STATUTORY RULES OF NORTHERN IRELAND

2005 No. 131

PENSIONS

The Pension Protection Fund (Valuation) Regulations (Northern Ireland) 2005

Made - - - -	*16th March 2005*
Coming into operation	*6th April 2005*

The Department for Social Development, in exercise of the powers conferred on it by Articles 2(5)(a), 127(3) to (5) and (11)(a), 129(4), 162(1)(a), (2) and (3), 172(1) and 287 (2) and (3) of the Pensions (Northern Ireland) Order 2005(**1**) 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 Pension Protection Fund (Valuation) Regulations (Northern Ireland) 2005 and shall come into operation on 6th April 2005.

(2) In these Regulations –

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

"appropriate person" in the case of an Article 127 valuation, means the person specified in Article 127(11)(a)(ii) of the Order and, in the case of an Article 162 valuation means the actuary as defined in Article 162(2) of the Order;

"Article 127 valuation" means an actuarial valuation under that Article of the Order;

"Article 162 valuation" means an actuarial valuation under that Article of the Order;

"Article 75 debt" means so much of the amount treated by Article 75 of the 1995 Order(**2**) (deficiencies in the assets) as a debt due from the employer to the trustees or managers at the applicable time;

"commencement date" means 6th April 2005;

"contribution notice" means a notice issued under Article 34 (contribution notices where avoidance of employer debt), 43 (contribution notices where non-compliance with financial support direction) or 51 (contribution notice where failure to comply with restoration order) of the Order;

(**1**) S.I.2005/255 (N.I. 1); the Pensions (Northern Ireland) Order 2005 is modified in its application to partially guaranteed schemes, hybrid schemes and multi-employer schemes by, respectively, S.R. 2005 Nos. 55, 84 and 91

(**2**) Article 75 is amended by Article 248 of the Pensions (Northern Ireland) Order 2005

"eligible scheme" has the meaning given by Article 110 of the Order (eligible schemes);

"employer" in relation to an occupational pension scheme which has no active members, except in relation to a multi-employer scheme, or a section of a multi-employer scheme, includes every person who was the employer of persons in the description of employment to which the scheme relates immediately before the time at which the scheme ceased to have any active members in relation to it;

"employer" in relation to a multi-employer scheme, or a section of a multi-employer scheme includes –

(a) in the case of a scheme which has no active members, every person who was the employer of persons in the description of employment to which the scheme, relates immediately before the time at which the scheme, or section ceased to have any active members in relation to it unless, after that time –

  (i) an Article 75 debt becomes due from that person to the scheme, or section; and

  (ii) either –

    (aa) the full amount of the debt has been paid by that person to the trustees or managers of the scheme, or section, or

    (bb) in circumstances where a legally enforceable agreement has been entered into between that person and the trustees or managers of the scheme, or section, the effect of which is to reduce the amount which is payable in respect of the debt, the reduced amount of the debt has been paid in full by that person to those trustees or managers; and

(b) in any other case, any person who has ceased to be the employer of persons in the description of employment to which the scheme, or section relates unless –

  (i) at the time when he so ceased the scheme, or section, was not being wound up and continued to have active members in relation to it; and

  (ii) an Article 75 debt became due at that time from that person to the scheme, or section and either –

    (aa) the full amount of the debt has been paid by that person to the trustees or managers of the scheme or section, or

    (bb) in circumstances where a legally enforceable agreement has been entered into between that person and the trustees or managers of the scheme or section, the effect of which is to reduce the amount which is payable in respect of the debt, the reduced amount of the debt has been paid in full by that person to those trustees or managers.

"employment" means trade, business, profession, office or vocation;

"external liabilities" means any liabilities which do not fall due to the members of the scheme;

"financial support direction" means a direction issued under Article 39 of the Order (financial support directions);

"pension credit rights" has the meaning given by Article 121(1) of the 1995 Order(**3**) (interpretation of Part II);

"registrable scheme" has the meaning given by Article 55(5) of the Order (registrable information);

"relevant accounts" means –

(**3**) The definitions of "pension credit", "pension credit member" and "pension credit rights" were 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))

(a) audited accounts for the scheme which are prepared in respect of a period ending with the relevant time;

(b) if none are so prepared, the latest such accounts which are available at the relevant time; or

(c) if the appropriate person's opinion is that it is practicable to use them, the latest such accounts which are available on the date the appropriate person signs the Article 127 or Article 162 valuation;

"relevant time" for the purposes of Article 162 of the Order, means the date in relation to which the assets and liabilities of the eligible scheme are calculated;

"restoration order" has the meaning given by Article 48 of the Order (restoration orders where transactions at an undervalue); and

"restricted information" has the meaning given in Article 179 of the Order (restricted information).

Provision of actuarial valuation to determine scheme underfunding

2.—(1) The trustees or managers of an eligible scheme shall provide the Board or the Regulator on the Board's behalf with its first Article 162 valuation within one year of the relevant time of the valuation.

(2) Subject to paragraph (3), the relevant time of the first Article 162 valuation shall not be later than –

(a) in the case of an eligible scheme that is a registrable scheme prior to the commencement date, 5th April 2008.

(b) in the case of an eligible scheme that becomes a registrable scheme on or after the commencement date, a period of one year beginning immediately after the registration date of the scheme.

(3) In a case to which paragraph (2)(a) applies, for the purposes of an Article 162 valuation prepared and signed by an appropriate person on or after the commencement date, a calculation of the assets and liabilities as at a date before the commencement date, but no earlier than 1st November 2004 may be used, and in such a case the relevant time shall be taken to be the date on which the assets and liabilities of the scheme were so calculated.

(4) The relevant time of any subsequent Article 162 valuation must not exceed a period of three years beginning immediately after the relevant time of the previous valuation provided to the Board or the Regulator on the Board's behalf.

(5) Any subsequent Article 162 valuation shall be provided to the Board or the Regulator on the Board's behalf within 12 months of the relevant time of that valuation.

Excluded assets

3. There shall be excluded from the value of the eligible scheme's assets –

(a) in the case of an Article 127 valuation, any amounts treated as a debt due to the trustees or managers which are unlikely to be recouped without disproportionate cost or unlikely to be recovered within a reasonable time; and

(b) in the case of an Article 162 valuation –

(i) any amounts treated as a debt due to the trustees or managers under Article 75 of the 1995 Order (deficiencies in the assets);

(ii) any amounts treated as debt under Article 207(3) of the Order (failure to make payments);

(iii) any resources invested (or treated as invested) in contravention of Article 40 of the 1995 Order (restriction on employer-related investments); and

(iv) any amounts treated as a debt due to the trustees or managers which are unlikely to be recouped without disproportionate cost or unlikely to be recovered within a reasonable time.

Contribution notices, financial support directions and restoration orders

4. Subject to regulation 7(3) and (4), the prescribed requirement for any amount due under a contribution notice, financial support direction or restoration order to be regarded as an asset of the scheme is that the notice, direction or order was issued by the Regulator prior to the date that the valuation is approved.

Valuation of assets

5. Subject to regulations 3 and 7, in determining the value of the assets of a scheme for the purposes of obtaining an Article 127 valuation or an Article 162 valuation, the appropriate person shall adopt the value given of the assets of the scheme stated in the relevant accounts, less the amount of the external liabilities, and that value shall be taken to be the value of those assets at the relevant time.

Valuation of protected liabilities

6. Subject to regulation 7, in the case of protected liabilities(**4**) the value of a protected liability shall be –

(a) for an Article 127 valuation, the estimated cost of securing scheme benefits calculated in accordance with Schedule 6 to the Order (pension compensation provisions) to the member by means of an annuity purchased at the market rate at the relevant time;

(b) for an Article 162 valuation, the estimated cost of securing scheme benefits in accordance with any guidance issued by the Board in accordance with Article 162(4) of the Order, for the member by means of an annuity purchased at the market rate at the relevant time.

Alternative valuation of assets and protected liabilities in specific cases

7.—(1) For the purposes of an Article 127 or Article 162 valuation, where arrangements are being made by the eligible 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.

(2) For the purposes of an Article 127 or Article 162 valuation, in the case of a contract of insurance, the value shall be –

(a) the value of the liability secured where the contract of insurance falls within the definition of a relevant contract of insurance in Article 145(8) of the Order (effect of Board assuming responsibility for a scheme); or where this is not the case either –

(b) the surrender value of the contract of insurance; or

(**4**) The term "protected liabilities" is defined in Article 115(1) of the Pensions (Northern Ireland) Order 2005