STATUTORY RULES OF NORTHERN IRELAND

1997 No. 96

PENSIONS

The Occupational Pension Schemes (Payments to Employers) 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 37(3), (4)(*e*) and (10), 69(3)(*a*) and (*b*), 76(2), (3)(*d*) and (8), 77(4)(*a*) and (6), 122(4)(*a*) and 166 of the Pensions (Northern Ireland) Order 1995(**1**) and of all other powers enabling it in that behalf, hereby makes the following Regulations:

Preliminary

Citation, commencement and interpretation

1.—(1) These Regulations may be cited as the Occupational Pension Schemes (Payments to Employers) Regulations (Northern Ireland) 1997 and shall come into operation on 6th April 1997.

(2) In these Regulations—

"surplus" means an excess in the value of the assets in a scheme over its liabilities by more than the maximum percentage prescribed under Schedule 22 to the Taxes Act 1988 (reduction of pension fund surpluses).

(3) 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.

(4) 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.

Meaning of "member"

2. For the purposes of these Regulations and Articles 37 and 76, the meaning of "member" in relation to any scheme is extended to include any person who is entitled to the present payment of benefits under the scheme.

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

Application to these Regulations

3. These Regulations do not apply to a scheme unless it is a trust scheme which is an exempt approved scheme within the meaning given by section 592(1) of the Taxes Act 1988.

Payments from Surplus — Ongoing Schemes

Notice of proposed payment from surplus

4.—(1) For the purposes of Article 37 (which sets out the requirements which must be satisfied before a power to make payments to the employer out of funds held for the purposes of a scheme may be exercised) the prescribed requirements as to notice referred to in Article 37(4)(*e*) are set out in paragraphs (2) to (5).

(2) The trustees shall take all reasonable steps to ensure that each member is given 2 written notices in accordance with the following provisions of this regulation.

(3) The first notice shall be given after proposals to reduce or eliminate a surplus have been approved under paragraph 6(1) of Schedule 22 to the Taxes Act 1988. It shall—

(a) inform the member as to—

(i) how it is proposed that the surplus shall be reduced or eliminated, by reference to the ways permitted under paragraph 3(3) of that Schedule; and

(ii) whether the requirements of Article 37(4) are satisfied;

(b) invite the member, if he wishes, to make written representations in relation to the proposals to the trustees before a specified date (which is not earlier than 2 months from the date on which the first notice is given);

(c) advise the member—

(i) that a second notice will be given to him if the trustees intend to proceed with the proposals; and

(ii) that no payment may be made to the employer in accordance with the proposals until at least 3 months after the date on which the second notice is given.

(4) The second notice shall be given after the date specified in accordance with paragraph (3)(*b*) and at least 3 months before the power is exercised. It shall—

(a) contain the information referred to in paragraph (3)(*a*), including any modifications to the proposals; and

(b) advise the member that he may make written representations to the Authority before a specified date (which is not earlier than 3 months from the date on which the second notice is given) if he considers that any of the requirements of Article 37(4) are not satisfied.

(5) For the purposes of paragraph (2)—

(a) a notice shall be treated as having been given to a member if it has been sent to him by post either at the address at which he was last known to be living or, in the case of an active member, at an address at which he is known to be currently employed; and

(b) notices are not required to be given where a member has no known address or where correspondence sent to a member's last known address has been returned.

Circumstances in which the Authority must be satisfied that the requirements of Article 37 are met

5.—(1) For the purposes of Article 37(3) (which provides that, in prescribed circumstances, the power to make payments to an employer out of funds held for the purposes of a scheme cannot

be exercised unless the Authority are of the opinion that the requirements of Article 37(4) and any prescribed requirements are satisfied) the prescribed circumstances are—

(a) that, subject to paragraph (2) of this regulation, the Authority receive (in relation to any proposals to which that Article applies)—

(i) written representations from a member to the effect that any of the requirements of Article 37(4) are not satisfied; or

(ii) information from any source sufficient to raise a doubt as to whether all those requirements are satisfied; and

(b) the Authority notify the trustees in writing that no payment should be made to the employer in accordance with the proposals until the Authority have confirmed in writing that the Authority are satisfied that those requirements are satisfied.

(2) Where the trustees have given notice to a member in accordance with regulation 4, paragraph (1)(*a*)(i) shall only apply in the case of representations received by the Authority from the member before the date specified in accordance with regulation 4(4)(*b*) (expiry date of the second notice).

Additional requirement for the purposes of Article 37

6.—(1) For the purposes of Article 37(3) (which provides for requirements to be prescribed in addition to those mentioned in Article 37(4)) the requirement set out in paragraph (2) of this regulation applies where—

(a) the date specified in accordance with regulation 4(4)(*b*) (expiry date of the second notice) has passed; and

(b) the trustees have not received notification from the Authority in accordance with regulation 5(1)(*b*).

(2) The requirement is that the trustees obtain written confirmation from the Authority that the Authority have not received any representations or information referred to in regulation 5(1)(*a*) and accordingly Article 37(5) does not apply.

Distribution of Excess Assets — Schemes Winding Up

Notice of proposal to distribute excess assets to the employer

7.—(1) For the purposes of Article 76 (which sets out the requirements which must be satisfied before a power to distribute assets to the employer on a winding up may be exercised) the prescribed requirements as to notice referred to in Article 76(3)(*d*) are set out in paragraphs (2) to (5).

(2) Where the trustees or the employer propose to exercise a power such as is referred to in paragraph (1), the trustees or, as the case may be, the employer, shall take all reasonable steps to ensure that each member is given 2 written notices of the proposal in accordance with the following provisions of this regulation.

(3) The first notice shall—

(a) inform the member as to—

(i) the trustees' estimate of the value of the assets remaining after the liabilities of the scheme have been fully discharged and the persons or class of person to whom, and in what proportions, it is proposed that they should be distributed; and

(ii) whether the requirements of Article 76(3) are satisfied;

(b) invite the member, if he wishes, to make written representations in relation to the proposal to the trustees or, as the case may be, to the employer, before a specified date (which is not earlier than 2 months from the date on which the first notice is given);

(c) advise the member—

(i) that a second notice will be given to him if the trustees or the employer, as the case may be, intend to proceed with the proposal; and

(ii) that no excess assets may be distributed to the employer in accordance with the proposal until at least 3 months after the date on which the second notice is given.

(4) The second notice shall be given after the date specified in accordance with paragraph (3)(*b*) and at least 3 months before the power is exercised. It shall—

(a) contain the information referred to in paragraph (3)(*a*), including any modifications to the proposal;

(b) advise the member that he may make written representations to the Authority before a specified date (which is not earlier than 3 months from the date on which the second notice is given) if he considers that any of the requirements of Article 76(3) are not satisfied.

(5) For the purposes of paragraph (2)—

(a) a notice shall be treated as having been given to a member if it has been sent to him by post either at the address at which he was last known to be living or, in the case of an active member, at an address at which he is known to be currently employed; and

(b) notices are not required to be given where a member has no known address or where correspondence sent to a member's last known address has been returned.

Circumstances in which the Authority must be satisfied that the requirements of Article 76 are met

8.—(1) For the purposes of Article 76(2) (which provides that, in prescribed circumstances, the power to distribute assets to the employer on a winding up cannot be exercised unless the Authority are of the opinion that the requirements of Article 76(3) and any prescribed requirements are satisfied) the prescribed circumstances are—

(a) that, subject to paragraph (2) of this regulation, the Authority receive (in relation to any proposal to which that Article applies)—

(i) written representations from a member to the effect that any of the requirements of Article 76(3) are not satisfied; or

(ii) information from any source sufficient to raise a doubt as to whether all those requirements are satisfied; and

(b) the Authority notify the trustees or, as the case may be, the employer in writing that the power should not be exercised until the Authority have confirmed in writing that the Authority are satisfied that those requirements are satisfied.

(2) Where notice has been given to a member in accordance with regulation 7, paragraph (1)(*a*)(i) shall only apply in the case of representations received by the Authority from the member before the date specified in accordance with regulation 7(4)(*b*) (expiry date of the second notice).

Additional requirement for the purposes of Article 76

9.—(1) For the purposes of Article 76(2) (which provides for requirements to be prescribed in addition to those mentioned in Article 76(3)) the requirement set out in paragraph (2) of this regulation applies where—

(a) the date specified in accordance with regulation 7(4)(*b*) (expiry date of the second notice) has passed; and

(b) the trustees or, as the case may be, the employer have not received notification from the Authority in accordance with regulation 8(1)(*b*).