STATUTORY RULES OF NORTHERN IRELAND

2005 No. 378

PENSIONS

The Pensions Regulator (Financial Support Directions, etc.) Regulations (Northern Ireland) 2005

Made - - - -	*8th August 2005*
Coming into operation	*1st September 2005*

The Department for Social Development, in exercise of the powers conferred on it by Articles 2(5)(a), 39(1)(b), (3)(c) and (9), 40(3)(a) and (4), 41(2)(b), (c) and (d), 280(1)(b) and 287(2) of the Pensions (Northern Ireland) Order 2005(**1**), 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 Pensions Regulator (Financial Support Directions, etc.) Regulations (Northern Ireland) 2005 and shall come into operation on 1st September 2005.

Interpretation

2.—(1) In these Regulations—

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

"Article 75 debt" means a debt due, or a debt which might become due, from the employer in relation to the scheme under Article 75 of the 1995 Order(**2**) (deficiencies in the scheme assets);

"business associate" means a person referred to in—

(a) Article 39(6)(b) (persons to whom the Regulator may issue a financial support direction - individuals) who is involved in the carrying on of any business, or

(b) Article 39(6)(c) (persons to whom the Regulator may issue a financial support direction – non-individuals);

"calculation date" means the date specified by the Regulator, by reference to which the value of the resources of a person to whom Article 39(6) applies will be calculated;

"entity" means an employer or a business associate;

"entity value" means the fair value of the entity;

(**1**) S.I.2005/255 (N.I. 1)
(**2**) Article 75 was amended by Article 248 of the Pensions (Northern Ireland) Order 2005

"entity value difference" ("EVD") means the difference between the entity value at the calculation date and the aggregate of that entity's net assets as set out in the FSD reference accounts and any identified FVDs;

"fair value" means the amount for which an asset could be exchanged, or a liability settled, between knowledgeable, willing parties in an arm's length transaction;

"fair value difference" ("FVD") means the difference between the fair value of an asset or liability at the calculation date and the amount at which that asset or liability is recorded in the FSD reference accounts;

"FSD reference accounts" means the accounts used to establish the net assets of the relevant entity for the purposes of the value of resources calculation which shall be—

(c) the entity's most recent individual accounts, or, where the Regulator and the entity agree, subsequent accounts prepared on a basis consistent with the most recent individual accounts, taking into account any changes required in order to comply with generally accepted accounting practice, or

(d) in the case of an entity not subject to Article 234 of the Companies Order(**3**) (duty to prepare individual accounts), that entity's most recent set of approved accounts, or where the Regulator and the entity agree, subsequent accounts prepared on a basis consistent with the most recent approved accounts, taking into account any changes required in order to comply with generally accepted accounting practice;

"individual accounts" means accounts prepared in accordance with Article 234 of the Companies Order;

"net assets" ("NA") means the aggregate of the entity's assets less the aggregate of its liabilities (and liabilities shall include any provision for liabilities made in individual accounts prepared in accordance with either Article 234A (Companies Order individual accounts) or Article 234B (IAS individual accounts) of the Companies Order, or any similar provision for liabilities made in the accounts of any entity to which the Companies Order does not apply);

"property" has the same meaning as in Article 49(7) (restoration orders – meaning of "property");

"related employer balances" ("Eb") means any amount which has been taken into account in the calculation of the value of the resources of the employer which, were it also to appear in the calculation of the value of the resources of a business associate, would result in the value of the resources of the business associate and the employer together being overstated or understated by that amount; and such an amount may include (but is not limited to)—

(e) any direct or indirect investment in the share capital of the employer;

(f) any liability of a business associate relating to the employer's liabilities to the extent that the corresponding liability is deducted in the calculation of the value of the employer's resources;

(g) any subordinated employer funding, and

(h) provisions made by the business associate against any amounts owed by the employer to the business associate, to the extent that the corresponding liability is deducted in the calculation of the value of the employer's resources;

"relevant pension scheme related balances" ("P") means any assets or liabilities included within the FSD reference accounts of the entity which relate to the scheme in relation to which Article 39 (financial support directions) applies, including any assets or liabilities relating to the scheme's deficit or surplus net of any related deferred tax asset or liability together with any other creditor or prepayment balances related to the scheme in question as calculated

(**3**) Articles 234 to 235C were substituted for Articles 234 and 235 by regulation 2 of S.R. 2004 No. 496

in accordance with the generally accepted accounting practice used for the FSD reference accounts;

"subordinated employer funding" means any amounts included within the calculation of the value of the resources of the business associate that have been treated as subordinated liabilities of the employer in the calculation of the value of the employer's resources;

"subordinated liabilities" ("Se") means any liabilities included within the FSD reference accounts of the employer which in the event of the entity being wound up would rank for payment after the unsecured creditors whether as a matter of general law or contract or otherwise.

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

Prescribed schemes

3. For the purposes of Article 39(1)(b) (schemes to which Article 39 (financial support directions) does not apply), a prescribed scheme or a scheme of a prescribed description is as prescribed for the purposes of Articles 34 and 48 (contribution notices and restoration orders) in regulation 2 of the Pensions Regulator (Contribution Notices and Restoration Orders) Regulations (Northern Ireland) 2005(**4**).

Prescribed events

4. An event prescribed for the purposes of Article 39(3)(c) (financial support directions – content of direction) is—

(a) any event specified in any sub-paragraph of regulation 2(2) of the Pensions Regulator (Notifiable Events) Regulations (Northern Ireland) 2005(**5**) (employer-related notifiable events) which occurs in respect of any party named in arrangements approved in a notice issued under Article 41(1) (meaning of "financial support");

(b) any insolvency event, as defined in Article 105(2) to (5) (insolvency events) as the case may be, in relation to any person named in a financial support direction;

(c) any failure to abide by, or any alteration to, an arrangement falling within Article 41(2) (meaning of "financial support" – arrangements) and approved by the Regulator in a notice issued under Article 41(1) (meaning of "financial support").

Prescribed period

5. The period prescribed for the purposes of Article 39(9) (financial support directions – prescription of relevant time) is the period of 12 months.

Prescribed percentage

6. The percentage of the estimated Article 75 debt in relation to a scheme, prescribed for the purposes of Article 40(3)(a) (meaning of "insufficiently resourced" – percentage of Article 75 debt), is 50 per cent.

Resources

7.—(1) The resources of an entity shall constitute all those aspects of the entity that would be taken into account when arriving at the entity value.

(**4**) S.R. 2005 No. 173; regulation 2 was amended by regulation 5 of S.R. 2005 No. 194
(**5**) S.R. 2005 No. 172; regulation 2 was amended by regulation 9 of S.R. 2005 No. 357

(2) The resources of a person to whom regulation 11 applies shall constitute all that person's property.

Value of resources - business

8.—(1) Paragraphs (2) and (3) are subject to regulation 9(2) and (3).

(2) The value of the resources of the employer shall be the greater of zero or its entity value excluding relevant pension scheme related balances and any subordinated liabilities together with any related fair value differences as verified in accordance with regulation 10.

(3) The value of the resources of a business associate shall be its entity value excluding relevant pension scheme related balances and any employer investment balances together with any related fair value differences as verified in accordance with regulation 10.

Calculation of value of resources – business

9.—(1) The value of the resources of an entity shall be calculated in accordance with the provisions of this regulation.

(2) If, following any stage of the calculation in the case of the employer, the test set out in Article 40(3)(a) is not met (that is, the amount calculated to that point is greater than 50 per cent. of the estimated Article 75 debt in relation to the scheme) then the employer may seek the agreement of the Regulator that the employer be deemed to be not insufficiently resourced (but see regulation 10), and if the Regulator so agrees no further calculations in relation to either the employer or the business associate need be undertaken.

(3) If following any stage of the calculation set out in paragraphs (4) to (7) the value of the resources of the entity in relation to which the calculation is being undertaken—

(a) in the case of the employer, meets the test set out in Article 40(3)(a), substituting zero if the value of resources calculated to this point is less than zero, or

(b) in the case of the business associate, meets the test set out in Article 40(3)(b),

that entity may seek the agreement of the Regulator that the value of that entity's resources shall be set at the amount resulting from the calculations undertaken up to that point (but see regulation 10), and if the Regulator so agrees no further calculations in relation to that entity need be undertaken.

(4) In the case of the employer, stage one of the calculation is as follows—

NA + P (assuming P is a liability; if P is an asset then deduct P) + Se.

(5) In the case of the business associate, stage one of the calculation is as follows—

NA + P (assuming P is a liability; if P is an asset then deduct P) – Eb (assuming Eb is an asset; if Eb is a liability then add Eb).

(6) Stage two of the calculation is to add to the amount resulting from the applicable stage one any identified FVD, calculated in relation to any asset (or assets) or liability (or liabilities) selected by the relevant entity.

(7) Stage three of the calculation is to calculate the EVD and add that to the amount that resulted from the stage two calculation.

Verification of value of resources – business

10.—(1) If—

(a) the employer seeks the agreement of the Regulator referred to in regulation 9(2), or

(b) following either stage one or stage two of the calculation set out in regulation 9 the entity the value of whose resources is being calculated seeks the agreement of the Regulator referred to in regulation 9(3),

the relevant entity (either the employer referred to in sub-paragraph (a) or the entity referred to in sub-paragraph (b) as the case may be) must submit to the Regulator the calculation undertaken to that point together with the statutory declaration specified in paragraph (4), the supporting evidence specified in paragraph (5) and the report specified in paragraph (6).

(2) The Regulator will decide whether or not to give its agreement referred to in regulation 9(2) or (3) (as the case may be) following consideration of the documentation submitted in accordance with paragraph (1).

(3) If the entity the value of whose resources is being calculated carries out stage 3 of the calculation set out in regulation 9, that entity must submit to the Regulator that calculation together with the statutory declaration specified in paragraph (4), the supporting evidence specified in paragraph (5) and the report specified in paragraph (6).

(4) The making of the statutory declaration referred to in paragraphs (1) and (3) shall be approved by the board of directors of the relevant entity, and it shall be made by a director on behalf of the board and consist of a declaration that the calculation of the value of resources of the entity attached to the statutory declaration has been approved by the board of directors of that entity and in the board's opinion fairly reflects the value of resources of that entity at the calculation date as calculated to that stage in accordance with regulation 9.

(5) The statutory declaration shall be accompanied by evidence of such underlying assumptions and calculations as the board considers necessary to set out the basis on which they have calculated the value of resources together with such other evidence as they consider necessary to understand the basis on which they have made their declaration.

(6) The statutory declaration shall be accompanied by a report from a reporting accountant, or, where approved by the Regulator, another appropriately qualified person, that in his opinion the calculation of the value of resources has been compiled in accordance with the underlying assumptions and calculations accompanying the statutory declaration, and that this calculation is consistent with such provisions of regulation 9 as are relevant in that case.

(7) Any reference to "director" or "board" in paragraphs (4) and (5) shall, in the case of an entity which is not a company within the Companies Order, be taken—

(a) in the case of a partnership, to be a reference to a partner or the partners, as the case may be;

(b) in the case of any other body (whether corporate or not) the affairs of which are managed by its members, to be a reference to a member or the body, as the case may be;

(c) in the case of any other body, to be a reference to a person who exercises functions equivalent to those of a director or either the body or the group of persons who exercise functions equivalent to those of a board of directors, as the case may be.

(8) In this regulation "reporting accountant" means—

(a) in the case of an entity which is required to have its accounts audited, a person eligible under Article 28 of the Companies (Northern Ireland) Order 1990(**6**) (eligibility for appointment) at the time of the report for appointment as a company auditor;

(b) in the case of any other entity, an independent accountant.

(**6**) S.I. 1990/593 (N.I. 5)