STATUTORY RULES OF NORTHERN IRELAND

1996 No. 584

PENSIONS

The Occupational Pension Schemes (Investment) Regulations (Northern Ireland) 1996

Made - - - - 13th December 1996

Coming into operation 6th April 1997

The Department of Health and Social Services, in exercise of the powers conferred on it by Articles 35(7), 40(1) and (2), 56(3), 115(1)(*a*), 120(2) 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

General

Citation, commencement and interpretation

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

(2) In these Regulations—

"collective investment scheme" has the same meaning as in section 75 of the Financial Services Act 1986(**2**) but shall include arrangements of the types described in section 75(6)(*a*) and (*c*) of that Act;

"commencement date" means the date of coming into operation of these Regulations;

"employer-related loan" has, for the purposes of regulations 5, 7 and 8, the meaning given in regulation 5(3);

"group of companies" means a group of companies consisting of a holding company and one or more subsidiaries where "holding company" and "subsidiary" have the same meaning as in Article 4 of the Companies (Northern Ireland) Order 1986(**3**);

(**1**) S.I. 1995/3213 (N.I. 22)
(**2**) 1986 c. 60
(**3**) S.I. 1986/1032 (N.I. 6); Articles 4 and 4A were substituted for Article 4 by Article 62(1) of the Companies (No. 2) (Northern Ireland) Order 1990 (S.I. 1990/1504 (N.I. 10))

"insurance company" has the same meaning as in section 96 of the Insurance Companies Act 1982(**4**);

"policy of insurance" means a contract the effecting of which constitutes the carrying on of long term business within the meaning of section 1(1) of the Insurance Companies Act 1982;

"recognised stock exchange" has the same meaning as in section 841 of the Taxes Act 1988;

"scheme" (except in the expression "collective investment scheme") means an occupational pension scheme;

"transaction at an undervalue" has the same meaning in relation to trustees or managers as it has in Article 202 of the Insolvency (Northern Ireland) Order 1989(**5**) in relation to a company to which that Article applies.

(3) In these Regulations a reference to a policy of insurance the effecting of which constitutes the carrying on of long term business falling within Class I or Class III of Schedule 1 to the Insurance Companies Act 1982 (classes of long term business) shall not include any contract the effecting of which is insurance business for the purposes of that Act only by virtue of section 95(*c*)(ii) of that Act (insurance business — contracts to manage the investments of pension funds).

(4) 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.

(5) For the purposes of these Regulations and notwithstanding section 39(2) of the Interpretation Act (Northern Ireland) 1954(**6**), 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

Restrictions on Employer-Related Investments

Schemes to which regulation 5 applies

2.—(1) Subject to paragraph (2), regulation 5 applies to schemes—

(a) which are either—

(i) approved for the purposes of Chapter I of Part XIV of the Taxes Act 1988 (retirement benefit schemes) or are the subject of an application for such approval which has not been determined; or

(ii) exempt from income tax by virtue of section 608 of that Act (exemption for superannuation funds approved before 6th April 1980); and

(b) which have at least one member in the United Kingdom and either—

(i) are established in the United Kingdom; or

(ii) have one or more trustees resident in the United Kingdom.

(2) Regulation 5 does not apply to schemes—

(a) which have fewer than 12 members each of whom is a trustee of the scheme; and

(b) the rules of which provide that, before any investment of the resources of the scheme is made in employer-related investments, each member shall agree in writing to the making of that investment.

(**4**) 1982 c. 50
(**5**) S.I. 1989/2405 (N.I. 19)
(**6**) 1954 c. 33 (N.I.)

"Connected" persons

3. Article 7 of the Insolvency (Northern Ireland) Order 1989 (connected persons) shall be modified in its application for the purposes of Article 40 and these Regulations so that a company shall not be connected with another company solely by reason of one or more of its directors being a director of that other company.

Prescription of investments as employer-related investments

4. For the purposes of paragraph (*e*) of the definition of "employer-related investments" in Article 40(2) the following are prescribed as employer-related investments—

(a) the proportion attributable to the scheme's resources (whether directly or through any intervening collective investment scheme) of any investments which—

(i) have been made by the operator of any collective investment scheme; and

(ii) would have been employer-related investments if they had been made by the scheme;

(b) any guarantee of, or security given to secure, obligations of the employer or of any person who is connected with, or an associate of, the employer and for the purposes of Article 40 and these Regulations a guarantee or security given by the trustees or managers shall be regarded as an investment of resources of the scheme equal to the amount of the obligations guaranteed or secured;

(c) any loan arrangement entered into with any person whereby the trustees' or managers' right to, or expectation of, repayment depends on the employer's actions or situation unless it was not the trustees' or managers' purpose in entering into the arrangement to provide financial assistance to the employer;

(d) where any of the scheme's resources are invested in a policy of insurance the terms of which permit the premiums or other consideration for the rights acquired under the policy, or any monies otherwise credited to, or for the benefit of, the trustees or managers or the members, to be invested in a fund created only for the purposes of that policy, the proportion of the scheme's resources invested in that policy which is the same proportion as B is of A where—

A represents all the assets of the insurer held in the fund, and

B represents that part of A which would, if invested by the scheme, be employer-related investments; and

(e) where any of a scheme's resources are invested in a policy of insurance (not being resources invested in a fund created only for the purposes of that policy) the terms of which permit the trustees or managers or the employer to direct that some or all of the premiums or other consideration for the rights acquired under the policy, or any monies otherwise credited to, or for the benefit of, the trustees or managers or the members, are invested in employer-related investments, any investments made by the insurer from those premiums or other consideration or monies, which would have been employer-related investments if they had been made by the scheme.

Restrictions on employer-related investments

5.—(1) Subject to regulations 6 to 9—

(a) not more than 5 per cent. of the current market value of the resources of a scheme may at any time be invested in employer-related investments; and

(b) none of the resources of a scheme may at any time be invested in any employer-related loan.

(2) None of the resources of a scheme may at any time be invested in any employer-related investment the making of which involves the entering by the trustees or managers into a transaction at an undervalue where the agreement to enter into that transaction is made on or after the commencement date.

(3) In this regulation and in regulations 7 and 8 "employer-related loan" means—

(a) a loan mentioned in paragraph (*d*) of the definition of "employer-related investments" in Article 40(2) (including, for the purposes of this regulation only, one which falls within the said paragraph (*d*) by virtue of Article 40(3));

(b) a security mentioned in paragraph (*a*) of the definition of "employer-related investments" in Article 40(2) which falls within paragraph 2 of Schedule 1 to the Financial Services Act 1986 (investments and investment business), except any such security which is listed on a recognised stock exchange; and

(c) an employer-related investment prescribed as such by regulation 4(*b*) or (*c*).

Investments to which restrictions do not apply

6.—(1) Regulation 5(1) shall not restrict or prohibit investments to which this regulation applies.

(2) This regulation applies to investments prescribed as employer-related investments by regulation 4(*e*) (but not to investments prescribed as employer-related investments by regulation 4(*d*)) where—

(a) the effecting of the policy of insurance constitutes the carrying on of long term business falling within Class I or Class III of Schedule 1 to the Insurance Companies Act 1982; and

(b) the policy of insurance is issued by an insurance company which is the employer and is—

(i) an insurance company which is authorised under section 3 or 4 of the Insurance Companies Act 1982 (authorisation to carry on insurance business in the United Kingdom) to carry on ordinary long term insurance business as defined in that Act;

(ii) an EC company as defined in section 2(6) of that Act(**7**) (restriction on carrying on insurance business) falling within paragraph (3); or

(iii) a friendly society which is authorised under section 32 of the Friendly Societies Act 1992(**8**) (grant of authorisation by Commission: general) to carry on long term business under any of the Classes specified in Head A of Schedule 2 to that Act (activities of a friendly society: long term business).

(3) An EC company falls within this paragraph if it—

(a) carries on ordinary long term insurance business (as defined in the Insurance Companies Act 1982) in the United Kingdom through a branch in respect of which such of the requirements of Part I of Schedule 2F to that Act(**9**) (recognition in the United Kingdom of EC and EFTA companies: EC companies carrying on business etc. in the United Kingdom) as are applicable have been complied with; or

(b) provides ordinary long term insurance (within the meaning of that Act) in the United Kingdom and such of the requirements of Part I of Schedule 2F to the Insurance Companies Act 1982 as are applicable have been complied with in respect of the insurance.

(4) This regulation applies to any employer-related investment of resources in an account (including a current, deposit or share account) with a building society as defined in the Building Societies Act 1986(**10**) or an institution authorised under Part I of the Banking Act 1987(**11**).

(**7**) Section 2(6) was inserted by regulation 4(2) of S.I. 1994/1696
(**8**) 1992 c. 40 subsection (4) was substituted by regulation 4 of S.I. 1994/1984
(**9**) Schedule 2F was inserted by regulation 45 of S.I. 1994/1696
(**10**) 1986 c. 53

(5) This regulation applies to any employer-related investment of resources which derives from a member's voluntary contributions and is invested in employer-related investments with the written agreement of the member who paid those contributions.

(6) This regulation applies to sums due from the employer to the trustees by virtue of a provision in an order under Article 7 such as is permitted by Article 8(1) (orders appointing trustees may provide that certain sums be treated as a debt due from the employer to the trustees).

(7) This regulation applies to sums which fall or fell to be treated as debts due from the employer to the trustees or managers by virtue of—

(a) Article 59(2) (determination of contributions: supplementary — contributions remaining unpaid after the due date);

(b) Article 60(5) (serious underprovision — amount of shortfall not met by an increase in the value of the scheme assets);

(c) Article 75(1) (deficiencies in the assets);

(d) Article 86(2) (schedules of payments to money purchase schemes: supplementary — amounts not paid in accordance with the payment schedule); or

(e) section 140(1) of the Pension Schemes Act (deficiencies in the assets of a scheme on winding up),

and to sums which would fall to be so treated by virtue of any of those Articles or that section were they not already debts due from the employer to the trustee or managers.

(8) This regulation applies to any employer-related investment of resources in a policy of insurance so as to provide benefits in respect of the pensionable service of a member (whether or not that policy also relates to any other member) where—

(a) the policy is specifically allocated to the provision of those benefits for that member or any other person mentioned or described in—

(i) that policy; or

(ii) the scheme rules or a nomination under the rules;

(b) the member has agreed in writing to his interest in the policy or contract being used as security for a loan to the employer or to a company associated with the employer and the Inland Revenue requirements concerning the loan have been satisfied; and

(c) the policy is effected with an insurance company such as is mentioned in paragraph (2)(*b*).

(9) For the purposes of regulation 4(*a*) the investments made by the operator of any collective investment scheme shall not be taken into account if—

(a) the collective investment scheme in question is operated by a person who may lawfully carry on investment business in the United Kingdom (within the meaning of section 1(3) of the Financial Services Act 1986 (investments and investment business)) consisting of or including the operation of collective investment schemes;

(b) there are at least 10 participants in the collective investment scheme in question;

(c) not more than 10 per cent. of the assets of the collective investment scheme in question are attributable, whether directly or through any intervening collective investment scheme, to the scheme's resources; and

(d) not more than 10 per cent. of the investments of the collective investment scheme in question are invested in securities falling within paragraph 1 of Schedule 1 to the Financial Services Act 1986(**12**) and issued by any one issuer.

(**11**) 1987 c. 22
(**12**) The Note to paragraph 1 was amended by article 2 of S.I. 1991/1104