

2005 No. 131

PENSIONS

**The Pension Protection Fund (Valuation) Regulations
(Northern Ireland) 2005**

Made - - - - - *16th March 2005*

Coming into operation *6th April 2005*

The Department for Social Development, in exercise of the powers conferred on it by Articles 2(5)(a), 127(3) to (5) and (11)(a), 129(4), 162(1)(a), (2) and (3), 172(1) and 287 (2) and (3) of the Pensions (Northern Ireland) Order 2005(a) and of all other powers enabling it in that behalf, hereby makes the following Regulations:

Citation, commencement and interpretation

1.—(1) These Regulations may be cited as the Pension Protection Fund (Valuation) Regulations (Northern Ireland) 2005 and shall come into operation on 6th April 2005.

(2) In these Regulations –

“the Order” means the Pensions (Northern Ireland) Order 2005;

“appropriate person” in the case of an Article 127 valuation, means the person specified in Article 127(11)(a)(ii) of the Order and, in the case of an Article 162 valuation means the actuary as defined in Article 162(2) of the Order;

“Article 127 valuation” means an actuarial valuation under that Article of the Order;

“Article 162 valuation” means an actuarial valuation under that Article of the Order;

“Article 75 debt” means so much of the amount treated by Article 75 of the 1995 Order(b) (deficiencies in the assets) as a debt due from the employer to the trustees or managers at the applicable time;

“commencement date” means 6th April 2005;

“contribution notice” means a notice issued under Article 34 (contribution notices where avoidance of employer debt), 43 (contribution notices where non-compliance with financial support direction) or 51 (contribution notice where failure to comply with restoration order) of the Order;

“eligible scheme” has the meaning given by Article 110 of the Order (eligible schemes);

“employer” in relation to an occupational pension scheme which has no active members, except in relation to a multi-employer scheme, or a section of a multi-employer scheme, includes every person who was the employer of persons in the description of employment to which the scheme relates immediately before the time at which the scheme ceased to have any active members in relation to it;

(a) S.I. 2005/255 (N.I. 1); the Pensions (Northern Ireland) Order 2005 is modified in its application to partially guaranteed schemes, hybrid schemes and multi-employer schemes by, respectively, S.R. 2005 Nos. 55, 84 and 91

(b) Article 75 is amended by Article 248 of the Pensions (Northern Ireland) Order 2005

“employer” in relation to a multi-employer scheme, or a section of a multi-employer scheme includes –

- (a) in the case of a scheme which has no active members, every person who was the employer of persons in the description of employment to which the scheme, relates immediately before the time at which the scheme, or section ceased to have any active members in relation to it unless, after that time –
 - (i) an Article 75 debt becomes due from that person to the scheme, or section; and
 - (ii) either –
 - (aa) the full amount of the debt has been paid by that person to the trustees or managers of the scheme, or section, or
 - (bb) in circumstances where a legally enforceable agreement has been entered into between that person and the trustees or managers of the scheme, or section, the effect of which is to reduce the amount which is payable in respect of the debt, the reduced amount of the debt has been paid in full by that person to those trustees or managers; and
- (b) in any other case, any person who has ceased to be the employer of persons in the description of employment to which the scheme, or section relates unless –
 - (i) at the time when he so ceased the scheme, or section, was not being wound up and continued to have active members in relation to it; and
 - (ii) an Article 75 debt became due at that time from that person to the scheme, or section and either –
 - (aa) the full amount of the debt has been paid by that person to the trustees or managers of the scheme or section, or
 - (bb) in circumstances where a legally enforceable agreement has been entered into between that person and the trustees or managers of the scheme or section, the effect of which is to reduce the amount which is payable in respect of the debt, the reduced amount of the debt has been paid in full by that person to those trustees or managers.

“employment” means trade, business, profession, office or vocation;

“external liabilities” means any liabilities which do not fall due to the members of the scheme;

“financial support direction” means a direction issued under Article 39 of the Order (financial support directions);

“pension credit rights” has the meaning given by Article 121(1) of the 1995 Order^(a) (interpretation of Part II);

“registrable scheme” has the meaning given by Article 55(5) of the Order (registrable information);

“relevant accounts” means –

- (a) audited accounts for the scheme which are prepared in respect of a period ending with the relevant time;
- (b) if none are so prepared, the latest such accounts which are available at the relevant time; or
- (c) if the appropriate person’s opinion is that it is practicable to use them, the latest such accounts which are available on the date the appropriate person signs the Article 127 or Article 162 valuation;

“relevant time” for the purposes of Article 162 of the Order, means the date in relation to which the assets and liabilities of the eligible scheme are calculated;

“restoration order” has the meaning given by Article 48 of the Order (restoration orders where transactions at an undervalue); and

(a) The definitions of “pension credit”, “pension credit member” and “pension credit rights” were inserted by paragraph 50(3) of Schedule 9 to the Welfare Reform and Pensions (Northern Ireland) Order 1999 (S.I. 1999/3147 (N.I. 11))

“restricted information” has the meaning given in Article 179 of the Order (restricted information).

Provision of actuarial valuation to determine scheme underfunding

2.—(1) The trustees or managers of an eligible scheme shall provide the Board or the Regulator on the Board’s behalf with its first Article 162 valuation within one year of the relevant time of the valuation.

(2) Subject to paragraph (3), the relevant time of the first Article 162 valuation shall not be later than –

- (a) in the case of an eligible scheme that is a registrable scheme prior to the commencement date, 5th April 2008.
- (b) in the case of an eligible scheme that becomes a registrable scheme on or after the commencement date, a period of one year beginning immediately after the registration date of the scheme.

(3) In a case to which paragraph (2)(a) applies, for the purposes of an Article 162 valuation prepared and signed by an appropriate person on or after the commencement date, a calculation of the assets and liabilities as at a date before the commencement date, but no earlier than 1st November 2004 may be used, and in such a case the relevant time shall be taken to be the date on which the assets and liabilities of the scheme were so calculated.

(4) The relevant time of any subsequent Article 162 valuation must not exceed a period of three years beginning immediately after the relevant time of the previous valuation provided to the Board or the Regulator on the Board’s behalf.

(5) Any subsequent Article 162 valuation shall be provided to the Board or the Regulator on the Board’s behalf within 12 months of the relevant time of that valuation.

Excluded assets

3. There shall be excluded from the value of the eligible scheme’s assets –

- (a) in the case of an Article 127 valuation, any amounts treated as a debt due to the trustees or managers which are unlikely to be recouped without disproportionate cost or unlikely to be recovered within a reasonable time; and
- (b) in the case of an Article 162 valuation –
 - (i) any amounts treated as a debt due to the trustees or managers under Article 75 of the 1995 Order (deficiencies in the assets);
 - (ii) any amounts treated as debt under Article 207(3) of the Order (failure to make payments);
 - (iii) any resources invested (or treated as invested) in contravention of Article 40 of the 1995 Order (restriction on employer-related investments); and
 - (iv) any amounts treated as a debt due to the trustees or managers which are unlikely to be recouped without disproportionate cost or unlikely to be recovered within a reasonable time.

Contribution notices, financial support directions and restoration orders

4. Subject to regulation 7(3) and (4), the prescribed requirement for any amount due under a contribution notice, financial support direction or restoration order to be regarded as an asset of the scheme is that the notice, direction or order was issued by the Regulator prior to the date that the valuation is approved.

Valuation of assets

5. Subject to regulations 3 and 7, in determining the value of the assets of a scheme for the purposes of obtaining an Article 127 valuation or an Article 162 valuation, the appropriate person shall adopt the value given of the assets of the scheme stated in the relevant accounts, less the amount of the external liabilities, and that value shall be taken to be the value of those assets at the relevant time.

Valuation of protected liabilities

6. Subject to regulation 7, in the case of protected liabilities^(a) the value of a protected liability shall be –

- (a) for an Article 127 valuation, the estimated cost of securing scheme benefits calculated in accordance with Schedule 6 to the Order (pension compensation provisions) to the member by means of an annuity purchased at the market rate at the relevant time;
- (b) for an Article 162 valuation, the estimated cost of securing scheme benefits in accordance with any guidance issued by the Board in accordance with Article 162(4) of the Order, for the member by means of an annuity purchased at the market rate at the relevant time.

Alternative valuation of assets and protected liabilities in specific cases

7.—(1) For the purposes of an Article 127 or Article 162 valuation, where arrangements are being made by the eligible scheme for the transfer to or from it, of accrued rights and any pension credit 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 are assets of the scheme making the transfer and not of the receiving scheme.

(2) For the purposes of an Article 127 or Article 162 valuation, in the case of a contract of insurance, the value shall be –

- (a) the value of the liability secured where the contract of insurance falls within the definition of a relevant contract of insurance in Article 145(8) of the Order (effect of Board assuming responsibility for a scheme); or where this is not the case either –
- (b) the surrender value of the contract of insurance; or
- (c) where it appears to the appropriate person that the surrender value of the contract of insurance does not accurately reflect the actual value at the relevant time; then he shall adopt such a value as appears to him to be appropriate.

(3) In the case of an asset to which regulation 4 applies, the appropriate person shall adopt as the value of the asset, the amount due to the scheme given in the notice, direction or order.

(4) For the purposes of an Article 127 valuation –

- (a) where the appropriate person, in accordance with guidance issued by the Board in accordance with Article 127(6) of the Order, holds the opinion that any Article 75 debt falling due to the eligible scheme will be recouped in the future then he shall treat the proportion of the Article 75 debt that he believes will be recovered as an asset of the scheme;
- (b) where any Article 75 debt is recouped between the relevant time and the date the valuation is approved under Article 128(2) of the Order (approval of valuation), then the amount so recouped –
 - (i) shall be treated as an asset of the scheme; and
 - (ii) the Article 127 valuation shall be adjusted accordingly;
- (c) where an amount is due under a contribution notice, a financial support direction or a restoration order, and
 - (i) a proportion of the amount due has been recouped; and
 - (ii) the appropriate person, in accordance with any guidance issued by the Board in accordance with Article 127(6) or 162(4) of the Order as appropriate, holds the opinion that no further payments due in relation to the notice or direction will be recouped by the scheme; then

^(a) The term “protected liabilities” is defined in Article 115(1) of the Pensions (Northern Ireland) Order 2005

the appropriate person shall adjust the value of the asset contained in the notice or direction to the value recouped by the trustees or managers of the eligible scheme during the pre-approval period.

- (d) if the appropriate person –
- (i) has been given notice; or
 - (ii) holds the opinion;

that the value of any asset set out in the relevant accounts, that is not excluded from the actuarial valuation, is substantially different at the relevant time from that set out in the relevant accounts, then he shall adjust the value of the asset to the market value of the asset at the relevant time; or

- (e) where the appropriate person –
- (i) has been given notice; or
 - (ii) holds the opinion

in accordance with any Board guidance issued in accordance with Article 127(6) of the Order, that there exists an asset of the scheme which is not listed in the relevant accounts, and which is not excluded from the actuarial valuation, then he shall adopt such a value for the asset as he considers is appropriate.

(5) The appropriate person shall not make an adjustment to the value of an interest in real property 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^(a) current on the date that the valuation is signed.

Application of these regulations to multi-employer schemes

8. In these Regulations, in the case of a scheme which is a multi-employer scheme for the purposes of the Pension Protection Fund (Multi-employer Schemes) (Modification) Regulations (Northern Ireland) 2005^(b), where these Regulations apply to a section or a segregated part of a scheme, which is for the purposes of Part III of the Order, an eligible scheme, for “eligible scheme” and “scheme” substitute “section or segregated part of a scheme”.

Form and content of Article 127 valuation and notice

9.—(1) An Article 127 valuation shall be in writing, and shall contain the following information –

- (a) a statement of the assets and protected liabilities of the eligible scheme calculated in accordance with these Regulations and guidance issued by the Board in accordance with Article 127(6) of the Order;
- (b) a statement that the valuation was prepared in accordance with these Regulations and any guidance issued by the Board in accordance with Article 127(6);
- (c) a statement that the valuation does not take effect until the valuation has become binding;
- (d) a statement that the person who prepared the valuation is an appropriate person;
- (e) the effective date and the date of issue of the valuation;
- (f) the name, address and pension scheme registration number of the scheme;
- (g) the name and address of the appropriate person who prepared and signed the Article 127 valuation;
- (h) the names and contact details of the trustees or managers of the eligible scheme.

(2) Where an Article 127 valuation becomes binding, the notice which the Board must issue under Article 129(4) shall be in writing and shall contain the following information –

- (a) the name or type of notice issued;
- (b) the date on which the notice is issued;

^(a) The Royal Institution of Chartered Surveyors can be contacted at RICS Contact Centre, Surveyor Court, Westwood Way, Coventry, CV4 8JE
^(b) S.R. 2005 No. 91

- (c) the name, address and pension scheme registration number of the scheme in respect of which the notice is issued;
- (d) a statement that the valuation under Article 127(2) has become binding;
- (e) the date on which the approval of valuation notice was issued;
- (f) the name of the employer in relation to the scheme in respect of which the notice is issued;
- (g) whether the notice issued by the Board contains any restricted information and, if so, the nature of the restriction.

Prescribed qualifications for the purposes of Article 127 and Article 162 of the Order

10. For the purpose of the definition of actuarial valuation contained in Article 127(11) and the purpose of the definition of actuary contained in Article 162(2) of the Order, a person with the prescribed qualifications is –

- (a) a Fellow of the Faculty of Actuaries(a); or
- (b) a Fellow of the Institute of Actuaries(b).

Sealed with the Official Seal of the Department for Social Development on 16th March 2005.

(L.S.)

John O'Neill

A senior officer of the Department for Social Development

(a) The Faculty of Actuaries can be contacted at Faculty of Actuaries, Maclaurin House, 18 Dublin Street, Edinburgh, EH1 3PP
(b) The Institute of Actuaries can be contacted at Institute of Actuaries, Staple Inn Hall, High Holborn, London, WC1V 7QJ

EXPLANATORY NOTE

(This note is not part of the Regulations.)

These Regulations provide for the assessment of the assets and liabilities of eligible schemes in accordance with Articles 127 and 162 of the Pensions (Northern Ireland) Order 2005 (“the Order”).

The Board of the Pension Protection Fund (“the Board”) is established by section 107 of the Pensions Act 2004 (c. 35) (“the Act”) to provide compensation for members of certain occupational pension schemes in the event of the insolvency of the scheme’s sponsoring employer and where the pension scheme is underfunded at a certain level.

Regulation 2 provides that eligible schemes must provide an initial Article 162 actuarial valuation of the scheme’s assets and liabilities by a prescribed date. The Regulation further provides that in the case of Article 162 valuations, the trustees or managers of eligible schemes must provide actuarial valuations to the Board, or to the Pensions Regulator (established under section 1 of the Act) at least every three years after the initial actuarial valuation.

Regulation 3 provides for assets that shall be excluded from the actuarial valuations.

Regulation 4 provides for the circumstances where a payment due to the eligible scheme under a contribution notice, a financial support direction or a restoration order shall be considered to be an asset of the eligible scheme. The regulation also further provides that where such a payment is considered to be an asset the actuarial valuation shall be adjusted accordingly.

Regulation 5 provides for how the value of assets of eligible schemes are to be determined for the purposes of an actuarial valuation under Articles 127 and 162 of the Order.

Regulation 6 provides for the valuation of protected liabilities of the eligible scheme.

Regulation 7 provides for valuation of assets and protected liabilities of the scheme in specific cases where the valuation contained regulations 4, 5 and 6 would not give an accurate picture of the assets and protected liabilities of the eligible scheme.

Regulation 8 provides for the application of these Regulations to multi-employer schemes.

Regulation 9 prescribes the form and content of the notice sent by the Board to the relevant employer when a valuation becomes binding under Article 129 of the Order and also the form and content of the valuation sent by the eligible scheme to the Board.

Regulation 10 prescribes the qualifications required of a person conducting an actuarial valuation under Article 127 or 162 of the Order.

The Pensions (2005 Order) (Commencement No. 1 and Consequential and Transitional Provisions) Order (Northern Ireland) 2005 (S.R. 2005 No. 48 (C. 5)) provides for the coming into operation of Articles 2(5)(a), 127(3) to (5) and (11)(a), 129(4), 162(1)(a), (2) and (3) and 172(1) on 25th February 2005 for the purpose of authorising the making of regulations and on 6th April 2005 for all other purposes.

As these Regulations are made before the end of the period of six months beginning with the coming into operation of the provisions of the Order by virtue of which they are made, the requirement to consult under Article 289(1) of the Order does not apply by virtue of paragraph (2)(c) of that Article.

© Crown Copyright 2005

Published and printed in the UK by The
Stationery Office Limited
under the authority and
superintendence of Carol
Tullo, Controller of
Her Majesty's Stationery
Office being the Government
Printer for Northern Ireland and
the Officer appointed to print the
Acts of the Northern Ireland Assembly

Dd. N2031. C2. 3/05. Gp. 130. 14567.

£3.00

ISBN 0-337-95895-5



9 780337 958953