STATUTORY RULES OF NORTHERN IRELAND

2002 No. 74

PENSIONS

The Occupational Pension Schemes (Winding Up Notices and Reports, etc.) Regulations (Northern Ireland) 2002

Made - - - -	*5th March 2002*
Coming into operation	*1st April 2002*

The Department for Social Development, in exercise of the powers conferred by section 109(1) of the Pension Schemes (Northern Ireland) Act 1993(**1**) and Articles 10(2)(*b*) and (3), 23(2), 26B(3)(*b*), 26C(2) and (3), 49A(1), (2)(*b*) and (3), 71A(4), 72A(1)(*b*), (2), (7) and (8)(*a*), 72B(2)(*c*)(iii), (3), (5)(*c*), (6)(*c*) and (8)(*b*), 115(2), 121(8) and 166(1) to (3) of the Pensions (Northern Ireland) Order 1995(**2**), and now vested in it(**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 (Winding Up Notices and Reports, etc.) Regulations (Northern Ireland) 2002 and shall come into operation on 1st April 2002.

(2) In these Regulations—

"member", "deferred member" and "pensioner member" have the meanings given in Article 121(1)(**4**), subject to the provision made by regulations 5(3) and 10(3);

"small self-administered scheme" has the meaning given in regulation 2(1) of the Retirement Benefits Schemes (Restriction on Discretion to Approve) (Small Self-administered Schemes) Regulations 1991(**5**).

(**1**) 1993 c. 49; section 109(1) was amended by section 48(1) of the Child Support, Pensions and Social Security Act (Northern Ireland) 2000 (c. 4 (N.I.))

(**2**) S.I. 1995/3213 (N.I. 22); Articles 26B and 26C were inserted by section 43(2) of the Child Support, Pensions and Social Security Act (Northern Ireland) 2000; Article 49A was inserted by section 45(3) of that Act; Article 71A was inserted by section 44 of that Act; Article 72A was inserted by section 45(1) of that Act; Article 72B was inserted by section 46 of that Act; Article 115(2) was amended by section 43(3) of that Act; Article 121(8) was added by section 45(2) of that Act

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

(**4**) Definition of "member" was amended by paragraph 50(2) of Schedule 9 to the Welfare Reform and Pensions (Northern Ireland) Order 1999 (S.I. 1999/3147 (N.I. 11)); definition of "pensioner member" was amended by paragraph 5(3) of Schedule 5 to the Child Support, Pensions and Social Security Act (Northern Ireland) 2000

(**5**) S.I. 1991/1614; definition of "small self-administered scheme" was amended by regulation 3(*b*) of S.I. 1998/728 and regulation 2(5) of S.I. 2000/1086

(3) Subject to paragraph (4), the Interpretation Act (Northern Ireland) 1954(**6**) shall apply to these Regulations as it applies to an Act of the Assembly.

(4) For the purposes of these Regulations and notwithstanding section 39(2) of the Interpretation Act (Northern Ireland) 1954, where a period of time is expressed to begin on, or to be reckoned from, a particular day, that day shall be included in the period.

(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.

Schemes within Article 22: appointment of independent trustee

2.—(1) A person who is subject to the duty under Article 23(1)(*b*) (duty of insolvency practitioner or official receiver to appoint an independent trustee of a trust scheme where he is not satisfied that at least one of the scheme's trustees is an independent person) shall perform that duty before the end of the period of 3 months beginning with—

(a) the date on which the person first becomes aware that Article 22(**7**) applies in relation to the scheme in question, or

(b) the date on which the duty arises,

whichever is the later.

(2) Article 26A(1)(**8**) (trustees' duty to give notice to the Authority as soon as reasonably practicable after it first appears to any of them as mentioned in Article 26A(1)(*a*) and (*b*) that the scheme appears to be without an independent trustee) shall have effect as if for "as soon as reasonably practicable" there were substituted "within the period of one month".

(3) Article 26A(2) (duty of every person involved in the administration of a scheme to give notice to the Authority as soon as reasonably practicable after it first appears to him that the scheme is without trustees) shall have effect as if for "as soon as reasonably practicable" there were substituted "within the period of one month".

Other schemes: notice to the Authority that Article 26B applies

3.—(1) Article 26B(1) (duty of every person involved in the administration of a scheme to give notice to the Authority as soon as reasonably practicable after it first appears to him as mentioned in Article 26B(1)(*a*) and (*b*) that the case falls within Article 26B(1)(*a*) to (*d*)) shall have effect as if for "as soon as reasonably practicable" there were substituted "within the period of one month".

(2) The period prescribed for the purposes of Article 26B(3)(*b*) (the period during which no person is required to give notice to the Authority that the case falls within Article 26B(1)(*a*) to (*d*)) is the period of 3 months beginning with the relevant date.

(3) In paragraph (2) "the relevant date" means the date on which the event occurred by virtue of which the scheme in question became a scheme in relation to which Article 22 would apply but for regulations under Article 115(**9**).

Persons exempted from duty to give notices to the Authority under Article 26A or 26B

4. In Article 26C (construction of Articles 26A and 26B) references, in relation to a scheme, to a person involved in the administration of the scheme do not include any person whose only involvement with the scheme is in connection with—

(**6**) 1954 c. 33 (N.I.)
(**7**) Article 22 was amended by section 43(1) of the Child Support, Pensions and Social Security Act (Northern Ireland) 2000
(**8**) Article 26A was inserted by section 43(2) of the Child Support, Pensions and Social Security Act (Northern Ireland) 2000
(**9**) *See* regulation 5 of S.R. 1997 No. 99

(a) underwriting policies of insurance that are specifically allocated to the provision of benefits for individual members or other persons with rights to benefits under the scheme or annuity contracts, or

(b) providing advice about the management of investments.

Schemes disapplied from Articles 26A and 26B

5.—(1) Article 26A (information to be given to the Authority in relation to a scheme to which Article 22 applies) does not apply to any scheme within paragraph (2)(*a*) or (*b*), and Article 26B does not apply to any scheme within paragraph (2).

(2) A scheme is within this paragraph if it is—

(a) a scheme of which there is only one member;

(b) a small self-administered scheme;

(c) a scheme of which each member is a trustee, or

(d) a scheme—

(i) the only benefits provided by which are death benefits, and

(ii) under the provisions of which no member has accrued rights.

(3) In this regulation "member" means a deferred member or a pensioner member.

Penalties for failing to give notice to the Authority under Article 26A or 26B

6.—(1) This regulation applies for the purpose of prescribing the meaning of "the maximum amount" in Article 10 (civil penalties) in cases where that Article applies to any person by virtue of Article 26A(7) or (8) or 26B(4) (failure to give certain notices to the Authority).

(2) Where that person is an individual, the maximum amount is £1,000.

(3) Where that person is not an individual, the maximum amount is £10,000.

Applications to the Authority to modify schemes to secure winding up

7.—(1) This regulation applies where an application is made to the Authority under Article 71A (modification by Authority to secure winding up) to make an order modifying a scheme with a view to ensuring that it is properly wound up.

(2) The application shall—

(a) set out the modification requested;

(b) specify the effects, if any, which the modification would or might have—

(i) on benefits under the scheme that are in payment at the time of the application, and

(ii) on benefits under it which are or may be payable at a later time;

(c) specify the reason for requesting the modification;

(d) specify whether any previous application has been made to a court or to the Authority for an order to make the modification requested by the application or any similar modification;

(e) confirm that at the time the application is made the employer in relation to the scheme is subject to an insolvency procedure (within the meaning given by Article 71A(8));

(f) specify whether the modification would reduce the value of the assets, if any, which might otherwise be distributed to that employer on the winding up, and

(g) contain a statement that the notices required by paragraph (3) have been given.

(3) Before making the application the trustees or managers of the scheme shall give notice in writing that the application is being made—

(a) to all members of the scheme in respect of whom they have a current address, and

(b) if the modification would reduce the value of the assets which might otherwise be distributed to the employer on the winding up, to the person acting as an insolvency practitioner in relation to the employer or, as the case may be, the official receiver,

and the references in sub-paragraph (*b*) to "acting as an insolvency practitioner" and "official receiver" shall be construed in accordance with Articles 3 and 2 of the Insolvency (Northern Ireland) Order 1989(**10**).

(4) A notice under paragraph (3) shall—

(a) in the case of a notice under paragraph (3)(*a*), specify the information referred to in paragraph (2)(*a*), (*b*), (*c*) and (*f*);

(b) in the case of a notice under paragraph (3)(*b*), specify the information referred to in paragraph (2)(*a*) to (*d*) and (*f*);

(c) specify the date on which it is given, and

(d) contain a statement about the recipient's rights under paragraph (5).

(5) A member of the scheme in respect of which the application is made or a person to whom a notice is to be given under paragraph (3)(*b*) may make representations to the Authority about the modification requested by the application during the period of one month beginning with the date specified under paragraph (4)(*c*).

(6) Before determining the application the Authority shall consider any representations duly made to them under paragraph (5).

(7) The application shall be accompanied by the following documents—

(a) a copy of—

(i) the documents constituting the scheme or, if any of those documents have been consolidated, the consolidated version of them;

(ii) if the documents mentioned in head (i) do not set out the rules of the scheme, those rules, and

(iii) any document which amends or supplements or wholly or partly supersedes any document within head (i) or (ii);

(b) if an actuary is required to be appointed under Article 47(1)(*b*), a copy of any advice given by the actuary so appointed to the trustees or managers concerning the effects, if any, that the modification requested by the application would or might have on the assets of, or the benefits provided by, the scheme;

(c) subject to paragraph (9), a copy of any legal advice given to the trustees or managers in relation to the modification requested by the application;

(d) a copy of any determination by a court concerning the modification requested or any similar modification, and

(e) if a record is required to be kept under Article 49A(1) of the trustees' or managers' determination that the scheme be wound up, a copy of that record.

(8) Subject to paragraph (9), if in dealing with the application it appears to the Authority necessary or desirable that any information or document which is not required to be given to them under paragraph (2) or (7) be given to them before they determine the application, they may require the trustees or managers to provide it.

(**10**) S.I. 1989/2405 (N.I. 19)

(9) Nothing in paragraph (7)(*c*) or (8) requires a person to produce a document if he would be entitled to refuse to produce it in any proceedings in any court on the grounds that it was the subject of legal professional privilege.

Reports to the Authority about winding up: time limits

8.—(1) Article 72A (reports to Authority about winding up) applies to a winding up beginning on or after 1st April 1973.

(2) In the case of a winding up which began before 1st April 2002, the first report to be made under Article 72A shall be made before the relevant date.

(3) In paragraph (2) the "relevant date" means—

(a) if the winding up began before 1st January 1990, 1st June 2002;

(b) if the winding up began on or after 1st January 1990 but before 1st January 1993, 1st April 2003;

(c) if the winding up began on or after 1st January 1993 but before 1st January 1996, 1st April 2004;

(d) if the winding up began on or after 1st January 1996 but before 1st January 1999, 1st April 2005;

(e) if the winding up began on or after 1st January 1999 but before 1st April 2002, 1st April 2006.

(4) In the case of a winding up which begins on or after 1st April 2002 but before 1st April 2003, the first report to be made under Article 72A shall be made—

(a) after the end of the period of 3 years beginning with the day on which the winding up begins, and

(b) before the end of the period of one year beginning with the end of the period that applies under sub-paragraph (*a*).

(5) In the case of a winding up which begins on or after 1st April 2003, the first report to be made under Article 72A shall be made—

(a) after the end of the period of 3 years beginning with the day on which the winding up begins, and

(b) before the end of the period of 3 months beginning with the end of the period that applies under sub-paragraph (*a*).

Contents of reports to the Authority about winding up

9.—(1) In the case of each winding up, the first report to the Authority under Article 72A(1) shall contain—

(a) the name by which the scheme is known;

(b) the date on which the winding up began;

(c) the number allotted to the scheme by the Registrar of Occupational and Personal Pension Schemes for the purposes of the register compiled and maintained under section 6 of the Pension Schemes Act 1993(**11**);

(d) a statement as to the nature of the benefits provided by the scheme;

(**11**) 1993 c. 48; section 6 was amended by paragraph 23 of Schedule 3 to, and paragraph 20 of Schedule 5 to, the Pensions Act 1995 (c. 26)