STATUTORY RULES OF NORTHERN IRELAND

2005 No. 168

PENSIONS

The Occupational Pension Schemes (Employer Debt) Regulations (Northern Ireland) 2005

Made - - - -	*25th March 2005*
Coming into operation	*6th April 2005*

The Department for Social Development, in exercise of the powers conferred by Articles 40(1) and (2), 49(2) and (3), 57(2) and (4), 60(2), 68(2)(e), 75(1)(b), (5), (6D)(b)(i) and (10), 75A(1) to (4), 87(2), 115(1), 116, 122(3) and 166(1) to (3) of the Pensions (Northern Ireland) Order 1995(**1**), and now vested in it(**2**), and of all other powers enabling it in that behalf, hereby makes the following Regulations:

Preliminary

Citation, commencement and application

1.—(1) These Regulations may be cited as the Occupational Pension Schemes (Employer Debt) Regulations (Northern Ireland) 2005 and shall come into operation on 6th April 2005.

(2) These Regulations shall not apply to–

(a) any scheme other than a money purchase scheme if a debt to the trustees or managers of the scheme has been treated as arising under Article 75(1) (deficiencies in the assets) before that date;

(b) any scheme which immediately before that date was regarded by virtue of regulation 2 of the Winding Up Regulations as having begun to be wound up before that date for the purposes of those Regulations, or

(c) any scheme which according to the rules in Article 121(4) to (8)(**3**) (interpretation of Part II) began to wind up before that date.

(**1**) S.I. 1995/3213 (N.I. 22); Article 40(2) was amended by Article 152 of the Financial Services and Markets Act 2000 (Consequential Amendments) Order 2001 (S.I. 2001/3649); Article 75 is amended by Article 248 of the Pensions (Northern Ireland) Order 2005 (S.I. 2005/255 (N.I. 1)) and Article 75A is inserted by Article 249 of that Order; Article 87(2) is amended by paragraph 60(b) of Schedule 10 to that Order

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

(**3**) Article 121(4) to (8) was inserted by section 45(2) of the Child Support, Pensions and Social Security Act (Northern Ireland) 2000 (c. 4 (N.I.))

Interpretation

2.—(1) In these Regulations –

"the 2005 Order" means the Pensions (Northern Ireland) Order 2005(**4**);

"the actuary" means the actuary appointed for the scheme in pursuance of Article 47(1)(b) (professional advisers) or, in the case of a scheme to which that provision does not apply by virtue of regulations made under Article 47(5), an actuary otherwise authorised by the trustees or managers to provide such valuations or certifications as may be required under these Regulations;

"the applicable time" means the time as at which the value of the assets of a scheme and the amount of its liabilities are to be determined, calculated and verified for the purposes of Article 75;

"the Deficiency on Winding Up Regulations" means the Occupational Pension Schemes (Deficiency on Winding Up, etc.) Regulations (Northern Ireland) 1996(**5**);

"employer" has the same meaning as in Article 75 (but see paragraph (2) and regulations 9 and 13);

"employment-cessation event" has the meaning given in regulation 6(4);

"the MFR Regulations" means the Occupational Pension Schemes (Minimum Funding Requirement and Actuarial Valuations) Regulations (Northern Ireland) 1996(**6**);

"money purchase scheme" means an occupational pension scheme under which all the benefits that may be provided other than death benefits are money purchase benefits;

"multi-employer scheme" means a scheme in relation to which there is more than one employer (including, except in regulation 8, any section of a scheme treated under that regulation as a scheme if there is more than one employer in relation to that section);

"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 (conditions for approval of retirement benefit schemes) or 591 (discretionary approval) of the Taxes Act 1988 at any time before 6th April 2006, or

(b) that the scheme is registered under section 153 of the Finance Act 2004(**7**) (registration of pension schemes);

"the Winding Up Regulations" means the Occupational Pension Schemes (Winding Up) Regulations (Northern Ireland) 1996(**8**).

(2) In these Regulations "scheme" must be read in appropriate cases in accordance with the modifications of Article 75 made by regulation 8, 14 or 15, as the case may be; and "employer" and "member" must be read accordingly.

(3) References in these Regulations to the guidance in GN 19 are to the guidelines on winding up and scheme asset deficiency (GN 19), prepared and published by the Institute of Actuaries and the Faculty of Actuaries(**9**) and approved for the purposes of these Regulations by the Department, with such revisions as have been so approved at the applicable time.

(**4**) S.I. 2005/255 (N.I. 1)
(**5**) S.R. 1996 No. 585, amended by S.R. 1997 Nos. 160 and 544, S.R. 1999 No. 486, S.R. 2002 No. 64, S.R. 2004 No. 60 and S.R. 2005 No. 20
(**6**) S.R. 1996 No. 570; relevant amending Regulations are S.R. 1996 No. 584, S.R. 1997 No. 160, S.R. 2000 No. 335 and S.R. 2002 No. 64
(**7**) 2004 c. 12
(**8**) S.R. 1996 No. 621, to which there are amendments not relevant to these Regulations
(**9**) The publications GN 19 and GN 27 may be obtained from the Institute of Actuaries, Staple Inn Hall, High Holborn, London WC1V 7QJ and from the Faculty of Actuaries, Maclaurin House, 18 Dublin Street, Edinburgh EH1 3PP

(4) References in these Regulations to the guidance in GN 27 are to the guidelines on minimum funding requirement (GN 27), prepared and published by the Institute of Actuaries and the Faculty of Actuaries and approved for the purposes of the MFR Regulations by the Department, with such revisions as have been so approved at the applicable time.

(5) In these Regulations any reference to a numbered Article is a reference to the Article of the Pensions (Northern Ireland) Order 1995 bearing that number.

Disapplication of the Deficiency on Winding Up Regulations

3. The Deficiency on Winding Up Regulations shall not apply in any case where these Regulations apply (and accordingly they shall only apply to a scheme as respects which regulation 1(2)(a), (b) or (c) applies).

Schemes to which Article 75 does not apply

4.—(1) Article 75 shall 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(**10**) (superannuation of persons employed in local government service, etc.) and 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(**11**) (pensions of members), or which was established under Part II of the Ministerial Salaries and Member's Pensions Act (Northern Ireland) 1965(**12**) or Article 3 of the Assembly Pensions (Northern Ireland) Order 1976(**13**);

(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 with such a superannuation fund as is mentioned in section 615(6) of the Taxes Act 1988 (fund established to provide superannuation benefits in respect of persons' employment in a trade or undertaking wholly outside the United Kingdom);

(h) a scheme with fewer than 2 members;

(i) a scheme with fewer than 12 members where all the members are trustees of the scheme and either –

(**10**) S.I. 1972/1073 (N.I. 10)
(**11**) 1998 c. 47
(**12**) 1965 c. 18 (N.I.)
(**13**) S.I. 1976/1779

(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

(ii) the scheme has a trustee who is independent in relation to the scheme for the purposes of Article 23(**14**) (power to appoint independent trustees) (see Article 23(3)) and is registered in the register maintained by the Authority in accordance with regulations made under Article 23(4);

(j) a scheme with fewer than 12 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 and is registered in the register maintained by the Authority in accordance with regulations made under Article 23(4), or

(k) the scheme established by the Salvation Army Act 1963(**15**).

(2) Before 6th April 2006 –

(a) paragraph (1)(e) shall apply with the addition at the end of the words "and is not a relevant statutory scheme providing relevant benefits", and

(b) for the purposes of that paragraph "relevant statutory scheme" and "relevant benefits" have the same meaning as in Chapter I of Part XIV of the Taxes Act 1988 (see sections 611A(**16**) and 612(1) of that Act).

Valuations

Calculation of the value of scheme liabilities and assets: defined benefit schemes

5.—(1) The liabilities and assets of a scheme which are to be taken into account for the purposes of Article 75(2) and (4) and their amount or value must be determined, calculated and verified by the actuary as at the applicable time –

(a) in the case of liabilities in respect of pensions or other benefits, on the assumption that the liabilities will be discharged by the purchase of annuities of the kind described in Article 74(3)(c)(**17**) (discharge of liabilities: annuity purchase);

(b) subject to sub-paragraph (a), on the general assumptions specified in regulation 3(2)(a) to (c) and (3) of the MFR Regulations (determination, valuation and verification of assets and liabilities: general);

(c) subject to sub-paragraph (a) and paragraphs (2), (3), (5) and (6), in accordance with regulations 4 to 8 of the MFR Regulations (determination and valuation of assets and liabilities);

(d) subject to sub-paragraph (e), so far as the guidance given in GN 27 applies as respects regulations 3(2)(a) to (c) and (3) and 4 to 8 of the MFR Regulations or as respects sub-paragraph (a) and paragraphs (2) and (3) of this regulation, in accordance with that guidance, and

(e) in accordance with the guidance given in GN 19 so far as that guidance applies for the purposes of these Regulations.

(**14**) Article 23 is substituted by Article 32(3) of the Pensions (Northern Ireland) Order 2005
(**15**) 1963 c. xxxii
(**16**) Section 611A was inserted by paragraph 15 of Schedule 6 to the Finance Act 1989 (c. 26)
(**17**) Article 74(3)(c) was amended by Article 60 of the Financial Services and Markets Act 2000 (Consequential Amendments) Order 2002 (S.I. 2002/1555)

(2) For the purposes of paragraph (1)(a) the actuary must estimate the cost of purchasing the annuities.

(3) The liabilities of a scheme which are to be taken into account under paragraph (1) include all expenses (except the cost of the annuities referred to in paragraph (1)(a)) which, in the opinion of the trustees or mangers of the scheme, are likely to be incurred in connection with the winding up of the scheme.

(4) Where in these Regulations (or in the MFR Regulations as applied by this regulation) there is a reference to the value of any asset or the amount of any liability being calculated or verified in accordance with the opinion of the actuary or as he thinks appropriate, he must comply with any relevant provision in the guidance given in GN 27 or, as the case may be, GN 19 in making that calculation or verification.

(5) 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 Article 75(2) and (4) must be certified by the actuary in the form set out in Schedule 1, but if the scheme is being wound up on the date as at which the valuation is made, the actuary must modify the note at the end of the certificate by omitting the words from "if the scheme" to the end.

(6) For the purposes of this regulation –

(a) references in regulations 3(2), 4, 5, 7 and 8 of the MFR Regulations to the relevant date shall be taken as references to the applicable time;

(b) regulations 4(1), 7(1) and 8(2) of the MFR Regulations shall have effect with the substitution for "the minimum funding requirement is met" of "the value of the assets of the scheme is less than the amount of the liabilities of the scheme";

(c) regulation 6(1)(b) of the MFR Regulations shall have effect with the addition at the end of the words "(and any amount treated as a debt due to the trustees or managers of the scheme under Article 75(2) or (4) by virtue of the valuation in question)".

(7) In its application for the purposes of this regulation in a case where the applicable time falls after the scheme has begun to be wound up, regulation 6(1) of the MFR Regulations shall have effect with the addition after sub-paragraph (c) of the words –

", and for the purposes of sub-paragraph (a), regulation 5(1)(a) of the Occupational Pension Schemes (Investment) Regulations (Northern Ireland) 1996(**18**) (exclusion of employer-related investments over 5 per cent. of current market value) shall be disregarded.".

(8) This regulation has effect subject to regulation 7.

Multi-employer schemes

Multi-employer schemes: general

6.—(1) In its application to a multi-employer scheme, Article 75 shall have effect in relation to each employer as if –

(a) the reference in Article 75(2)(a)(ii) to a time which falls before any relevant event in relation to the employer which occurs while the scheme is being wound up were a reference to a time which falls before relevant events have occurred in relation to all the employers;

(b) the reference in Article 75(2) to an amount equal to the difference being treated as a debt due from the employer were a reference to an amount equal to that employer's share of the difference being treated as a debt due from that employer;

(**18**) S.R. 1996 No. 584, to which there are amendments not relevant to these Regulations