STATUTORY RULES OF NORTHERN IRELAND

1997 No. 97

PENSIONS

The Occupational Pension Schemes (Modification of Schemes) Regulations (Northern Ireland) 1997

Made - - - - 24th February 1997

Coming into operation 6th April 1997

The Department of Health and Social Services, in exercise of the powers conferred on it by Articles 10(3), 67(4), (5) and (6), 68(5), 122(4)(*a*) and 166(1) to (3) of the Pensions (Northern Ireland) Order 1995(**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 Occupational Pension Schemes (Modification of Schemes) Regulations (Northern Ireland) 1997 and shall come into operation on 6th April 1997.

(2) 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.

(3) For the purposes of these Regulations and notwithstanding section 39(2) of the Interpretation Act (Northern Ireland) 1954(**2**), 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.

Extension of meaning of "member"

2. In a case where a member has died, the meaning of "member" (as defined in Article 121(1)) shall, for the purposes of Article 67 and these Regulations, be extended to include the widow or widower of the member or, in the case where there is no widow or widower, any other person who has an entitlement to a payment under the scheme in respect of the deceased member.

Certification requirement in respect of a power which would or might affect any entitlement or accrued right

3.—(1) For the purposes of Article 67(4)(*a*) (certification requirements in respect of any power conferred on any person by an occupational pension scheme to modify that scheme) the prescribed requirement is that an actuary shall certify to the trustees of the scheme that, in his opinion, the exercise of the power in the proposed manner to modify the scheme would not adversely affect any

(**1**) S.I. 1995/3213 (N.I. 22)
(**2**) 1954 c. 33 (N.I.)

member of the scheme (without his consent) in respect of his entitlement, or accrued rights, acquired before that power is exercised.

(2) The reference to an actuary in paragraph (1) means—

(a) in a case where the requirement of Article 47(1)(*b*) (appointment of professional advisers) applies, the individual appointed by the trustees or managers as actuary in accordance with the requirements of Article 47;

(b) in any other case—

(i) a Fellow of the Institute of Actuaries;

(ii) a Fellow of the Faculty of Actuaries; or

(iii) a person with other actuarial qualifications who is approved by the Department.

Consent requirement in respect of a power which would or might affect any entitlement or accrued right

4. For the purposes of Article 67(4)(*b*) (consent requirements in respect of any power conferred on any person by an occupational pension scheme to modify that scheme) the prescribed requirement is that the consent of the member to the proposed exercise of the power to modify the scheme shall be in writing.

Circumstances where consent to the exercise of a power to modify shall be treated as given

5. Where a power to which Article 67 applies may not (apart from that Article) be exercised without the consent of any person, such consent may be treated as given where—

(a) the trustees have sent written notification ("the first notification") to the member's last known address of the proposed exercise of the power to modify the scheme;

(b) a further written notification ("the second notification") was sent by the trustees at least 2 months after the date the first notification was sent; and

(c) no response was received from the member in respect of the first notification or the second notification before the end of a period of one month from the date the second notification was sent.

Restriction on powers to modify schemes: exception

6. For the purposes of Article 67(5) (restriction on the power to modify schemes does not apply to the exercise of a power in a prescribed manner) the prescribed manner is, in the case of an occupational pension scheme which is not a trust scheme, the exercise of the power by the managers with the member's consent.

Power of trustees to modify trust scheme by resolution: exception

7. For the purposes of Article 68(5) (power to modify schemes by resolution does not apply to trust schemes falling within a prescribed class or description) the prescribed class or description is any trust scheme—

(a) in respect of which any Minister of the Crown or government department has given a guarantee or made arrangements for the purpose of securing that the assets of the scheme are sufficient to meet its liabilities; or

(b) which is a public service pension scheme.