STATUTORY RULES OF NORTHERN IRELAND

1996 No. 585

PENSIONS

The Occupational Pension Schemes (Deficiency on Winding Up, etc.) Regulations (Northern Ireland) 1996

Made - - - - 13th December 1996
Coming into operation in accordance with regulation 1(2) to (6)

The Department of Health and Social Services, in exercise of the powers conferred on it by Articles 68(2)(*e*), 75(5), (9) and (10), 87(2), 115(1)(*a*) and (*b*), 116, 122(2), (3) and (4)(*a*) and 166(2) and (3) 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 and commencement

1.—(1) These Regulations may be cited as the Occupational Pension Schemes (Deficiency on Winding Up, etc.) Regulations (Northern Ireland) 1996.

(2) This regulation shall come into operation on 19th December 1996.

(3) Subject to paragraphs (2) and (4) to (6) and regulation 6(1) (in so far as it relates to the period there mentioned), these Regulations shall come into operation on 6th April 1997.

(4) Regulations 3 to 6 shall not apply where the applicable time falls before 6th April 1997.

(5) Regulations 3 to 6 shall not apply to any scheme which began to be wound up earlier than 19th December 1996.

(6) Regulations 7 to 9 shall only apply where the act or omission to which the reduction in value is attributable occurred after 5th April 1997.

Interpretation

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 (7) to (10).

(2) In these Regulations—

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

"the applicable time" has the same meaning as in Article 75 (but see the modifications in regulations 4(3), 6(3) and 7(2));

"employer" has the same meaning as in Article 75 (but see paragraph (4) and regulations 5, 6 and 9);

"the MFR Regulations" means the Occupational Pension Schemes (Minimum Funding Requirement and Actuarial Valuations) Regulations (Northern Ireland) 1996(**2**);

"money purchase scheme" has the same meaning as in Article 75 (but see paragraph 4 of Schedule 2).

(3) In these Regulations references to a relevant insolvency event occurring in relation to an employer have the same meaning as in Article 75.

(4) In these Regulations "scheme" shall be construed in appropriate cases in accordance with Article 75(1B) and (1C) (as inserted by regulation 4(2) or, as the case may be, regulation 8) and Schedule 2 (and "employer" and "member" shall be construed accordingly).

(5) In these Regulations references to the guidance 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(**3**) and approved for the purposes of these Regulations by the Department, with such revisions as have been so approved at the applicable time.

(6) In these Regulations references to the guidance in GN 27 are to the guidelines on minimum funding requirement (GN 27), prepared and published by the Institute of Actuaries and the Faculty of Actuaries(**3**) and approved for the purposes of the MFR Regulations by the Department, with such revisions as have been so approved at the applicable time.

(7) Subject to paragraphs (8) and (10), 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.

(8) 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 (7), 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.

(9) 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 (7)(*a*)(ii) and (8) 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.

(10) Where—

(a) a scheme is wound up in pursuance—

(**2**) S.R. 1996 No. 570
(**3**) Copies of GN 19 and GN 27 may be obtained from the Faculty of Actuaries, 17 Thistle Street, Edinburgh EH2 1DF
(**3**) Copies of GN 19 and GN 27 may be obtained from the Faculty of Actuaries, 17 Thistle Street, Edinburgh EH2 1DF

(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.

(11) 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.

(12) For the purposes of these Regulations and notwithstanding section 39(2) of the Interpretation Act (Northern Ireland) 1954(**4**), 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.

Schemes which are not money purchase schemes

Calculation of the value of scheme liabilities and assets

3.—(1) The liabilities and assets of a scheme which are to be taken into account for the purposes of Article 75(1) and their amount or value shall be determined, calculated and verified by the actuary—

(a) on the general assumptions specified in regulation 3(2) and (3) of the MFR Regulations;

(b) subject to paragraphs (3) and (4), in accordance with regulations 4 to 8 of the MFR Regulations;

(c) subject to sub-paragraph (*d*), in so far as the guidance given in GN 27 applies as respects regulations 3(2) and (3) and 4 to 8 of the MFR Regulations, in accordance with that guidance; and

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

and where in these Regulations (or in the MFR Regulations as applied by this paragraph) there is a reference to the value of any asset or the amount of any liability being calculated or verified in accordance with the opinion of the actuary or as he thinks appropriate, he shall comply with any relevant provision in the guidance given in GN 27 or, as the case may be, GN 19 in making that calculation or verification.

(2) The value of the assets and the amount of the liabilities of a scheme which are to be taken into account for the purposes of Article 75(1) must be certified by the actuary in the form set out in Schedule 1, but if the scheme is being wound up on the date as at which the valuation is made, the actuary shall modify the note at the end of the certificate by omitting the words from "if the scheme" onwards.

(3) For the purposes of this regulation—

(a) references in regulations 3(2), 4, 5, 7 and 8 of the MFR Regulations to the relevant date shall be taken as references to the applicable time;

(b) regulations 4(1), 7(1) and 8(2) of the MFR Regulations shall have effect with the substitution for "the minimum funding requirement is met" of "the value of the assets of the scheme is less than the amount of the liabilities of the scheme";

(c) regulation 6(1)(*b*) of the MFR Regulations shall have effect with the addition, at the end, of "(and any amount treated as a debt due to the trustees or managers of the scheme under Article 75(1) by virtue of the valuation in question)".

(**4**) 1954 c. 33 (N.I.)

(4) In its application for the purposes of this regulation in a case where the applicable time falls after the scheme has begun to be wound up, regulation 6(1) of the MFR Regulations has effect with the addition, after sub-paragraph (*c*) of the words—

"and for the purposes of sub-paragraph (*a*), regulation 5(1)(*a*) of the Occupational Pension Schemes (Investment) Regulations (Northern Ireland) 1996(**5**) (exclusion of employer-related investments over 5 per cent. of current market value) shall be disregarded.".

Multi-employer schemes

4.—(1) In its application to a scheme in relation to which there is more than one employer, Article 75 has effect with the following modifications.

(2) After paragraph (1) there shall be inserted the following paragraphs—

"(1A) In the case of a scheme in relation to which there is more than one employer, the amount of the debt due from each employer shall, unless the scheme provides for the total amount of the debt due under paragraph (1) to be otherwise apportioned amongst the employers, be such proportion of that total amount as, in the opinion of the actuary after consultation with the trustees or managers, the amount of the scheme's liabilities attributable to employment with that employer bears to the total amount of the scheme's liabilities attributable to employment with any of the employers.

(1B) Where a scheme in relation to which there is more than one employer is divided into two or more sections and the provisions of the scheme are such that—

(a) different sections of the scheme apply to different employers or groups of employers (whether or not more than one section applies to any particular employer or groups including any particular employer),

(b) contributions payable to the scheme by an employer, or by a member in employment under that employer, are allocated to that employer's section (or, if more than one section applies to the employer, to the section which is appropriate in respect of the employment in question), and

(c) a specified part or proportion of the assets of the scheme is attributable to each section and cannot be used for the purposes of any other such section,

each section of the scheme shall be treated as a separate scheme for the purposes of this Article.

(1C) Where—

(a) a scheme which has been such a scheme as is mentioned in paragraph (1B) is divided into two or more sections some or all of which apply only to members who are not in pensionable service under the section, and

(b) the provisions of the scheme have not been amended so as to prevent the conditions mentioned in paragraph (1B)(*a*) to (*c*) being satisfied in relation to two or more sections, but

(c) those conditions have ceased to be satisfied in relation to one or more sections (whether before or after this Article came into operation) by reason only of there being no members in pensionable service under the section and no contributions which are to be allocated to it,

the section in relation to which those conditions have ceased to be satisfied shall be treated as a separate scheme for the purposes of this Article.".

(3) For paragraph (3) there shall be substituted—

(**5**) S.R. 1996 No. 584

"(3) In this Article, "the applicable time" means—

(a) in relation to a scheme which is being wound up, any time—

(i) after the commencement of the winding up, and

(ii) before a relevant insolvency event has occurred in relation to each of the employers to whom the scheme relates, and

(b) in relation to a scheme which is not being wound up—

(i) in relation only to any employer who ceases to be a person employing persons in the description or category of employment to which the scheme relates at a time when at least one other person continues to employ such persons, immediately before he so ceases, and

(ii) in relation only to any employer in relation to whom a relevant insolvency event occurs, immediately before that event occurs.".

(4) Where (apart from this paragraph) paragraph (1) does not apply to a scheme by reason of its not being a scheme in relation to which there is more than one employer but, if it did so, paragraph (1C) of Article 75 (as inserted by paragraph (2)) would apply to the scheme, that Article shall have effect with the modifications made by paragraphs (2) and (3).

(5) For the purposes of Article 75(1A) (as inserted by paragraph (2))—

(a) the total amount of the scheme's liabilities which are attributable to employment with any of the employers; and

(b) the amount of the liabilities attributable to employment with any one employer,

shall be such amount as is determined, calculated and verified by the actuary in accordance with the guidance given in GN 19; and a determination under this paragraph must be certified by the actuary as being in accordance with that guidance.

Former employers

5.—(1) In the application of Article 75 and these Regulations to a scheme which has no active members, "the employer" includes every person who employed persons in the description or category of employment to which the scheme relates immediately before the occurrence of the event after which the scheme ceased to have any active members.

(2) In the application of Article 75 and these Regulations to a scheme, "the employer" includes any person who has ceased on or after 6th April 1997 and before the applicable time to be a person employing persons in the description or category of employment to which the scheme relates, unless —

(a) when he so ceased the scheme was not being wound up and continued to have active members; and

(b) one of the conditions in paragraph (3) is met.

(3) Those conditions are—

(a) that no debt was treated as becoming due from him under Article 75(1) by virtue of his so ceasing;

(b) that such a debt was treated as becoming due from him and has been paid before the applicable time;

(c) that such a debt was treated as becoming due from him but at the applicable time it is excluded from the value of the assets of the scheme by virtue of regulation 6(1)(*b*) of the MFR Regulations (exclusion of debts unlikely to be recovered).