STATUTORY RULES OF NORTHERN IRELAND

1996 No. 621

PENSIONS

The Occupational Pension Schemes (Winding Up) Regulations (Northern Ireland) 1996

Made - - - - 31st December 1996

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 93(1) and (2), 109(1)(*d*), 164(1) and (4) and 177(2) to (4) of the Pension Schemes (Northern Ireland) Act 1993(**1**) and Articles 38(3)(*b*), 49(2)(*b*), (3) and (4), 68(2)(*e*), 73(3) and (7) to (9), 74(2), (3)(*a*) to (*d*) and (5)(*b*), 115(1)(*a*) and (*b*), 116, 122(2) and (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:

Preliminary

Citation, commencement and interpretation

1.—(1) These Regulations may be cited as the Occupational Pension Schemes (Winding Up) Regulations (Northern Ireland) 1996 and shall come into operation on 6th April 1997.

(2) These Regulations do not apply to any scheme which has begun to be wound up before 6th April 1997.

(3) In these Regulations—

"the Act" means the Pension Schemes (Northern Ireland) Act 1993;

"the MFR Regulations" means the Occupational Pension Schemes (Minimum Funding Requirement and Actuarial Valuations) Regulations (Northern Ireland) 1996(**3**);

"the Order" means the Pensions (Northern Ireland) Order 1995;

and other expressions have the same meaning as in Part II of the Order.

(4) In these Regulations any reference to a numbered Article is a reference to the Article of the Order bearing that number.

(**1**) 1993 c. 49; section 93(2) was amended by paragraph 6(*a*) of Schedule 4 to the Pensions (Northern Ireland) Order 1995 (S.I.1995/3213 (N.I. 22)) and section 164 was substituted by Article 151(1) of that Order

(**2**) S.I.1995/3213 (N.I. 22)

(**3**) S.R. 1996 No. 570

(5) In these Regulations references to the guidance given in GN 19 are to the guidelines on winding-up and scheme asset deficiency (GN 19), prepared and published by the Institute of Actuaries and the Faculty of Actuaries(**4**) and approved for the purposes of these Regulations by the Department, as they apply as respects schemes of the description in question with such revisions as have been so approved as at the date as at which the valuation in question is made.

(6) Subject to paragraph (7), the Interpretation Act (Northern Ireland) 1954(**5**) shall apply to these Regulations as it applies to a Measure of the Assembly.

(7) 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.

Commencement of winding up

2.—(1) For the purposes of these Regulations, the time when a scheme begins to be wound up shall be determined in accordance with paragraphs (2) to (5).

(2) Subject to paragraphs (3) and (5), where the rules of the scheme require or permit the scheme to be wound up and the scheme is wound up under those rules, the scheme begins to be wound up—

(a) either—

(i) at such time as the rules provide that it does so; or

(ii) if the rules make no provision as to that time, at such time as the trustees determine that the scheme shall begin to be wound up; or

(b) as soon as there are no members who are in pensionable service under the scheme,

whichever is the later.

(3) Where the rules of the scheme require or permit the scheme to be wound up, but the trustees determine in pursuance of Article 38 or otherwise that the scheme is not for the time being to be wound up, then for the purposes of paragraph (2), in so far as any provision made by the rules of the scheme as to the time when it begins to be wound up is inconsistent with the trustees' determination, that provision shall be disregarded.

(4) Where under the rules of the scheme any person other than the trustees may determine that the scheme is to be wound up, or is not to be wound up for the time being, then the references in paragraphs (2)(*a*)(ii) and (3) to the trustees' determination shall be taken, in a case where the winding up begins or is deferred by virtue of that other person's determination, as a reference to his determination; and this paragraph applies where such a power is vested in the trustees jointly with another person, or in some but not all of the trustees, as it applies where such a power is vested only in a person other than the trustees.

(5) Where—

(a) a scheme is wound up in pursuance—

(i) of an order of the Authority under Article 11; or

(ii) of an order of a court; and

(b) the order makes provision as to the time at which the scheme is to begin to be wound up,

the scheme begins to be wound up at the time specified in the order or, if none is so specified, the date on which the order takes effect.

(**4**) Copies of GN 19 may be obtained from the Faculty of Actuaries, 17 Thistle Street, Edinburgh, EH2 1DF
(**5**) 1954 c. 33 (N.I.)

Preferential Liabilities on Winding Up

Modification of Article 73

3.—(1) Article 73(3) applies—

(a) in all cases subject to the modifications mentioned in paragraphs (3) and (4);

(b) in the case of a scheme which begins to be wound up before the expiry of the transitional period, subject to the modifications mentioned in paragraphs (5) and (6); and

(c) in the case of a scheme which begins to be wound up after the expiry of that period, subject to the modification mentioned in paragraph (7).

(2) For the purposes of paragraph (1), the transitional period is—

(a) the period of 10 years beginning on 6th April 1997; or

(b) in the case of a scheme—

(i) to which regulation 16(2) of the MFR Regulations applies (extension of period covered by schedule of contributions where minimum funding valuation shows minimum funding requirement not met); and

(ii) the schedule period in relation to which has been extended under regulation 25 or 27 of those Regulations (extension by the Authority),

that extended schedule period;

and in this paragraph "the schedule period" has the same meaning as in regulation 16(3) of the MFR Regulations.

(3) After Article 73(3)(*a*) there shall be inserted—

"(aa) where—

(i) the trustees or managers of the scheme are entitled to benefits under a contract of insurance which was entered into before 6th April 1997 with a view to securing the whole or part of the scheme's liability for any pension or other benefit payable in respect of one particular person whose entitlement to payment of a pension or other benefit has arisen and for any benefit which will be payable in respect of that person on his death, and

(ii) either that contract may not be surrendered or the amount payable on surrender does not exceed the liability secured by the contract (but excluding liability for increases to pensions),

the liability so secured,".

(4) In Article 73(3)(*b*)—

(a) at the beginning there shall be inserted "in a case not falling within paragraph (*aa*),"; and

(b) for "to dependants" there shall be substituted "in respect".

(5) For Article 73(3)(*c*) and (*d*) there shall be substituted—

"(c) any liability—

(i) for equivalent pension benefits (within the meaning of section 56(1) of the National Insurance Act (Northern Ireland) 1966(**6**)), guaranteed minimum pensions, protected rights or section 5(2B) rights (within the meaning of regulation 1(2) of the Contracting-out (Transfer and Transfer Payment) Regulations (Northern Ireland) 1996(**7**)) (but excluding increases to pensions), or

(**6**) 1966 c. 6 (N.I.); section 56 was repealed by the Social Security Act 1973 (c. 38) but continued in force by regulation 3 of, and Schedule 1 to, S.R.1975 No. 48

(**7**) S.R. 1996 No. 618

(ii) in respect of members with less than two years' pensionable service who are not entitled to accrued rights under the scheme, for the return of contributions,

(d) any liability for increases to pensions referred to in sub-paragraphs (*aa*) and (*b*),

(e) any liability for increases to pensions referred to in sub-paragraph (*c*),

(f) so far as not included in sub-paragraph (*c*) or (*e*), any liability for pensions or other benefits which have accrued to or in respect of any members of the scheme (including increases to pensions);".

(6) In the words following sub-paragraph (*f*) of Article 73(3) (as inserted by paragraph (5)), for "sub-paragraphs (*b*) to (*d*)" there shall be substituted "sub-paragraphs (*aa*) to (*f*)".

(7) In the words following sub-paragraph (*d*) of Article 73(3) for "sub-paragraphs (*b*) to (*d*)" there shall be substituted "sub-paragraphs (*aa*) to (*d*)".

(8) In the case of any scheme to which Article 73(3) applies with the modifications mentioned in paragraphs (5) and (6), regulations 7(3)(*b*)(iv) and 8(4) of the Occupational Pension Schemes (Transfer Values) Regulations (Northern Ireland) 1996(**8**) shall have effect with the insertion after "(*c*)(i)" of ", (*e*)" and with the substitution for "(*d*)" of "(*f*)".

Calculation of amounts of liabilities

4.—(1) Subject to paragraphs (4) and (5), for the purposes of Article 73(2) the amounts of the liabilities mentioned in Article 73(3) shall be calculated and verified by the actuary of the scheme—

(a) on the assumption that the questions whether or not a person's entitlement to payment of a pension or other benefit has arisen and whether any amount must be treated as an increase or as part of a pension are to be determined as at the crystallisation date;

(b) on the assumption that liabilities in respect of members do not include the expenses involved in meeting them;

(c) subject to paragraph (3), in the manner specified in regulations 7(2), (3) and (7) to (10) and 8(2) of the MFR Regulations (so far as they relate to the calculation and verification of liabilities); and

(d) otherwise in accordance with the guidance given in GN 19 (so far as it applies for the purposes of these Regulations).

(2) Such a calculation must be accompanied by a statement that it is in accordance with the guidance mentioned in paragraph (1)(*d*).

(3) For the purposes of this regulation, regulations 7 and 8 of the MFR Regulations shall be modified as follows—

(a) references in regulations 7(3), (7) and (8) and 8(2) to the relevant date shall be taken as references to the date as at which the calculation is made (being a date not earlier than the crystallisation date or the commencement of winding up, if later);

(b) in regulation 7(3) ", subject to paragraphs (4) and (5)," shall be omitted; and

(c) regulation 8(2)(*a*)(i) shall be omitted.

(4) If, when the assets of the scheme are applied in accordance with Article 73(2) towards satisfying any liability of the scheme mentioned in Article 73(3), that liability, as calculated in accordance with the rules of the scheme (without any reduction by reason of its falling within a class of liability which is to be satisfied after another class), is in the opinion of the actuary fully satisfied by applying assets of a value less than the amount of that liability calculated in accordance with

(**8**) S.R. 1996 No. 619

paragraph (1), then the amount to be taken as the amount of that liability for the purposes of Article 73(2) shall be reduced accordingly.

(5) If, when the assets of the scheme are applied in accordance with Article 73(2) towards satisfying the liabilities mentioned in Article 73(3)(*aa*) or (*b*), those liabilities, as calculated in accordance with the rules of the scheme (without any reduction by reason of their falling within a class of liability which is to be satisfied after another class), cannot in the opinion of the actuary be fully satisfied by applying assets of a value equal to the amount of those liabilities calculated in accordance with paragraph (1), then the amount to be taken as the amount of those liabilities for the purposes of Article 73(2) shall be increased accordingly.

(6) Subject to paragraph (7), in this regulation "the crystallisation date" means—

(a) in the case of a scheme where—

(i) the trustees or managers determined (whether in pursuance of Article 38 or otherwise) that the scheme was not for the time being to be wound up, despite rules otherwise requiring it to be so;

(ii) the time when the sub-paragraph of Article 73(3) into which the liability in respect of any person falls is determined is fixed under the provisions of the scheme; and

(iii) that time falls on or after the date of that determination mentioned in head (i) and before the date on which the scheme begins to be wound up,

the date when that time occurs; and

(b) otherwise, the date on which the scheme begins to be wound up.

(7) Where the trustees or managers of a scheme—

(a) determined before 6th April 1997 that the scheme was not for the time being to be wound up, despite rules otherwise requiring it to be so; and

(b) before that date determined a time (being a time before 6th April 1997) when the amounts or descriptions of liabilities of the scheme were to be determined for the purposes of any rule of the scheme requiring the assets of the scheme to be applied on winding up in satisfying the amounts of certain liabilities to or in respect of members before other such liabilities,

the date when that time occurs is the crystallisation date.

Modification of schemes to fix time for settling priority of liabilities on winding up

5.—(1) The trustees of a trust scheme may by resolution modify the scheme with a view to fixing or providing for the fixing of the time when the sub-paragraph of Article 73(3) into which the liability in respect of any person falls is to be determined for the purposes of Article 73(2) and (3) or of any priority rule of the scheme, in the event of a determination (whether in pursuance of Article 38 or otherwise) that the scheme is not for the time being to be wound up, despite rules otherwise requiring it to be so.

(2) That time must be —

(a) on or after the date of the resolution and of any such determination to defer winding up; and

(b) before the date on which the scheme begins to be wound up.

(3) In paragraph (1) "priority rule" means a rule of the scheme requiring the trustees to apply the assets of the scheme on a winding up in satisfying the amounts of certain liabilities to or in respect of members before other such liabilities.