STATUTORY RULES OF NORTHERN IRELAND

1996 No. 570

PENSIONS

The Occupational Pension Schemes (Minimum Funding Requirement and Actuarial Valuations) Regulations (Northern Ireland) 1996

Made - - - - 10th 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 41(1), (2)(*c*), (3)(*b*) and (6), 49(2) and (3), 56(2)(*b*) and (3), 57(1), (2)(*b*), (4)(*b*) and (5), 58(2), (3)(*a*) and (*c*), (4)(*b*)(i), (5), (6) and (7), 59(1) and (3), 60(2)(*b*), (3), (4), (5)(*b*), (6) and (7), 61, 68(2)(*e*), 75(5), 115(1), 116, 122(3) 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:

Preliminary

Citation and commencement

1. These Regulations may be cited as the Occupational Pension Schemes (Minimum Funding Requirement and Actuarial Valuations) Regulations (Northern Ireland) 1996 and shall come into operation on 6th April 1997.

Interpretation

2.—(1) In these Regulations—

"commencement date" means 6th April 1997;

"disclosure valuation" means an actuarial valuation required by regulation 8 of the Occupational Pension Schemes (Disclosure of Information) Regulations (Northern Ireland) 1986(**2**);

"effective date"—

(a) in relation to a minimum funding valuation, has the meaning given in Article 56(5);

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

(**2**) S.R. 1986 No. 225; regulation 8 was amended by regulation 2(5) and (6) of S.R. 1986 No. 319, regulation 4 of S.R. 1987 No. 283, regulation 8(6) of S.R. 1988 No. 109, regulation 11 of S.R. 1992 No. 304 and paragraph 6(6) of Schedule 2 to S.R. 1994 No. 300

(b) in relation to a valuation obtained under regulation 30, means the date as at which the assets and liabilities are valued;

(c) in relation to a disclosure valuation, means the date as at which the valuation was made;

"equities" means investments falling within paragraph 1, 2, 4 or 5 of Schedule 1 to the Financial Services Act 1986(**3**);

"gilt-edged securities" means investments falling within paragraph 3 or 10 of Schedule 1 to the Financial Services Act 1986(**4**);

"minimum funding valuation" means an actuarial valuation required by Article 57(1)(*a*) or (2);

"relevant date" means—

(a) in relation to a minimum funding valuation, the effective date, and

(b) in relation to a certificate under Article 57(1)(*b*) or a certificate under Article 58 of the rates of contributions shown in a schedule of contributions, the date the certificate is signed;

"schedule period" has the meaning given in regulation 16(3);

"scheme" in the cases mentioned in paragraphs 1 and 4 to 6 of Schedule 5 (sectionalised and partly approved or guaranteed schemes) shall be construed in accordance with those paragraphs (and "employer" and "member" shall be construed accordingly);

"serious shortfall valuation", in relation to a scheme, means a minimum funding valuation for the scheme as a result of which Article 60 (serious underprovision) applies;

"transitional period" means the period of 5 years beginning with the commencement date.

(2) In these Regulations any reference to an Article shall be construed as a reference to an Article of the Pensions (Northern Ireland) Order 1995.

(3) References in these Regulations to the guidance in GN 27 are to the mandatory guidelines on minimum funding requirement (GN 27), prepared and published by the Institute of Actuaries and the Faculty of Actuaries(**5**) and approved for the purposes of these Regulations by the Department, with such revisions as have been so approved—

(a) in the case of guidance applicable in relation to a minimum funding valuation, as at the date of signing of the valuation, and

(b) in the case of guidance applicable to a certificate under Article 57(1)(*b*) or a certificate under Article 58 of the rates of contributions shown in a schedule of contributions, as at the relevant date.

(4) References in these Regulations to a relevant insolvency event occurring in relation to the employer have the same meaning as in Article 75 (but see paragraph 1(2) of Schedule 4).

(5) In regulations 3 to 28 and in Schedules 1 to 4, the expression "these Regulations" does not include regulation 30.

(6) 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.

(**3**) 1986 c. 60; the Note to paragraph 1 was amended by article 2 of S.I. 1991/1104
(**4**) Note (3) to paragraph 3 was added by article 2(1) of S.I. 1990/349
(**5**) Copies of GN 27 may be obtained from the Faculty of Actuaries, 17 Thistle Street, Edinburgh EH2 1DF
(**6**) 1954 c. 33 (N.I.)

Valuation of assets and liabilities

Determination, valuation and verification of assets and liabilities: general

3.—(1) The liabilities and assets of a scheme which are to be taken into account for the purposes of Articles 56 to 61 (minimum funding requirement) and their amount and value shall be determined, calculated and verified by the actuary—

(a) in the manner specified in regulations 4 to 9;

(b) in the case of any valuation for the purpose of forming an opinion as to whether the minimum funding requirement is met on a relevant date, on the general assumptions specified in paragraphs (2) and (3), and

(c) in accordance with the guidance given in GN 27,

and where in these Regulations 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 provisions in that guidance in making that calculation or verification.

(2) The assumptions mentioned in paragraph (1)(*b*) are—

(a) that no contributions will become due to the scheme from the employer or the members on or after the relevant date;

(b) that all pensionable service under the scheme ceased immediately before that date;

(c) that liabilities in respect of members will be so secured that—

(i) the benefits of pensioner members will be equal in value to those under the scheme, and

(ii) the benefits of active members and deferred members will be reasonably likely to be equal in value to those payable in respect of their accrued rights under the scheme, and

(d) that liabilities in respect of members will include such amounts in respect of the expenses involved in meeting them as are indicated by the guidance given in GN 27.

(3) Where arrangements are being made by the scheme for the transfer to or from it of accrued rights, until such time as the trustees or managers of the scheme to which the transfer is being made ("the receiving scheme") have received assets of the full amount agreed by them as consideration for the transfer, it shall be assumed—

(a) that the rights have not been transferred, and

(b) that any assets transferred in respect of the transfer of those rights—

(i) are assets of the scheme making the transfer and not of the receiving scheme, and

(ii) have such a value as is determined in accordance with the guidance given in GN 27.

Determination and valuation of assets

4.—(1) Subject to paragraphs (2) to (7) and to regulations 3(3), 5, 6 and 9, in determining the value of the assets of a scheme for the purpose of forming an opinion as to whether the minimum funding requirement is met on a relevant date, the actuary shall adopt the value given to the assets of the scheme in the relevant accounts (less the amount of the external liabilities), and that value shall be taken to be the value of those assets on the relevant date.

(2) In this regulation "external liabilities", in relation to a scheme, means such liabilities of the scheme (other than liabilities within regulation 7(1)(*a*) or (*b*)) as are shown in the net assets statement

in the relevant accounts, and their amount shall be taken to be the amount shown in that statement in respect of them.

(3) In this regulation "relevant accounts", in relation to a scheme, means audited accounts for the scheme—

(a) which comply with the requirements imposed under Article 41, and

(b) which are prepared in respect of a period ending with the relevant date or, if none are so prepared—

(i) are the latest such accounts which are available at the relevant date, or

(ii) if in the opinion of the actuary it is practicable for them to be used, the latest such accounts which are available on the date of signing of the valuation.

(4) If—

(a) the actuary has been given notice that the value of any asset or the amount of external liabilities at the relevant date was substantially different from the value or amount determined in accordance with paragraph (1) or, as the case may be, paragraph (2), or

(b) the relevant accounts are such accounts as are mentioned in paragraph (3)(*b*)(i) or (ii) and in the opinion of the actuary the valuation of any asset or external liabilities in the accounts was substantially out of date by the relevant date,

then he shall make such adjustment to the value of that asset or, as the case may be, the amount of that external liability as appears to him appropriate to secure that the value or the amount he adopts is the market value of the asset or, as the case may be, the current amount of the liability.

(5) For the purposes of paragraph (4)—

(a) "market value" means the price which the asset might reasonably be expected to fetch on a sale in the open market, on the assumption that there were available to any prospective purchaser of the asset all the information which a prudent purchaser of it might reasonably require if he were proposing to purchase it from a willing vendor by private treaty and at arm's length, and

(b) the question whether the value of any asset or the amount of any liability is substantially different or out of date shall be determined by comparing the amount of adjustment likely to be required with the value of the asset or, as the case may be, the amount of the liability, that will otherwise be adopted.

(6) No adjustment may be made under paragraph (4) of the value given to any real property or any interest in real property in the relevant accounts, unless the adjustment reflects a more recent valuation given by a chartered surveyor in accordance with any relevant Practice Statements and Guidance Notes issued by the Royal Institution of Chartered Surveyors(**7**) and current on the date of signing of the valuation.

(7) For the purposes of paragraph (3), accounts are to be taken to comply with the requirements imposed under Article 41—

(a) in a case where they relate to a shorter period than that as to which accounts are required to be obtained under that Article, if they comply with those requirements apart from any relating to the length of the period covered, and

(b) in a case where they relate to a period ending before those requirements applied, if they comply with any requirements as to the form and content of accounts imposed under section 110 of the Pension Schemes (Northern Ireland) Act 1993(**8**).

(**7**) Copies are available from the Royal Institution of Chartered Surveyors, 12 Great George Street, Parliament Square, London SW1P 3AD

(**8**) 1993 c. 49; section 110 is repealed by paragraph 18 of Schedule 1 to the Pensions (Northern Ireland) Order 1995

Rights under insurance contracts

5.—(1) Nothing in regulation 4 applies for the purposes of determining the value of any rights under a contract of insurance and that value shall be determined as follows.

(2) Subject to paragraphs (3) and (4), the value of a contract of insurance is to be taken to be the amount (if any) payable on its surrender.

(3) Where, if a contract of insurance were surrendered to the insurer on the relevant date, the amount of the alternative liabilities which the insurer would secure in return for the surrender would be substantially greater than the amount payable on its surrender, then its value is to be taken to be that greater amount.

(4) Where it appears to the actuary that the circumstances are such that, in accordance with the guidance given in GN 27, it is appropriate for him to do so, then he may—

(a) disregard the value of the rights under a contract of insurance and the amount of the liabilities secured by the contract, or

(b) adopt a value for those rights which is equal to the amount of those liabilit ies.

Excluded assets

6.—(1) There shall be excluded from the value of the scheme assets—

(a) any resources invested (or treated as invested by or under Article 40) in contravention of Article 40(1) (restriction on employer-related investments);

(b) any amounts treated as a debt due to the trustees or managers under Article 59(2), 60(5) or 75(1) which are unlikely to be recovered without disproportionate cost or within a reasonable time;

(c) any increase in scheme assets attributable to an increase in the value of the scheme's assets being secured by a method specified in Schedule 4 following a serious shortfall valuation.

(2) At any time after the transitional period, there shall also be excluded the excess of the value mentioned in paragraph (3) over the amount mentioned in paragraph (4).

(3) The value referred to in paragraph (2) is the aggregate value of employer-related invest ments, as defined in Article 40(2), the holding of which—

(a) contravenes Article 40(1), or

(b) would do so apart from any provision enabling them to be held only until a specified time or by virtue of their having fallen within regulation 5(2)(*d*) of the Occupa tional Pension Schemes (Investment of Scheme's Resources) Regulations (Northern Ireland) 1992(**9**).

(4) The amount referred to in paragraph (2) is 5 per cent. of the aggregate value of the scheme's assets (excluding anything falling within paragraph (1) or (3)(*b*)).

Determination and valuation of liabilities

7.—(1) Subject to the provisions of these Regulations, the liabilities of a scheme which shall be taken into account for the purpose of forming an opinion as to whether the minimum funding requirement is met on a relevant date are—

(a) the liabilities in respect of pensions and benefits mentioned in Article 73(3) (which lists the liabilities of schemes in the order in which they are to be met on a winding up), and

(b) in the case of a scheme with members whose employment is contracted-out by reference to the scheme, liability in respect of contributions equivalent premiums for all such members

(**9**) S.R. 1992 No. 47