

2002 No. 64

PENSIONS

The Occupational Pension Schemes (Minimum Funding Requirement and Miscellaneous Amendments) Regulations (Northern Ireland) 2002

Made 25th February 2002

Coming into operation 19th March 2002

The Department for Social Development, in exercise of the powers conferred by Articles 56(3), 57(1)(b), (2) and (5), 58(2), (4)(b) and (6)(a), 59(3), 61, 73(3), 75(5), 122(2) and 166(1) to (3) of the Pensions (Northern Ireland) Order 1995(a), and now vested in it(b), and of all other powers enabling it in that behalf, hereby makes the following Regulations:

Citation and commencement

1. These Regulations may be cited as the Occupational Pension Schemes (Minimum Funding Requirement and Miscellaneous Amendments) Regulations (Northern Ireland) 2002 and shall come into operation on 19th March 2002.

Amendment of the Occupational Pension Schemes (Minimum Funding Requirement and Actuarial Valuations) Regulations

2.—(1) The Occupational Pension Schemes (Minimum Funding Requirement and Actuarial Valuations) Regulations (Northern Ireland) 1996(c) shall be amended in accordance with paragraphs (2) to (12).

(2) In regulation 2(1)(d) (interpretation), for the definition of “transitional period” there shall be substituted the following definition—

“ “transitional period” means the period beginning on the commencement date and ending on 31st December 2004”.

(3) In regulation 7(e) (determination and valuation of liabilities) for paragraph (9) there shall be substituted the following paragraph—

“(9) For the purposes of this regulation—

(a) S.I. 1995/3213 (N.I. 22); Articles 58(6)(a) and 59(3) were amended by paragraph 12 of Schedule 2 to the Welfare Reform and Pensions (Northern Ireland) Order 1999 (S.I. 1999/3147 (N.I. 11)) and Article 73 was amended by Article 35(1) of that Order. *See also* S.R. 1996 Nos. 570, 585 and 621, S.R. 1997 Nos. 160 and 544, S.R. 1999 No. 486 and S.R. 2000 No. 335

(b) *See* Article 8(b) of S.R. 1999 No. 481

(c) S.R. 1996 No. 570; relevant amending regulations are S.R. 1997 No. 160, S.R. 1999 No. 486 and S.R. 2000 No. 335

(d) Regulation 2(1) was amended by S.R. 2000 No. 335

(e) Regulation 7 was amended by S.R. 1997 No. 160 and S.R. 2000 No. 335

- (a) a scheme is only to be taken to have a gilts-matching policy for liabilities in respect of pensioner members, pension credit benefit members, deferred members or pension credit members at any time if the last statement in respect of the scheme under Article 35 before that time states that the trustees' policy is to meet all liabilities (excluding liabilities in respect of any money purchase benefits other than underpin benefits) in respect of pensioner members, pension credit benefit members or, as the case may be, deferred members or pension credit members from investments in gilt-edged securities, and
- (b) "underpin benefits" means money purchase benefits which, under the provisions of the scheme, will only be provided in respect of a member if their value exceeds the value of other benefits in respect of him under the scheme which are not money purchase benefits."

(4) In regulation 12(1)(b) (duty to obtain minimum funding valuations where new serious underfunding suspected) after "the scheme would meet the minimum funding requirement on or before the" there shall be inserted "date 7 days before the".

(5) In regulation 16(a) (periods covered by schedules of contributions) for paragraph (2) there shall be substituted the following paragraph—

"(2) Where, on or after 19th March 2002, a schedule of contributions following a minimum funding valuation is certified by virtue of Article 58(3)(a) or (c) and—

- (a) that valuation shows that, on the effective date, the minimum funding requirement was not met, or
- (b) the minimum funding requirement did not appear to the actuary to be met on the date falling 7 days before the date on which the certificate of the rates of contributions shown in the schedule is signed,

the period referred to in paragraph (1) which applies for the schedule which shall be prepared following that valuation by virtue of Article 58(3)(a) or (c), is extended so as to end with the expiry of the period of 10 years beginning with the date on which the rates of contributions shown in the schedule are certified."

(6) In regulation 17(b) (content and certification of schedules of contributions)—

(a) in paragraph (1)—

- (i) in sub-paragraph (b) after "in relation to the scheme" there shall be added "(excluding the amount of any contributions required by sub-paragraph (d) to be shown separately)",
- (ii) the word "and" at the end of sub-paragraph (b) shall be omitted, and

(a) Regulation 16 was amended by S.R. 1999 No. 486

(b) Regulation 17 was amended by S.R. 1997 No. 160

(iii) after sub-paragraph (c) there shall be added—

“ and

(d) in the case only of a schedule of contributions which is certified on or after 19th March 2002, the due dates and amounts of any payments required by Article 60(2)(a) (serious underprovision).”;

(b) after paragraph (1) there shall be inserted the following paragraph—

“(1A) For the purposes of Article 58(6)(a), the prescribed date is the date 7 days before the date on which the actuary signs the certificate of the rates of contributions shown in the schedule.”;

(c) in paragraph (2)(b)—

(i) for “date he signs the certificate” there shall be substituted “date 7 days before the date on which he signs the certificate”, and

(ii) for “is” there shall be substituted “was”;

(d) in paragraph 3(b)—

(i) for “date he signs the certificate” there shall be substituted “date 7 days before the date on which he signs the certificate”, and

(ii) for “is” there shall be substituted “was”;

(e) in paragraph (4)(a), for “contributions” there shall be substituted “additional contributions”;

(f) in paragraph (5)—

(i) for “additional payments and contributions” there shall be substituted “additional payments and additional contributions”;

(ii) for “the expiry of the period of one year” there shall be substituted “the expiry of the period of 3 years”, and

(iii) the words “(extended as mentioned in regulation 20(3) where that regulation applies)” shall be omitted.

(7) In regulation 18 (occasional and periodic certification of adequacy of contributions)—

(a) in paragraph (1) for “The trustees” there shall be substituted “Subject to paragraphs (1A) and (1B), the trustees”;

(b) in paragraph (1)(b) for “that valuation” there shall be substituted “the last minimum funding valuation”, and

(c) after paragraph (1) there shall be inserted the following paragraphs—

“(1A) Paragraph (1) shall not apply to any scheme the value of whose assets was, or appears to the actuary to have been, not less than 100 per cent. of the amount of its liabilities both at the effective date of the last minimum funding valuation obtained by the trustees or managers under Article 57 and—

(a) in any case where the first schedule of contributions following that valuation was certified before 19th March 2002, at the date on which that schedule was certified, and

(b) in any case where the first schedule of contributions following that valuation is certified on or after 19th March 2002, at the date 7 days before the date on which that schedule was certified.

(1B) In a case where the trustees or managers of a scheme have obtained a minimum funding valuation since the relevant date of the last certificate under Article 58 of the rates of contributions shown in the schedule of contributions, no certificate need be obtained under paragraph (1) in relation to the anniversary of that date.”.

(8) In regulation 20(a) (minimum funding valuations showing serious underprovision)—

(a) in paragraph (1)—

(i) for “Where there has been a serious shortfall valuation for a scheme” there shall be substituted “Where, following a serious shortfall valuation for a scheme, a schedule of contributions is certified on or after 19th March 2002”;

(ii) in sub-paragraph (a) the words “subject to paragraph (3),” shall be omitted and for “the period of one year” there shall be substituted “the period of 3 years”;

(b) paragraph (3) shall be omitted.

(9) In regulation 21(1) (failure reports), after “they shall” there shall be inserted “before the end of the period of 3 months beginning with the end of any such period”.

(10) In Schedule 2(b) (certification of schedules of contributions)—

(a) in Part I—

(i) in paragraph 1 for “(minimum funding requirement met on date certificate signed)” there shall be substituted “(minimum funding requirement met on date 7 days before date certificate signed)”;

(ii) in paragraph 2 for “(minimum funding requirement not met on date certificate signed)” there shall be substituted “(minimum funding requirement not met on date 7 days before date certificate signed)”;

(iii) for paragraph 5 there shall be substituted the following paragraph—

“5. If, in a case where there has been a serious shortfall valuation, the actuary is of the opinion that on the date 7 days before the date on which he signs the certificate there was no longer such a difference as is mentioned in Article 60(1), he shall insert the following statement after paragraph 1 of the certificate—

(a) Regulation 20 was amended by S.R. 1997 No. 160

(b) Schedule 2 was amended by S.R. 1997 No. 160

“1A. Cessation of serious shortfall in assets

In my opinion an actuarial valuation for the scheme as at the date 7 days before the date of this certificate would not show a shortfall as is mentioned in Article 60(1) of the Pensions (Northern Ireland) Order 1995 (value of scheme assets less than 90 per cent. of amount of scheme liabilities).”.

- (iv) for paragraph 6 there shall be substituted the following paragraph—

“6. If, in a case where there has been a serious shortfall valuation, the actuary is of the opinion that on the date 7 days before the date on which he signs the certificate the difference mentioned in Article 60(1) has decreased, he shall insert the following statement after paragraph 1 of the certificate—

“1A. Decrease in serious shortfall in assets

In my opinion an actuarial valuation for the scheme as at the date 7 days before the date of this certificate would show that the shortfall mentioned in Article 60(1) of the Pensions (Northern Ireland) Order 1995 (value of scheme assets less than 90 per cent. of amount of scheme liabilities) has decreased since the last actuarial valuation for the purposes of Article 57 and is now .”.

- (b) in Part II for paragraph 1 of the form of actuary’s certificate there shall be substituted the following paragraph—

“1. I hereby certify that, in my opinion, the rates of the contributions payable in accordance with the schedule of contributions dated are adequate for the purpose of securing that throughout the period it covers, the scheme will meet the minimum funding requirement imposed by Article 56(1) of the Pensions (Northern Ireland) Order 1995 .”.

- (11) In Schedule 3, in Part I (certification), for paragraph 5 there shall be substituted the following paragraph—

“5. The statement mentioned in regulation 12(1) (duty to obtain minimum funding valuations where actuary suspects new serious underfunding) is as follows—

“3. Serious shortfall in assets

In my opinion an actuarial valuation for the scheme as at the date 7 days before the date of this certificate would show such a shortfall as is mentioned in Article 60(1) of the Pensions (Northern Ireland) Order 1995 (value of scheme assets less than 90 per cent. of amount of scheme liabilities).”.

- (12) In Schedule 4(a) in paragraph 1(1) (methods of securing shortfall in cases of serious underprovision) in the definition of “Article 60 shortfall” for “(or, in a case where Article 60(7A)(b) applies, the date the actuary signed

(a) Schedule 4 was amended by S.R. 1997 No. 160

(b) Article 60(7A) was inserted by regulation 20(6) of S.R. 1996 No. 570 as inserted by paragraph 7(6) of the Schedule to S.R. 1997 No. 160

the certificate)” there shall be substituted “(or, in a case where Article 60(7A) applies, the date 7 days before the date on which the actuary signs the certificate)”.

Amendment of the Occupational Pension Schemes (Deficiency on Winding Up, etc.) Regulations

3.—(1) The Occupational Pension Schemes (Deficiency on Winding Up, etc.) Regulations (Northern Ireland) 1996(a) shall be amended in accordance with paragraphs (2) to (4).

(2) In regulation 3(1) (calculation of the value of scheme liabilities and assets) for “The liabilities” there shall be substituted “Subject to regulation 3A, the liabilities”.

(3) After regulation 3 there shall be inserted the following regulation—

“Valuation of liabilities where employer not insolvent

3A.—(1) Where a scheme (including a section of a scheme in relation to which there is more than one employer which is treated as a separate scheme for the purposes of Article 75) is being wound up and the employer was not insolvent immediately before the winding up of the scheme commenced, regulation 3 shall have effect as if—

(a) in paragraph (1)—

- (i) at the beginning of sub-paragraph (a) there were inserted “except to the extent that the liabilities are in respect of any entitlement to a pension or other benefit that has arisen under the scheme and in respect of which paragraph (1B) applies,”;
- (ii) in sub-paragraph (a) for “regulation 3(2) and (3)” there were substituted “regulation 3(2)(a) to (c) and (3)”;
- (iii) in sub-paragraph (b) for “paragraphs (3) and (4)” there were substituted “paragraphs (1B), (3) and (4)”;
- (iv) in sub-paragraph (c) for “regulations 3(2) and (3)” there were substituted “regulations 3(2)(a) to (c) and (3)”, and after “4 to 8 of the MFR Regulations” there were inserted “or as respects paragraphs (1A) and (1B)”;

(b) after paragraph (1) there were inserted the following paragraphs—

“(1A) The liabilities of a scheme which are to be taken into account under paragraph (1) shall include all expenses (except the cost of annuities taken into account by virtue of paragraph (1B)) which, in the opinion of the trustees or managers of the scheme, are likely to be incurred in connection with the winding up of the scheme.

(1B) When calculating the liabilities of the scheme in respect of any entitlement to the payment of any pension or other benefit (including any increase in a pension) that has arisen under the

(a) S.R. 1996 No. 585; relevant amending regulations are S.R. 1997 No. 160

scheme on or before the applicable time, it shall be assumed that all such liabilities will be discharged by the purchase of annuities of a kind described in Article 74(3)(c) (discharge of liabilities by insurance—annuity purchase) and, for the purposes of the calculation, the actuary shall estimate the cost of purchasing any such annuities.”.

(2) Where a scheme to which regulation 4(a) (multi-employer schemes) applies (including a section of a scheme in relation to which there is more than one employer which is treated as a separate scheme for the purposes of Article 75) is being wound up in circumstances where—

- (a) an employer in relation to the scheme ceases to employ persons in the description or category of employment to which the scheme relates at a time when there are no other employers in relation to the scheme continuing to employ such persons, and
- (b) that employer was not insolvent immediately before the winding up commenced,

regulation 3 shall have effect with the modifications set out in paragraph (1).

(3) For the purposes of paragraphs (1) and (2), an employer is insolvent if a relevant insolvency event has occurred in relation to that employer.”.

(4) In Schedule 1, in the Note at the end of the form of certificate (form of actuary’s certificate), after “securing” there shall be inserted “all of”.

Amendment of the Occupational Pension Schemes (Winding Up) Regulations

4.—(1) The Occupational Pension Schemes (Winding Up) Regulations (Northern Ireland) 1996(b) shall be amended in accordance with paragraphs (2) to (4).

(2) In regulation 4(1) (calculation of amounts of liabilities) after “Subject to” there shall be inserted “regulation 4A and”.

(3) After regulation 4 there shall be inserted the following regulation—

“Calculation of liabilities where employer not insolvent

4A.—(1) In the case of a scheme in respect of which the employer was not insolvent at the time the winding up of the scheme commenced, regulation 4 shall have effect as if—

- (a) in paragraph (1)(c) for “paragraph (3)” there were substituted “paragraphs (2A) and (3)”;
- (b) after paragraph (2) there were inserted the following paragraph—

“(2A) For the purpose of calculating the amount of the liabilities in respect of any entitlement to the payment of any pension or other benefit (including any increase in a pension) that has arisen under the scheme on or before the crystallisation date—

(a) Regulation 4 was amended by S.R. 1997 No. 160

(b) S.R. 1996 No. 621, to which there are amendments not relevant to these regulations

- (a) it shall be assumed that all such liabilities will be discharged by the purchase of annuities of a kind described in Article 74(3)(c), and
- (b) paragraph (1)(b) shall not have effect.”, and
- (c) for paragraph (5) there were substituted the following paragraph—

“(5) If, when the assets of the scheme are applied in accordance with Article 73(2) towards satisfying the liabilities mentioned in sub-paragraphs (aa) or (b) of Article 73(3) and towards satisfying any liability for an increase to a pension or other benefit to which those sub-paragraphs of that Article apply, 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.”.

(2) For the purposes of paragraph (1), an employer is insolvent if a relevant insolvency event within the meaning given by Article 75(4) has occurred in relation to that employer.”.

(4) In regulation 13(4) (hybrid schemes) after “that regulation)” there shall be inserted “, but regulation 4A shall not apply for that purpose”.

Amendment to Article 60(7A) of the Pensions (Northern Ireland) Order 1995

5.—(1) Article 60(7A) of the Pensions (Northern Ireland) Order 1995 shall be amended in accordance with paragraphs (2) to (4).

(2) In sub-paragraph (b) for “on the date he signs the certificate” there shall be substituted “on the date seven days before the date on which he signs the certificate”.

(3) In sub-paragraph (b)(i) for “is” there shall be substituted “was”.

(4) In sub-paragraph (b)(ii) for “is” and “has” there shall be substituted “was” and “had” respectively.

Sealed with the Official Seal of the Department for Social Development
on 25th February 2002.

(L.S.)

John O’Neill
Senior Officer of the Department for
Social Development

EXPLANATORY NOTE

(This note is not part of the Regulations.)

These Regulations are made under the Pensions (Northern Ireland) Order 1995 (“the 1995 Order”). They make amendments to the Occupational Pension Schemes (Minimum Funding Requirement and Actuarial Valuations) Regulations (Northern Ireland) 1996, the Occupational Pension Schemes (Deficiency on Winding Up, etc.) Regulations (Northern Ireland) 1996 and the Occupational Pension Schemes (Winding Up) Regulations (Northern Ireland) 1996.

Regulation 1 provides for citation and commencement.

Regulation 2 amends the Occupational Pension Schemes (Minimum Funding Requirement and Actuarial Valuations) Regulations (Northern Ireland) 1996 so as to make miscellaneous amendments to regulations 2, 7, 12, 16, 17, 18, 20 and 21 of, and Schedules 2, 3 and 4 to, those Regulations. The amendments extend the deficit correction periods within which scheme underfunding must be made good, remove the requirement for annual recertifications for schemes that are fully funded and include a number of minor technical amendments.

Regulation 3 amends the Occupational Pension Schemes (Deficiency on Winding Up, etc.) Regulations (Northern Ireland) 1996 so to provide that, where a scheme is in the process of winding up and the employer is not insolvent, the scheme’s liabilities are to be calculated so as to include the actual cost of winding up and the cost of securing pensions or other benefits in payment by way of annuities.

Regulation 4 amends the Occupational Pension Schemes (Winding Up) Regulations (Northern Ireland) 1996 so as to amend the calculation of liabilities in respect of any pension or other benefit (including any increase in a pension) which has become payable under a scheme in circumstances where the scheme winds up and the employer is not insolvent at the time the winding up commenced.

Regulation 5 makes consequential amendments to Article 60(7A) of the 1995 Order.

As these Regulations, in so far as they are made under Part II of the 1995 Order, make in relation to Northern Ireland only provision corresponding to provision contained in regulations made by the Secretary of State for Work and Pensions in relation to Great Britain, the requirement for consultation does not apply by virtue of Article 117(2)(e) of the 1995 Order.

Articles 58(6)(a) and 59(3) of the 1995 Order, some of the enabling provisions under which these Regulations are made, were amended by paragraph 12 of Schedule 2 to the Welfare Reform and Pensions (Northern Ireland) Order 1999 (“the 1999 Order”). The Welfare Reform and Pensions

(1999 Order) (Commencement No. 11) Order (Northern Ireland) 2002 (S.R. 2002 No. 63 (C. 4)) provides for the coming into operation of paragraph 12 of Schedule 2 to the 1999 Order, in so far as it is not already in operation, on 19th March 2002.

An assessment of the cost to business of these Regulations is detailed in a Regulatory Impact Assessment, copies of which have been laid in the Business Office and the Library of the Northern Ireland Assembly. Copies of the Assessment are available from the Department for Social Development, Social Security Policy and Legislation Division, Room 5, Block 5, Stormont Estate, Upper Newtownards Road, Belfast BT4 3SJ.

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