STATUTORY RULES OF NORTHERN IRELAND

1997 No. 94

PENSIONS

The Occupational Pension Schemes (Scheme Administration) 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 27(3) and (5), 32(2) and (3), 47(3), (5), (6) and (9), 49(1), (2), (4), (5) and (8), 85(1), (2) and (3), 86(1) 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:

Part I

Introduction

Citation, commencement and interpretation

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

(2) In these Regulations—

"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 which has not been determined;

"business days" means any day other than a Saturday, a Sunday, Christmas Day, Good Friday or a bank holiday within the meaning of the Banking and Financial Dealings Act 1971(**2**);

"pensioneer trustee" has the same meaning as in regulation 2(1) of the Retirement Benefits Schemes (Restriction on Discretion to Approve) (Small Self-administered Schemes) Regulations 1991(**3**);

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

(**1**) S.I. 1995/3213 (N.I. 22)
(**2**) 1971 c. 80
(**3**) S.I. 1991/1614. *See also* regulation 2(4) to (8) of that instrument for the meaning of "connected with" in regulation 2(1)

"relevant statutory scheme" has the same meaning as in section 611A of the Taxes Act 1988(**4**);

"scheme year" means—

(a) a year specified for the purposes of the scheme in any document comprising the scheme or, if none is so specified, a period of 12 months commencing on 1st April or on such date as the trustees or managers select; or

(b) such other period (if any) exceeding 6 months but not exceeding 18 months as is selected by the trustees or managers in connection with—

(i) the commencement or termination of the scheme; or

(ii) a variation of the date on which the year or period referred to in paragraph (*a*) is to commence;

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

"unfunded occupational pension scheme" means an occupational pension scheme under which there is no requirement to set aside in advance resources related to the intended rate or amount of benefits;

"wholly insured scheme" means an occupational pension scheme under which all the benefits provided are secured by a policy of insurance or an annuity contract.

(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(**5**), 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.

Part II

Advisers

Article 47(3): prescribed functions

2. For the purposes of Article 47(3)(*a*) (reliance not to be placed on skill or judgement of any person appointed otherwise than by the trustees or managers) the prescribed functions are—

(a) the examination of, and the expression of an opinion on, the financial statements and accounts of the scheme and any other matter relating to the audit of the scheme;

(b) the provision of advice on financial questions relating to the funding of, and assets of, the scheme and on questions in respect of probabilities relating to mortality and other contingencies, and any other matter relating to the actuarial affairs of the scheme;

(c) the custody of cash, securities and any other documents of title to scheme assets.

Professional advisers' requirements: exceptions

3.—(1) Article 47(1)(*a*) (for every occupational pension scheme there shall be an individual, or a firm, appointed by the trustees or managers as auditor) shall not apply to—

(**4**) Section 611A was inserted by paragraph 15 of Schedule 6 to the Finance Act 1989 (c. 26)
(**5**) 1954 c. 33 (N.I.)

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

(b) the scheme established by the Salvation Army Act 1963(**6**);

(c) occupational pension schemes which provide relevant benefits but are neither approved schemes nor relevant statutory schemes;

(d) public service pension schemes—

(i) under the provisions of which there is no requirement for assets related to the intended rate or amount of benefit under the scheme to be set aside in advance (disregarding requirements relating to voluntary contributions); or

(ii) which are made under Article 9 of the Superannuation (Northern Ireland) Order 1972(**7**) (superannuation of persons employed in local government service, etc.) or which is established under Part II of the Ministerial Salaries and Members' Pensions Act (Northern Ireland) 1965(**8**) or Article 3 of the Assembly Pensions (Northern Ireland) Order 1976(**9**);

(e) unfunded occupational pension schemes;

(f) occupational pension schemes with less than 2 members;

(g) occupational pension schemes—

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

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

(h) occupational money purchase small self-administered schemes in which—

(i) all members of the scheme are trustees; and

(ii) all decisions are made only by unanimous agreement by the trustees who are members of the scheme and for the purpose of this head the participation of a pensioneer trustee in the making of a decision may be disregarded;

(i) occupational pension schemes with a superannuation fund such as is mentioned in section 615(6) of the Taxes Act 1988; and

(j) the BR Shared Cost Section of the Railways Pension Scheme made under section 134 of, and Schedule 11 to, the Railways Act 1993(**10**).

(2) Article 47(1)(*b*) (for every occupational pension scheme there shall be an individual appointed by the trustees or managers as actuary) shall not apply to—

(a) money purchase schemes;

(b) approved schemes—

(i) which have been categorised by the Commissioners of Inland Revenue for the purpose of their approval as centralised schemes for non-associated employers;

(ii) which are not contracted-out; and

(iii) under the provisions of which the only benefits which may be provided on or after retirement (other than money purchase benefits derived from the payment of additional contributions by any person) are lump sum benefits (not including benefits paid by way of commuted retirement pension) which are not calculated by reference to any member's salary;

(**6**) 1963 c. xxxii
(**7**) S.I. 1972/1073 (N.I. 10)
(**8**) 1965 c. 18 (N.I.)
(**9**) S.I. 1976/1779
(**10**) 1993 c. 43. *See* the Railways Pension Scheme Order 1994 (S.I. 1994/1433)

(c) schemes mentioned in paragraph (1)(*a*) to (*g*), (*i*) and (*j*).

(3) Article 47(2) (for every occupational pension scheme the assets of which consist of or include investments (within the meaning of the Financial Services Act 1986) there shall be an individual or a firm appointed by or on behalf of the trustees or managers as fund manager) shall not apply to—

(a) relevant schemes of a kind described in article 3(2) of the Financial Services Act 1986 (Occupational Pension Schemes) (No. 2) Order 1988(**11**);

(b) wholly insured schemes;

(c) schemes mentioned in paragraph (1)(*a*) to (*g*), (i) and (*j*).

(4) Article 47(3) (reliance not to be placed on the skill or judgement of any person appointed otherwise than by the trustees or managers) shall not apply to schemes mentioned in paragraph (1)(*a*) to (*g*), (*i*) and (*j*).

Qualifications and experience or approval required for appointment as auditor or actuary

4.—(1) For the purposes of Article 47(5)(*b*) (specification of qualifications and experience, or approval, required for appointment as professional adviser) the qualifications and experience, or approval, required for appointment as—

(a) the auditor, subject to paragraph (2), are—

(i) those specified in Article 28 of the Companies (Northern Ireland) Order 1990(**12**); or

(ii) approval by the Department;

(b) the actuary are—

(i) Fellowship of the Institute of Actuaries;

(ii) Fellowship of the Faculty of Actuaries; or

(iii) approval by the Department.

(2) A person shall not be appointed as the auditor where—

(a) he is a member of the scheme(**13**);

(b) he is employed under a contract of service by the trustees or managers of the scheme;

(c) he is an employer in relation to the scheme; or

(d) he is, by virtue of Article 30 of the Companies (Northern Ireland) Order 1990, ineligible to audit the accounts of a company which is an employer in relation to the scheme.

Manner and terms of appointment and removal of professional advisers

5.—(1) An appointment of a professional adviser shall be made in writing ("the notice of appointment") and shall specify—

(a) the date on which the appointment is due to take effect;

(b) to whom the professional adviser is to report; and

(c) from whom the professional adviser is to take instructions.

(2) A person appointed as a professional adviser shall—

(a) acknowledge in writing receipt of the notice of appointment within one month of receipt; and

(**11**) S.I. 1988/724

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

(**13**) *See* Article 27 of the Pensions (Northern Ireland) Order 1995 which provides that a trustee of a trust scheme, and any person connected with, or an associate of, such a trustee, is ineligible to act as an auditor. *See also* regulation 7 of these Regulations

(b) confirm in writing that he will notify the trustees or managers, immediately he becomes aware, of the existence of any conflict of interest to which he is subject in relation to the scheme.

(3) The resignation of a professional adviser shall be made by serving on the trustees or managers a notice of resignation in writing.

(4) The notice of resignation referred to in paragraph (3) shall, in the case of the auditor or actuary, contain either—

(a) a statement by the auditor or actuary specifying any circumstances connected with the resignation which, in his opinion, significantly affect the interests of the members or prospective members of, or beneficiaries under, the scheme; or

(b) a declaration by the auditor or actuary that he knows of no such circumstances as are referred to in sub-paragraph (*a*).

(5) The resignation shall be effective from the date (if any) specified in the notice by the professional adviser as the date he wishes his resignation to be effective, or, if no date is specified, the date on which the trustees or managers receive the notice.

(6) Trustees or managers wishing to remove a professional adviser shall do so by serving on him a notice in writing stating the date with effect from which his appointment terminates.

(7) Where the auditor or actuary is removed in accordance with paragraph (6), he shall, within 14 days of receipt of the removal notice referred to in that paragraph, provide the trustees or managers with either—

(a) a statement specifying any circumstances connected with the removal which, in his opinion, significantly affect the interests of the members or prospective members of, or beneficiaries under, the scheme; or

(b) a declaration that he knows of no such circumstances as are referred to in sub-paragraph (*a*).

(8) Where the auditor or actuary—

(a) is removed by the trustees or managers;

(b) resigns; or

(c) dies,

the trustees or managers shall appoint a replacement auditor or actuary (as the case may be) within 3 months of the date of the removal, resignation or death.

(9) In a case where paragraph (8) applies, Article 47(1)(*a*) (where the replacement is to be an auditor) or (*b*) (where the replacement is to be an actuary) shall not apply pending the appointment of the replacement.

(10) Where a statement or declaration is made in accordance with paragraph (4) or (7) the trustees or managers shall furnish the succeeding auditor or actuary and, whichever the case may be, the remaining auditor or actuary to the scheme, with a copy of the statement or declaration, where it is reasonably practical to do so on or before the day on which the appointment of the succeeding auditor or actuary takes effect, and in any event not later than the fourteenth day after the trustees or managers receive the statement or declaration.

(11) This regulation shall not apply in the case of an appointment of a person as a professional adviser to a scheme which falls within the descriptions referred to in regulation 3(1)(*b*) to (*g*) and (*i*).

Duty to disclose information

6.—(1) It shall be the duty of any person—