide or increase benefits for, or in respect of, all or any of the members and, if there are such powers, the extent to which they are taken into account in the funding of the scheme;

(e) the policy of the trustees or managers regarding the reduction of the cash equivalent of benefits which have accrued to or in respect of members on account of the state of the funding of the scheme, and

(f) the intervals at which the trustees or managers will obtain actuarial valuations in accordance with Article 203(1)(a), and the circumstances in which and occasions on which they will, or will consider whether to, obtain actuarial valuations in addition to those obtained at such intervals.

(2) The first statement under Article 202 in respect of a scheme must be prepared by the trustees or managers within 15 months after the effective date of the first actuarial valuation obtained by them under Article 203.

(3) A statement under Article 202 must be reviewed, and if necessary revised—

(a) within 15 months after the effective date of each subsequent actuarial valuation, and

(b) within a reasonable period after any occasion on which the Regulator has exercised any of the powers conferred by Article 210(2) in relation to the scheme.

(4) A statement under Article 202 must specify the date on which it was prepared, or, if it has been revised, the date on which it was last revised.

Actuarial valuations and reports

7.—(1) In addition to the regular valuations provided for in Article 203(1)(a), the trustees or managers of a scheme must obtain an actuarial valuation where the Regulator has given directions under Article 210(2)(b)(i) as to the manner in which the scheme's technical provisions are to be calculated.

(2) Where the trustees or managers have obtained an actuarial valuation or an actuarial report, they must ensure that it is received by them—

(a) in the case of a valuation under Article 203(1)(a), within 15 months after its effective date;

(b) in the case of a valuation where the Regulator has given directions under Article 210(2)(b)(i)—

(i) within three months after the date of the directions if the effective date of the valuation is before the date of the directions, and

(ii) within six months after the effective date of the valuation if that date is the same as or later than the date of the directions;

(c) in the case of a report, within 12 months after its effective date.

(3) Where the assets taken into account in an actuarial valuation include rights under an insurance policy, the valuation must state the reason why the value given to such rights is considered appropriate in the circumstances of the case.

(4) An actuarial valuation must include—

(a) the actuary's certification of the calculation of the technical provisions, in the form set out in Schedule 1, and

(b) the actuary's estimate of the solvency of the scheme.

(5) An actuarial report must include an assessment by the actuary of changes in the value of the scheme's assets since the last actuarial valuation was prepared.

(6) In paragraph (4), "the actuary's estimate of the solvency of the scheme" means—

(a) except in the case referred to in paragraph (b), an estimate by the actuary of whether, on the effective date of a valuation, the value of assets of the scheme to be taken into account under regulation 3(1) exceeded or fell short of the sum of—

(i) the cost of purchasing annuities, of the type described in Article 74(3)(c) of the 1995 Order(**9**) and on terms consistent with those in the available market, which would be sufficient to satisfy the liabilities taken into account under regulation 3(2), and

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

and the amount of the excess or, as the case may be, the shortfall, and

(b) where the actuary considers that it is not practicable to make an estimate in accordance with paragraph (a), an estimate of the solvency of the scheme on the effective date of the valuation made in such manner as the actuary considers appropriate in the circumstances of the case.

(7) Where the actuary's estimate of solvency is made under paragraph (6)(b), the valuation must include a brief account of the principles adopted in making the estimate.

Recovery plan

8.—(1) Where Article 205(1) applies, and the trustees or managers of a scheme are required, following an actuarial valuation, either to prepare a recovery plan or to review and, if necessary, revise an existing recovery plan, they must do so—

(a) in the case of the first actuarial valuation obtained by them under Article 203 and each subsequent valuation under Article 203(1)(a), within 15 months after the effective date of the valuation;

(b) in the case of a valuation under Article 203(1)(b) and regulation 7(1), within whichever period is applicable under regulation 7(2)(b).

(2) In preparing or revising a recovery plan, the trustees or managers must take account of the following matters—

(**9**) Article 74(3)(c) was amended by Article 60 of S.I. 2002/1555