STATUTORY RULES OF NORTHERN IRELAND

2005 No. 387

PENSIONS

The Occupational Pension Schemes (Employer Debt, etc.) (Amendment) Regulations (Northern Ireland) 2005

Made - - - -	*12th August 2005*
Coming into operation	*2nd September 2005*

The Department for Social Development, in exercise of the powers conferred by Articles 10(3), 56(3), 75(1)(b), (5) and (10), 75A(1) to (7), 87(2), 115(1)(a) and (b), 116, 122(3) and 166(1) to (3) of the Pensions (Northern Ireland) Order 1995(**1**), and now vested in it(**2**), and Articles 2(5)(a), 88(2)(q) and 119(4) of, and paragraph 2(d) of Schedule 1 to, the Pensions (Northern Ireland) Order 2005(**3**) and of all other powers enabling it in that behalf, hereby makes the following Regulations:

Citation, commencement and interpretation

1.—(1) These Regulations may be cited as the Occupational Pension Schemes (Employer Debt, etc.) (Amendment) Regulations (Northern Ireland) 2005 and shall come into operation on 2nd September 2005.

(2) Regulation 2(1), (2), (5) and (8) does not apply if the employment-cessation event occurs before that date.

(3) Regulation 2(1) and (7) does not apply if the applicable time is before that date.

(4) In these Regulations—

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

"the 2005 Regulations" means the Occupational Pension Schemes (Employer Debt) Regulations (Northern Ireland) 2005(**4**);

"the applicable time" has the same meaning as in regulation 2(1) of the 2005 Regulations;

"employment-cessation event" has the meaning given in regulation 6(4) of the 2005 Regulations.

(**1**) S.I. 1995/3213 (N.I. 22); Article 75 was amended by Article 248 of the Pensions (Northern Ireland) Order 2005 (S.I. 2005/255 (N.I. 1)), Article 75A was inserted by Article 249 of that Order and Article 87(2) was amended by paragraph 60(b) 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); Article 88(2)(q) and paragraph 2(d) of Schedule 1 refer to functions of the Regulator, which by virtue of Article 6(1)(b) and (2)(b) include functions expressed to be conferred on "the Authority" by or by virtue of the Pensions (Northern Ireland) Order 1995

(**4**) S.R. 2005 No. 168

Amendment of the 2005 Regulations

2.—(1) The 2005 Regulations shall be amended in accordance with paragraphs (2) to (8).

(2) In regulation 2(1) (interpretation) at the end there shall be added the following definition—

""withdrawal arrangement" and "approved withdrawal arrangement" are to be read in accordance with paragraph 1(1) of Schedule 1A.".

(3) In regulation 4(1) (schemes to which Article 75 does not apply) sub-paragraph (k) and the word "or" immediately preceding it shall be omitted.

(4) In regulation 5 (calculation of the value of scheme liabilities and assets: defined benefit schemes)—

(a) in paragraph (1)(c) after "(2), (3)," there shall be inserted "(3A),", and

(b) after paragraph (3) there shall be inserted the following paragraph—

"(3A) If the modification specified in regulation 7(3) has applied in the case of an employment-cessation event that occurred in relation to an employer before the applicable time—

(a) the liabilities of the scheme that are attributable to employment with that employer, and

(b) the debts treated as due under Article 75(4) in accordance with that modification,

are not to be taken into account under paragraph (1).".

(5) For regulation 7 (multi-employer schemes: valuations for employment-cessation events) there shall be substituted the following regulations—

"**Multi-employer schemes: employment-cessation events and withdrawal arrangements**

7.—(1) This regulation applies where—

(a) Article 75 applies to a trust scheme with the modifications referred to in regulation 6, and

(b) as a result of the occurrence of an employment-cessation event in relation to an employer, a debt ("the cessation debt") calculated on the basis of assets and liabilities valued in accordance with regulation 5 is treated as due from the employer ("the cessation employer") under Article 75(4).

(2) If the cessation employer notifies the Authority in writing that he proposes to enter into a withdrawal arrangement—

(a) the Authority may issue a direction that the cessation debt is to be unenforceable for such period as the Authority may specify in the direction, and where such a direction has been issued the debt is unenforceable for that period, and

(b) the Authority may issue a direction that if an approved withdrawal arrangement has come into force within that period, Article 75 is to apply in the case of the employment-cessation event with the modification specified in paragraph (3) instead of the modification referred to in regulation 6(1)(e)(ii), and where such a direction has been issued and such an arrangement has so come into force, that modification so applies.

(3) The modification is that Article 75 has effect as if the reference in Article 75(4) to an amount equal to the difference being treated as a debt due from the employer were a reference to—

(a) amount A being treated as a debt due from the employer, and

(b) unless and until the Authority issue a direction that it is not to be so treated, amount B being treated as a debt due from the guarantors at the guarantee time for which (if there is more than one guarantor) they are jointly or, if the approved withdrawal arrangement so provides, jointly and severally liable,

where amount A is calculated in accordance with regulation 7A and amount B is calculated in accordance with regulation 7B.

(4) In this regulation—

"the guarantee time" means the earliest time when an event specified in paragraph 1(3) of Schedule 1A occurs;

"the guarantors" means such one or more of the parties to the approved withdrawal arrangement as are specified in the arrangement as the persons who are the guarantors for the purposes of this regulation.

(5) The Authority may issue a direction extending the period mentioned in paragraph (2)(a) by such further period as they may specify (so that the debt is unenforceable for the extended period).

(6) The Authority may only issue a direction under paragraph (3)(b)—

(a) before the guarantee time, and

(b) if the Authority consider that the approved withdrawal arrangement is no longer required.

(7) Schedule 1A applies for the purpose of making further provision in cases where this regulation applies; and in that Schedule and regulations 7A and 7B "the cessation employer" has the same meaning as in this regulation.

Calculation of amounts due from cessation employer by virtue of regulation 7

7A.—(1) For the purposes of regulation 7(3), amount A depends on whether or not a debt (a "scheme funding basis debt") would have been treated as due from the cessation employer under Article 75(4) if—

(a) regulation 5 had applied with the modifications specified in paragraph (4), and

(b) Article 75(4) had applied in accordance with regulation 6(1)(d) and (e) but subject to the modifications of regulation 6 specified in paragraph (5) (instead of in accordance with the modification specified in regulation 7(3)).

(2) If a debt would have been so treated, amount A is the sum of the scheme funding basis debt and the cessation expenses attributable to the employer.

(3) If a debt would not have been so treated, amount A is equal to the amount of the cessation expenses attributable to the employer.

(4) The modifications of regulation 5 are that—

(a) paragraphs (1)(a) and (2) and the references to those provisions in paragraph (1)(b), (c) and (d) (by virtue of which liabilities for pensions and other benefits are to be valued on the assumption that they will be discharged by the purchase of annuities) are omitted;

(b) paragraph (3) and the references to that paragraph in paragraph (1)(c) and (d) (by virtue of which winding up expenses are to be taken into account) are omitted, and

(c) in paragraph (5) for "for the purposes of Article 75(2) and (4)" there are substituted "for the purposes of Article 75(2) and for the purposes of Article 75(4) where no approved withdrawal arrangement has been entered into by the employer".

(5) The modifications of regulation 6 are that—

(a) in paragraph (1)(e) for head (ii) there is substituted the following head—

"(ii) in a case where the difference is ascertained immediately before an employment-cessation event occurs in relation to the employer, a reference to an amount equal to the employer's share of the difference, less the relevant transferred liabilities deduction, being treated as a debt due from the employer;";

(b) after paragraph (5) there is added the following paragraph—

"(6) In this regulation "the relevant transferred liabilities deduction" means the amount of any relevant transferred liabilities, less the value of the corresponding assets.

(7) For the purposes of paragraph (6)—

(a) "corresponding assets", in relation to relevant transferred liabilities, means the assets transferred from the scheme in connection with the transfer from the scheme of those liabilities, and

(b) the value of the corresponding assets is to be determined—

(i) in the case of corresponding assets that are assets of the scheme at the applicable time, as at that time, and

(ii) in the case of corresponding assets that are not assets of the scheme at that time, as at the date of the transfer of the assets.

(8) For the purposes of paragraph (6)—

(a) "relevant transferred liabilities" means liabilities in respect of members —

(i) which are transferred from the scheme in circumstances where the conditions set out in regulation 12(2)(a) or (b) and (3) of the Occupational Pension Schemes (Preservation of Benefit) Regulations (Northern Ireland) 1991(**5**) (transfer of member's accrued rights without consent) are met;

(ii) which are so transferred during the period beginning with the applicable time and ending with the date on which the approved withdrawal arrangement is approved ("the relevant period");

(iii) the transfer of which reduces the amount of the scheme's liabilities attributable to employment with the employer in relation to whom the employment-cessation event has occurred, and

(iv) in connection with the transfer of which there is a transfer of corresponding assets during the relevant period; and

(b) the amount of the relevant transferred liabilities is to be calculated in accordance with regulation 5 as modified by regulation 7A(4).".

(6) The value of the assets and the amount of the liabilities of a scheme which are to be taken into account for the purposes of determining whether a scheme funding basis debt would have been treated as due as mentioned in paragraph (1) must be certified by the actuary in the form set out in Schedule 1B, but—

(a) if the actuary is of the opinion that the value of the assets of the scheme was not less than the amount of the liabilities of the scheme—

(**5**) S.R. 1991 No. 37; paragraph (2) was substituted by regulation 35 of S.R. 1992 No. 304 and amended by regulation 2(7)(a) of S.R. 1996 No. 620 and paragraph (3) was substituted by regulation 2(a) of S.R. 1993 No. 324 and amended by regulation 2(a) of S.R. 1999 No. 378

(i) substituting in the first sentence of the comparison of value of scheme assets with amount of scheme liabilities for "was less" the words "was not less", and

(ii) omitting the last sentence of that comparison, and

(b) if the scheme is being wound up on the date as at which the valuation is made, omitting from the Note the words from "if the scheme" to the end.

(7) In this regulation "the cessation expenses attributable to the employer" has the meaning given by regulation 6(5).

Calculation of amounts due from guarantors by virtue of regulation 7

7B.—(1) For the purposes of regulation 7(3), amount B depends on whether the approved withdrawal arrangement provides for amount B to be the amount provided for under paragraph (2).

(2) If the approved withdrawal arrangement so provides, amount B is equal to the amount (if any) that would be the amount of the debt due from the cessation employer under Article 75(4) if—

(a) the employment-cessation event had occurred at the guarantee time;

(b) the cessation employer had not entered into an approved withdrawal arrangement, and

(c) there were no cessation expenses attributable to the employer.

(3) If the approved withdrawal arrangement does not provide for amount B to be the amount provided for under paragraph (2), amount B is equal to the amount that would be the amount treated as due from the cessation employer under Article 75(4) if the cessation employer had not entered into an approved withdrawal arrangement, less the sum of—

(a) the amount that is amount A for the purposes of regulation 7(3);

(b) if the amount that the approved withdrawal arrangement provides for the cessation employer to pay exceeds that amount, an amount equal to the excess, and

(c) the relevant transferred liabilities deduction.

(4) The value of the assets and the amount of the liabilities of a scheme which are to be taken into account for the purposes of determining the amount (if any) that would be the amount of the debt due from the cessation employer under Article 75(4) in the case mentioned in paragraph (2) must be certified by the actuary in the form set out in Schedule 1, but—

(a) substituting for the reference to regulation 5 a reference to paragraph (2) of this regulation;

(b) if the actuary is of the opinion that the value of the assets of the scheme was not less than the amount of the liabilities of the scheme—

(i) substituting in the first sentence of the comparison of value of scheme assets with amount of scheme liabilities for "was less" the words "was not less", and

(ii) omitting the last sentence of that comparison, and

(c) if the scheme is being wound up on the date as at which the valuation is made, omitting from the Note the words from "if the scheme" to the end.

(5) In this regulation—

"the cessation expenses attributable to the employer" has the meaning given by regulation 6(5);

"the relevant transferred liabilities deduction" has the meaning given by regulation 6(6), as inserted by the modification of regulation 6 made by regulation 7A(5)(b), except