STATUTORY RULES OF NORTHERN IRELAND

1997 No. 99

PENSIONS

The Occupational Pension Schemes (Independent Trustee) Regulations (Northern Ireland) 1997

Made - - - - 24th February 1997

Coming into operation 6th April 1997

The Department of Health and Social Services for Northern Ireland, in exercise of the powers conferred on it by sections 109(1)(*d*), (2), (3) and (4) and 164(1) and (4) of the Pension Schemes (Northern Ireland) Act 1993(**1**) and Articles 1(5), 23(3)(*c*), 115, 122(3) and 166 of the Pensions (Northern Ireland) Order 1995(**2**) 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 (Independent Trustee) Regulations (Northern Ireland) 1997 and shall come into operation on 6th April 1997.

(2) In these Regulations "the Order" means the Pensions (Northern Ireland) Order 1995 and other expressions have the same meaning as in Part II of the Order.

(3) Subject to paragraph (4), the Interpretation Act (Northern Ireland) 1954(**3**) shall apply to these Regulations as it applies to a Measure 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—

(a) to a numbered Article is a reference to the Article of the Order bearing that number; and

(b) to a numbered section is a reference to the section of the Pension Schemes (Northern Ireland) Act 1993 bearing that number.

(**1**) 1993 c. 49; section 164 was substituted by Article 151(1) of the Pensions (Northern Ireland) Order 1995 (S.I. 1995/3213 (N.I. 22))
(**2**) S.I. 1995/3213 (N.I. 22)
(**3**) 1954 c. 33 (N.I.)

Additional requirements for independent trustee

2. For the purposes of Article 23(3) (which sets out the requirements which must be satisfied for a person to be an independent trustee) the prescribed requirements are—

(a) that the person—

(i) has not provided services in relation to the scheme to the trustees or the employer at any time since the day which fell 3 years before Article 22 started to apply in relation to the scheme; and

(ii) is neither connected with, nor an associate of, a person who has provided such services since that day; and

(b) that the person—

(i) has had no interest in the assets of the employer or of the scheme (otherwise than as a trustee of the scheme) at any time since the day referred to in paragraph (*a*)(i); and

(ii) is neither connected with, nor an associate of, a person who has such an interest or has had at any time since that day.

Multi-employer schemes

3.—(1) Articles 22 to 26 are modified as described in this regulation in their application to any trust scheme in relation to which there is more than one employer ("a multi-employer scheme").

(2) Article 22 applies in relation to a multi-employer scheme only if—

(a) an employer in relation to whom an insolvency practitioner has begun to act, or the official receiver has become liquidator or provisional liquidator, or of whose estate the official receiver has become receiver and manager, or trustee—

(i) has, or has had at any time since the day which fell 3 years before Article 22 started to apply in relation to the scheme, power to appoint or to remove any trustee, or any director of a company which is a trustee, of the scheme; or

(ii) is a trustee of the scheme; and

(b) either—

(i) no other employer is a trustee of the scheme or has power to appoint or to remove any trustee, or any director of a company which is a trustee, of the scheme; or

(ii) another employer is a trustee or has such power, but he is an employer in relation to whom an insolvency practitioner has begun to act or the official receiver has become liquidator or provisional liquidator or of whose estate the official receiver has become receiver and manager, or trustee.

(3) Where Article 22 applies in relation to a multi-employer scheme, references to the employer in that Article and in Articles 23 to 25 are to be treated as references to each employer referred to in paragraph (2)(*a*).

(4) Where Article 22 applies in relation to a multi-employer scheme, it shall not cease to do so by virtue of paragraph (2)(*a*) of that Article unless the power to appoint or to remove any trustee of the scheme is transferred to the new employer or to any person who is independent for the purposes of Article 23(1).

Cases where a partnership is the employer

4.—(1) Articles 22 to 26 are modified as described in this regulation in their application to any case where—

(a) a partnership is the employer or one of the employers in relation to a trust scheme;

(b) the partnership is insolvent; and

(c) the High Court has jurisdiction to wind up the insolvent partnership(**4**).

(2) Article 22 applies in relation to the scheme—

(a) if a person begins to act as an insolvency practitioner in relation to the insolvent partnership; or

(b) if the official receiver becomes the liquidator or provisional liquidator of the insolvent partnership.

(3) Where Article 22 applies in relation to the scheme, references to a company are to be treated as including any insolvent partnership that the High Court has jurisdiction to wind up.

Exemptions

5.—(1) Articles 22 to 26 shall not apply to any of the following schemes—

(a) a scheme of which each member is a trustee;

(b) a money purchase scheme;

(c) a scheme—

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

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

(d) a scheme under which all the benefits to be provided are secured by one or more policies of insurance or annuity contracts and such policies or contracts are specifically allocated to the provision of benefits for individual members or any other person who has a right to benefits under the scheme;

(e) a scheme which would be a money purchase scheme but for the fact that it provides guaranteed minimum pensions;

(f) a scheme which provides relevant benefits but is neither an approved scheme nor a relevant statutory scheme;

(g) a section 615(6) scheme.

(2) In this regulation—

"approved scheme" means a scheme which is approved or was formerly approved under section 590 or 591 of the Taxes Act 1988 or in respect of which an application for such approval has been duly made but has not been determined;

"guaranteed minimum pension" has the same meaning as in section 4(2);

"relevant benefits" has the meaning given in section 612(1) of the Taxes Act 1988;

"relevant statutory scheme" has the meaning given in section 611A of the Taxes Act 1988(**5**);

"section 615(6) scheme" means a scheme with such a superannuation fund as is mentioned in section 615(6) of the Taxes Act 1988.

Meaning of "employer" in relation to schemes with no members in employment to which the scheme relates

6. For the purposes of Articles 22 to 26 and these Regulations, where there are no members in employment to which the scheme in question relates, references to the employer shall include the person who last employed persons in the description or category of employment to which the scheme in question relates.

(**4**) *See* Part VI of the Insolvency (Northern Ireland) Order 1989 (S.I. 1989/2405 (N.I. 19)) and S.R. 1991 No. 366

(**5**) Section 611A was inserted by paragraph 15 of Schedule 6 to the Finance Act 1989 (c. 26)