STATUTORY RULES OF NORTHERN IRELAND

2005 No. 171

PENSIONS

The Occupational Pension Schemes (Winding up, etc.) Regulations (Northern Ireland) 2005

Made - - - - 25th March 2005
Coming into operation in accordance with regulation 1(2)

The Department for Social Development, in exercise of the powers conferred upon it by sections 5, 21(2), 93(1), (2)(b) and (3), 97I, 97L, 109 and 178(3) of the Pension Schemes (Northern Ireland) Act 1993(**1**), Articles 49(2)(b), 56(3), 57(1) and (5), 68(2)(e), 73(2)(b), (6), (7) and (9), 73A(7), (8)(a) and (b) and (10), 73B(4), (5) and (8), 74(2) and (3)(e), 76(2), 89(5)(c), 115(1)(a) and (b), 116, 121(8) and 166(1) to (3) of the Pensions (Northern Ireland) Order 1995(**2**) and Articles 27 and 73(4) of, and paragraph 8(1) of Schedule 5 to, the Welfare Reform and Pensions (Northern Ireland) Order 1999(**3**), and now vested in it(**4**), and of all other powers enabling it in that behalf, hereby makes the following Regulations:

Citation, commencement and application

1.—(1) These Regulations may be cited as the Occupational Pension Schemes (Winding up, etc.) Regulations (Northern Ireland) 2005.

(**1**) 1993 c. 49; section 5 is amended by Article 133(3) and (4) of, and paragraphs 14 and 17 of Schedule 3 to, the Pensions (Northern Ireland) Order 1995 (S.I. 1995/3213 (N.I. 22)) and paragraph 38 of Schedule 1 to the Social Security Contributions (Transfer of Functions, etc.) (Northern Ireland) Order 1999 (S.I. 1999/671); section 21(2) was substituted by paragraph 26(b) of Schedule 3 to the Pensions (Northern Ireland) Order 1995 and amended by paragraph 43 of Schedule 1 to Social Security Contributions (Transfer of Functions, etc.) (Northern Ireland) Order 1999; section 93 was amended by paragraph 6 of Schedule 4 to the Pensions (Northern Ireland) Order 1995 and paragraph 5(1) of Schedule 5 to the Child Support, Pensions and Social Security (Northern Ireland) Act 2000 (c. 4 (N.I.)); sections 97I and 97L were inserted by Article 34 of the Welfare Reform and Pensions (Northern Ireland) Order 1999 (S.I. 1999/3147 (N.I. 11)); section 109 was amended by section 48 of the Child Support, Pensions and Social Security (Northern Ireland) Act 2000 and section 178(3) was amended by paragraph 14 of Schedule 4 and Schedule 5 to the Pensions (Northern Ireland) Order 1995 and paragraph 31 of Schedule 9 to the Welfare Reform and Pensions (Northern Ireland) Order 1999

(**2**) S.I. 1995/3213 (N.I. 22); Article 73 is substituted and Articles 73A and 73B are inserted by Article 247 of the Pensions (Northern Ireland) Order 2005 (S.I. 2005/255 (N.I. 1)); Article 74 was amended by paragraph 45 of Schedule 9 to the Welfare Reform and Pensions (Northern Ireland) Order 1999 and Article 60 of S.I. 2002/1555 and is amended by Article 247(2) of the Pensions (Northern Ireland) Order 2005 and Article 121 was amended by paragraph 14 of Schedule 2 and paragraph 50 of Schedule 9 to the Welfare Reform and Pensions (Northern Ireland) Order 1999 and section 45(2) of, and paragraph 5(3) of Schedule 5 to, the Child Support, Pensions and Social Security (Northern Ireland) Act 2000

(**3**) S.I. 1999/3147 (N.I. 11)

(**4**) *See* Article 8(b) of S.R. 1999 No. 481

(2) These Regulations shall come into operation on 6th April 2005 except for paragraph 4 of the Schedule which shall come into operation on 6th April 2006.

(3) Regulations 3 to 13 do not apply in the case of any scheme which –

(a) was regarded by virtue of regulation 2 of the Winding Up Regulations as having begun to be wound up before 6th April 2005 for the purposes of those Regulations; or

(b) in accordance with Article 121(4) to (8) of the 1995 Order began to wind up before that date.

Interpretation

2.—(1) In these Regulations –

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

"the 1999 Order" means the Welfare Reform and Pensions (Northern Ireland) Order1999;

"the 2005 Order" means the Pensions (Northern Ireland) Order 2005(**5**);

"assessment period" has the meaning given by Article 116 of the 2005 Order (assessment periods);

"the tax condition", in relation to a scheme, means –

(a) that the scheme has been approved by the Commissioners of Inland Revenue for the purposes of section 590(**6**) or 591(**7**) of the Taxes Act 1988 (conditions for approval of retirement benefit schemes or discretionary approval) at any time before 6th April 2006; or

(b) that the scheme is registered under section 153 of the Finance Act 2004(**8**) (registration of pension schemes);

"the Winding Up Regulations" means the Occupational Pension Schemes (Winding Up) Regulations (Northern Ireland) 1996(**9**).

(2) In these Regulations "scheme" must be read in appropriate cases in accordance with the modifications of Articles 73 to 74 of the 1995 Order made by regulation 13 (multi-employer sectionalised schemes, schemes with partial government guarantee and partly foreign schemes) and "employer" and "member" must be read accordingly.

(3) Subject to paragraphs (1) and (2) and regulation 12 (commencement of winding up), expressions used in these Regulations have the same meaning as in Article 121 of the 1995 Order.

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

(**5**) S.I. 2005/255 (N.I. 1)
(**6**) Section 590 was amended by paragraph 18 of Schedule 3 to the Finance Act 1988 (c. 39), paragraph 3 of Schedule 6 to the Finance Act 1989 (c. 26); (*see also* paragraph 18(2) and (3) of that Schedule), sections 34 and 36(2) and (3) of the Finance Act 1991 (c. 31) and paragraph 2 of Schedule 10 to the Finance Act 1999 (c. 16)
(**7**) Section 591 was amended by paragraph 6 of Schedule 13 to the Finance Act 1988; (*see also* paragraph 1 of that Schedule), section 107 of the Finance Act 1994 (c. 9), section 59(2) of the Finance Act 1995 (c. 4); (*see also* section 60(1) of that Act) and paragraph 3 of Schedule 10 to the Finance Act 1999; (*see also* paragraph 18(1) and (3) of that Schedule)
(**8**) 2004 c. 12; at the time of coming into operation of these regulations section 153 has not yet been brought into force
(**9**) S.R. 1996 No. 621; relevant amending regulations are S.R. 1997 No. 160, S.R. 1999 No. 486, S.R. 2002 No. 64, S.R. 2004 No. 187 and S.R. 2005 No. 20
(**10**) 1954 c. 33 (N.I.)

Winding up

Schemes to which Article 73 of the 1995 Order does not apply

3.—(1) Article 73 of the 1995 Order (preferential liabilities on winding up) does not apply to any scheme which is –

(a) a public service pension scheme under the provisions of which there is no requirement for assets related to the intended rate or amount of benefit under the scheme to be set aside in advance (disregarding requirements relating to voluntary contributions);

(b) a scheme which is made under Article 9 of the Superannuation (Northern Ireland) Order 1972(**11**) (superannuation of persons employed in local government service, etc.) which provides pensions to persons mentioned in paragraph (1)(a) of that Article;

(c) a scheme which is established under section 48 of the Northern Ireland Act 1998(**12**) (pensions of members), or which was established under Part II of the Ministerial Salaries and Members' Pensions Act (Northern Ireland) 1965(**13**) or Article 3 of the Assembly Pensions (Northern Ireland) Order 1976(**14**);

(d) a scheme in respect of which a relevant public authority, as defined in Article 280(4) of the 2005 Order, has given a guarantee or made any other arrangements for the purposes of securing that the assets of the scheme are sufficient to meet its liabilities;

(e) a scheme which does not meet the tax condition;

(f) a scheme which –

(i) has been categorised by the Commissioners of Inland Revenue for the purposes of its approval as a centralised scheme for non-associated employers,

(ii) which is not contracted-out, and

(iii) under the provisions of which the only benefits that may be provided on or after retirement (other than money purchase benefits derived from the payment of voluntary contributions by any person) are lump sum benefits which are not calculated by reference to a member's salary;

(g) a scheme –

(i) the only benefits provided by which (other than money purchase benefits) are death benefits, and

(ii) under the provisions of which no member has accrued rights (other than rights to money purchase benefits);

(h) a scheme with such a superannuation fund as is mentioned in section 615(6) of the Taxes Act 1988(**15**) (exemption from tax in respect of certain pensions);

(i) a scheme with fewer than two members;

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

(i) the rules of the scheme provide that all decisions are made only by the trustees who are members of the scheme by unanimous agreement, or

(**11**) S.I. 1972/1073 (N.I. 10)
(**12**) 1998 c. 47
(**13**) 1965 c. 18 (N.I.)
(**14**) S.I. 1976/1779
(**15**) Section 615(6) was amended by paragraph 11 of Schedule 10 to the Finance Act 1999 and has effect in relation to trust-based occupational pension schemes established in respect of persons wholly employed in a trade or undertaking outside of the United Kingdom

(ii) the scheme has a trustee who is independent in relation to the scheme for the purposes of Article 23 of the 1995 Order(**16**) (power to appoint independent trustees) (see paragraph (3) of that Article) and is registered in the register maintained by the Authority in accordance with regulations under paragraph (4) of that Article;

(k) a scheme with fewer than twelve members where all the members are directors of a company which is the sole trustee of the scheme and either –

(i) the rules of the scheme provide that all decisions are made only by the members of the scheme by unanimous agreement, or

(ii) one of the directors of the company 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 Authority in accordance with regulations made under paragraph (4) of that Article;

(l) the scheme established by the Salvation Army Act 1963(**17**).

(2) Before 6th April 2006 sub-paragraph (e) of paragraph (1) applies as if at the end there were added "and is not a relevant statutory scheme providing relevant benefits"; and for the purposes of that sub-paragraph "relevant statutory scheme" and "relevant benefits"(**18**) have the same meaning as in Chapter 1 of Part 14 of the Taxes Act 1988 (see sections 611A and 612(1) of that Act(**19**)).

Corresponding PPF liability: modifications of the pension compensation provisions, etc.

4.—(1) For the purposes of Article 73 of the 1995 Order, when determining the corresponding PPF liability in relation to any liability of a scheme to or in respect of a member for pensions or other benefits, the pension compensation provisions apply as if –

(a) those provisions applied to all schemes to which Article 73 of the 1995 Order applies and any reference in the pension compensation provisions to members, employers or any other expression the construction of which is dependent on the meaning of "scheme" were to be read accordingly (but subject to the following provisions of this regulation);

(b) Articles 124 to 126, 148 and 152(2)(a) and (c) to (f) of the 2005 Order were omitted;

(c) Schedule 6 to that Order (pension compensation provisions) applied –

(i) with the substitution for the references in paragraphs 5(4A), 15(5A) and 19(5A)(**20**) to the Board of references to the trustees or managers of the scheme,

(ii) with the substitution for the references in paragraphs 20(1)(a) and 32(1)(a) to the commencement of the assessment period of references to the commencement of the winding up period,

(iii) with the substitution for the reference in paragraph 35(4) to the time immediately before the assessment period which begins on the assessment date of a reference to the time immediately before the winding up period begins,

(iv) with the addition at the end of paragraph 35(5) of and in this sub-paragraph as it applies for the purposes of Article 73(4)(b) of the 1995 Order, "the employer" includes both any person included by virtue of regulation 4(1)(a) of the Occupational Pension Schemes (Winding up, etc.) Regulations (Northern Ireland) 2005 and any person who is the employer apart from by virtue of that regulation",

(**16**) Article 23 is substituted by Article 32(3) of the Pensions (Northern Ireland) Order 2005
(**17**) 1963 c. xxxii
(**18**) The definition of "relevant benefits" was amended by paragraph 10(1) of Schedule 10 to the Finance Act 1999
(**19**) Section 611A was inserted by paragraph 15 of Schedule 6 to the Finance Act 1989 and amended by paragraph 5 of Schedule 5 to the Finance Act 1999
(**20**) Paragraphs 5(4A), 15(5A) and 19(5A) are inserted by regulation 23(2) of S.R. 2005 No. 149

(v) with the substitution for other references to the assessment date of references to the winding up date, and

(vi) with the omissions specified in paragraph (2);

(d) no determination might be made under paragraph 29 of Schedule 6 (Board's powers to alter rates of revaluation and indexation) after the time as at which the corresponding PPF liability is determined for the purposes of Article 73 of the 1995 Order;

(e) no order might be made under paragraph 30 of that Schedule (Department's powers to vary percentage paid as compensation) after that time;

(f) the Pension Protection Fund (Compensation) Regulations (Northern Ireland) 2005(**21**) applied with the modifications specified in paragraph (3); and

(g) (so far as they are included in the pension compensation provisions) the Pension Protection Fund (Hybrid Schemes) (Modification) Regulations (Northern Ireland) 2005(**22**) applied with the substitution for the reference in regulation 3(2) of those Regulations to the assessment date of a reference to the winding up date.

(2) The omissions are –

(a) paragraphs 2, 20(4), 23A(**23**), 24, 25, 27 and 31A(**24**) and all references to those paragraphs;

(b) in paragraph 26 –

(i) in sub-paragraphs (2)(b)(i), (6B)(a)(**25**) and (9)(a) and (b) the words "or a connected occupational pension scheme",

(ii) in sub-paragraph (6B)(b) the words "or a relevant connected occupational pension scheme", and

(iii) the words following sub-paragraph (6B)(b).

(3) The modifications are –

(a) in regulation 4 (compensation for surviving dependants) –

(i) in paragraph (2) the words following "otherwise)" shall be omitted, and

(ii) for paragraph (3) there shall be substituted the following paragraph –

"(3) In the case of a surviving dependant the circumstances are where the admissible rules of the scheme provide for the payment of pension or other benefits to that person.";

(b) for references in regulations 5, 6, 9, 10(1), 11(1), 12(1) and 13 to the assessment date, wherever they occur, there shall be substituted references to the winding up date; and

(c) regulation 14 (modification of admissible rules) shall be omitted.

(4) In this regulation –

"corresponding PPF liability" has the meaning given in Article 73(5) of the 1995 Order;

"the pension compensation provisions" has the same meaning as in Part III of the 2005 Order (see Article 146 of that Order);

"the winding up date" means the date on which the winding up period began or, if the crystallisation date for the scheme for the purposes of regulation 4 of the Winding Up Regulations (calculation of amounts of liabilities) is an earlier date, that date.

(**21**) S.R. 2005 No. 149
(**22**) S.R. 2005 No. 84
(**23**) Paragraph 23A is inserted by regulation 3 of S.R. 2005 No. 137
(**24**) Paragraph 31A is inserted by regulation 3(4) of S.R. 2005 No. 84
(**25**) Sub-paragraph (6B) is inserted by regulation 20(3) of S.R. 2005 No. 149