STATUTORY RULES OF NORTHERN IRELAND

2001 No. 119

PENSIONS

The Stakeholder Pension Schemes (Amendment No. 2) Regulations (Northern Ireland) 2001

Made - - - -	*15th March 2001*
Coming into operation	*5th April 2001*

The Department for Social Development, in exercise of the powers conferred by Articles 3(2), 10(2)(*b*) and (3), 41(1) and (6), 50(1), (2)(*a*), (3) and (7) and 166(1) to (3) of the Pensions (Northern Ireland) Order 1995(**1**) and Articles 3(1)(*b*), (3), (5) and (7), 5(1), (3)(*b*), (5) and (9)(**2**) and 73(4) of 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 interpretation

1.—(1) These Regulations may be cited as the Stakeholder Pension Schemes (Amendment No. 2) Regulations (Northern Ireland) 2001 and shall come into operation on 5th April 2001.

(2) In these Regulations any reference to a numbered regulation or numbered Schedule is a reference to the regulation or Schedule bearing that number in the Stakeholder Pension Schemes Regulations (Northern Ireland) 2000(**5**).

Amendment of regulation 1

2.—(1) Regulation 1 (citation, commencement and interpretation) shall be amended in accordance with paragraphs (2) to (4).

(2) In paragraph (2) for "and Part IV shall come into operation on 8th October 2001" there shall be substituted—

"and—

(a) regulation 23 shall come into operation on 6th April 2001, and

(b) Part IV (except regulation 23) shall come into operation on 8th October 2001".

(**1**) S.I. 1995/3213 (N.I. 22); Article 3(2) was amended by paragraph 7 of Schedule 2 to, paragraph 33 of Schedule 9 to, and Schedule 10 to, the Welfare Reform and Pensions (Northern Ireland) Order 1999 (S.I. 1999/3147 (N.I. 11))
(**2**) Article 5(9) is cited because of the power conferred in the meaning of the expression "relevant employees"
(**3**) S.I. 1999/3147 (N.I. 11)
(**4**) *See* Article 8(*b*) of S.R. 1999 No. 481
(**5**) S.R. 2000 No. 262, amended by S.R. 2001 No. 13

(3) In paragraph (3)—

(a) after the definition of "beneficiary" there shall be inserted the following definition—

""dilution levy" has the meaning given by—

(a) in relation to—

(i) a scheme to which Part 4A (single pricing and dealing) of the Financial Services (Regulated Schemes) Regulations 1991(**6**) applies, or

(ii) where a scheme to which those Regulations apply has constituent parts for the purposes of Table 12.1 of those Regulations (umbrella schemes: application of regulations) as modified by Part 4C of those Regulations (single pricing: adaptation of regulations), each such constituent part to which that Part 4A applies,

Schedule 4 to those Regulations as modified by that Part 4C;

(b) in relation to a company in relation to which the Financial Services (Open-Ended Investment Companies) Regulations 1997(**7**) apply, Schedule 3 to those Regulations;", and

(b) after the definition of "reporting accountant" there shall be inserted the following definition—

""scheme instruments" means instruments establishing a stakeholder pension scheme;".

(4) After paragraph (7) there shall be inserted the following paragraph—

"(8) In paragraph (3), references in the definition of "dilution levy" to—

(a) the Financial Services (Regulated Schemes) Regulations 1991 are references to those Regulations, and

(b) the Financial Services (Open-Ended Investment Companies) Regulations 1997 are references to those Regulations,

as in force on 15th March 2001.".

Amendment of regulation 3

3.—(1) Regulation 3 (requirements applying to all stakeholder pension schemes as regards instruments establishing such schemes)(**8**) shall be amended in accordance with paragraphs (2) to (5).

(2) In paragraph (1)(**9**) for "the instruments establishing a stakeholder pension scheme (the "scheme instruments")" there shall be substituted "the scheme instruments".

(**6**) Not a statutory instrument. Published by the Financial Services Authority, London, 1997. Release 199, as amended by Release 203. The regulations form part of the Financial Services Authority Rulebook, and can be obtained, together with amendments, from the Financial Services Authority, 25 The North Colonnade, Canary Wharf, London E14 5HS. They are also available on the internet at http://www.fsa.gov.uk/pubs/rules/index-1999.html (for Release 199) and at http://www.fsa.gov.uk/pubs/rules/index-2000.html (for Release 203). They are made under sections 52, 81, 85, 86(3), 87(4) and (5), 88(10) and 90 of the Financial Services Act 1986 (c. 60). As to instruments under that Act, *see* paragraphs 4 to 9 of Schedule 9 to that Act. Paragraph 7 of that Schedule was amended by S.I. 1996/2827

(**7**) Not a statutory instrument. Published by the Financial Services Authority, London, 1997. Release 200, as amended by Releases 204 and 211. The regulations form part of the Financial Services Authority Rulebook, and can be obtained, together with amendments, from the Financial Services Authority, 25 The North Colonnade, Canary Wharf, London E14 5HS. They are also available on the internet at http://www.fsa.gov.uk/pubs/rules/index-1999.html (for Release 200) and at http://www.fsa.gov.uk/pubs/rules/index-2000.html (for Releases 204 and 211). They are made under regulation 6 of the Open-Ended Investment Companies (Investment Companies with Variable Capital) Regulations 1996 (S.I.1996/2827) and under the Open-Ended Investment Companies (Investment Companies with Variable Capital) Regulations (Northern Ireland) 1997 (S.R. 1997 No. 251), to which there are amendments not relevant to these regulations

(**8**) Regulation 3 was amended by S.R. 2001 No. 13

(**9**) Paragraph (1) was amended by S.R. 2001 No. 13

(3) In paragraph (5A)(**10**) for "Subject to paragraphs (10) and (11) and to regulation 17(1)," there shall be substituted "Subject to paragraph (10) and to regulation 17(1) and (5),".

(4) After paragraph (5A) there shall be inserted the following paragraph—

"(5B) The scheme instruments must, except to the extent necessary to ensure that the scheme has tax-exemption or tax-approval, permit as means of payment of contributions to the scheme payment from a bank account or building society account by—

(a) cheque;

(b) direct debit;

(c) standing order;

(d) direct credit (other than standing order),

and (for the avoidance of doubt) for the purposes of this paragraph, those means of payment do not include payment by cash, credit card or debit card (or by any combination thereof).".

(5) Paragraph (11)(**11**) shall be omitted.

Amendment of regulation 4

4.—(1) Regulation 4 (additional requirements as regards instruments establishing a stakeholder pension scheme established under a trust)(**12**) shall be amended in accordance with paragraphs (2) and (3).

(2) In paragraph (3) for "The instruments establishing a stakeholder pension" there shall be substituted "The scheme instruments of a".

(3) In paragraph (4)(*a*) for "or by this regulation" there shall be substituted ", by this regulation or by regulation 6".

Amendment of regulation 8

5. In regulation 8(6) (requirement applying to all stakeholder pension schemes as regards investments) for the definition of "contract of insurance" there shall be substituted the following definition—

""contract of insurance" means a contract—

(a) any (or any part) of whose objects is within any of classes I, III and VII of insurance business specified in Schedule 1 to the Insurance Companies Act 1982(**13**) (classes of long term business), and

(b) which is carried out by a person authorised under that Act to carry on insurance business including carrying out such a contract;".

Amendment of regulation 10

6.—(1) Regulation 10 (requirement for manager of schemes not established under a trust to have regard to certain matters, and to take advice, relating to investment) shall be amended in accordance with paragraphs (2) to (7).

(2) In paragraph (4) after "proper advice as to whether the investment" there shall be inserted "or investment option".

(3) After paragraph (4) there shall be inserted the following paragraph—

(**10**) Paragraph (5A) was inserted by S.R. 2001 No. 13
(**11**) Paragraph (11) was inserted by S.R. 2001 No. 13
(**12**) Regulation 4 was amended by S.R. 2001 No.13
(**13**) 1982 c. 50

"(4A) The manager of the scheme, and any person managing funds held for the purposes of the scheme, must, if retaining any investment or investment option for the purposes of the scheme—

(a) determine at what intervals the circumstances, and in particular the nature of the investment or investment option, make it desirable to obtain and consider in relation to that investment or investment option such advice as is mentioned in paragraph (4), and

(b) obtain and consider such advice accordingly.".

(4) In paragraph (5) for "For the purposes of paragraph (4)" there shall be substituted "For the purposes of this regulation".

(5) In paragraph (6) for "Paragraph (4) does not apply" there shall be substituted "Paragraphs (4) and (4A)(*b*) do not apply".

(6) In paragraph (7)—

(a) after "To the extent that paragraph (4)" there shall be inserted "or (4A)(*b*)", and

(b) for the words "persons who may themselves give proper advice" to the end there shall be substituted—

"a person who may himself give proper advice—

(a) must—

(i) before making any investment or selecting any investment option for the purposes of the scheme, consider, and

(ii) if so retaining any investment or investment option, consider at such intervals as are determined by him in relation to that investment or investment option under paragraph (4A)(*a*),

whether the investment or investment option is satisfactory having regard to the matters mentioned in paragraph (3) and the principles contained in the statement under regulation 9, and

(b) must record in writing the reasons why he considers that any—

(i) investment he makes or retains, or

(ii) investment option he selects or retains,

is satisfactory having regard to those matters and principles.".

(7) For paragraph (8) there shall be substituted the following paragraph—

"(8) No person shall be regarded as having complied with—

(a) paragraph (4) unless the advice to be obtained and considered by him under that paragraph is given or (by the giver of the advice) confirmed in writing;

(b) paragraph (4A)(*a*) unless the determination to be made by him under that paragraph is recorded by him in writing;

(c) paragraph (4A)(*b*) unless the advice to be obtained and considered by him under that paragraph is given or (by the giver of the advice) confirmed in writing.".

Amendment of regulation 11

7.—(1) Regulation 11 (requirement for manager of schemes not established under trust to appoint a reporting accountant) shall be amended in accordance with paragraphs (2) to (10).

(2) In paragraph (1) for "Subject to paragraph (2), for" there shall be substituted "For".

(3) Paragraph (2) shall be omitted.

(4) For paragraph (3) there shall be substituted the following paragraph—

"(3) There shall be appointed as reporting accountant for the scheme ("the reporting accountant"), by the trustees or manager of the scheme, a person who is eligible under paragraph (4) for such appointment.".

(5) For paragraph (4) there shall be substituted the following paragraph—

"(4) A person is eligible for appointment as the reporting accountant only if—

(a) he is not or, in the case of a partnership, no partner or employee of the partnership is a member of the scheme;

(b) he is not or, in the case of a partnership, neither the partnership nor any partner or employee of the partnership is connected with or an associate of the manager, or any of the trustees, of the scheme;

(c) he is eligible under Article 28 of the Companies (Northern Ireland) Order 1990 (eligibility for appointment)(**14**) ("the 1990 Order") for appointment as a company auditor, and

(d) he is not by virtue of Article 30 of the 1990 Order (ineligibility on ground of lack of independence) ineligible for appointment as company auditor of a company which is an employer in relation to the scheme.".

(6) In paragraphs (6) to (8), for "manager" in each place where it occurs there shall be substituted "trustees or manager".

(7) In paragraph (7)—

(a) after "in the event of his resignation" there shall be inserted "(including where he resigns solely or partly because he is required to do so by paragraph (7A))", and

(b) for sub-paragraph (ii) there shall be substituted the following—

"(ii) a declaration that he knows of no such circumstances,

but for the purposes of this paragraph, such circumstances shall not include the mere fact of his being, or having become, ineligible as mentioned in paragraph (7A).".

(8) After paragraph (7) there shall be inserted the following paragraph—

"(7A) Where the reporting accountant is or becomes ineligible, by virtue of not satisfying the conditions in paragraph (4), for his appointment as such—

(a) he shall not act as the reporting accountant (except if required to do so under paragraph (6), and except as required by his agreement under paragraph (7) and as required by sub-paragraphs (*c*) and (*d*));

(b) anything done for the purposes of these Regulations by him acting as such while ineligible in contravention of sub-paragraph (*a*) shall by the trustees or manager be taken for those purposes not to have been done;

(c) he shall resign (with immediate effect) by notice in writing immediately he is or becomes aware, or, as the case may be, should reasonably be or become aware, that he is or has become so ineligible;

(d) he shall state in that notice—

(i) that he is resigning by reason of ineligibility, and

(ii) the ground on which he is or has become so ineligible;

(e) notwithstanding sub-paragraph (*c*), if he is still in place when the trustees or manager are or become aware, or should reasonably be or become aware, that

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