

2005 No. 20

PENSIONS

**The Occupational Pension Schemes (Winding Up,
Deficiency on Winding Up and Transfer Values)
(Amendment) Regulations (Northern Ireland) 2005**

Made - - - - - *21st January 2005*

Coming into operation *15th February 2005*

The Department for Social Development, in exercise of the powers conferred by sections 109 and 177(2) and (3) of the Pension Schemes (Northern Ireland) Act 1993(a) and Articles 73(3), 75(5) and 166(1) to (3) of the Pensions (Northern Ireland) Order 1995(b), and now vested in it(c), 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 (Winding Up, Deficiency on Winding Up and Transfer Values) (Amendment) Regulations (Northern Ireland) 2005 and shall come into operation on 15th February 2005.

Amendment of the Occupational Pension Schemes (Winding Up) Regulations

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

(2) In regulation 4(1)(e) (calculation of amounts of liabilities) for “regulations 4A and 4B” there shall be substituted “regulations 4A to 4C”.

(3) In regulation 4B(1)(f) (calculation of liabilities where employer not insolvent and where winding up commences on or after 11th June 2003) at the beginning there shall be inserted “Subject to regulation 4C,”.

(4) After regulation 4B there shall be inserted the following regulation –

“Calculation of liabilities where winding up commences, and date of calculation falls, on or after 15th February 2005

4C.—(1) This regulation shall apply in the case of a scheme which begins to wind up on or after 15th February 2005 (“the commencement date”), and the date by reference to

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- (a) 1993 c. 49; section 109 was amended by section 48 of the Child Support, Pensions and Social Security Act (Northern Ireland) 2000 (c. 4)
- (b) S.I. 1995/3213 (N.I. 22); Article 73(3) was amended by Article 35(1) of the Welfare Reform and Pensions (Northern Ireland) Order 1999 (S.I. 1999/3147 (N.I. 11)) and modified by regulation 3 of S.R. 1996 No. 621 as amended by regulation 4(3) of S.R. 2000 No. 335 and regulation 3 of S.R. 2004 No. 187 and Article 75 was modified by regulation 4 of S.R. 1996 No. 585 as amended by paragraph 9(3) of the Schedule to S.R. 1997 No. 160
- (c) See Article 8(b) of S.R. 1999 No. 481
- (d) S.R. 1996 No. 621; relevant amending regulations are S.R. 2002 No. 64 and S.R. 2004 No. 60
- (e) Regulation 4(1) was amended by regulation 4(2) of S.R. 2002 No. 64 and regulation 2(2) of S.R. 2004 No. 60
- (f) Regulation 4B was inserted by regulation 2(5) of S.R. 2004 No. 60

which the liabilities and assets of the scheme are determined, calculated and verified for the purposes of Article 75 is a date falling on or after the commencement date.

(2) In the case of a scheme to which this regulation applies, 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 for the accrued rights to any pensions or other benefits of members of the scheme (including any increase to a pension) and for any future pensions, or other future benefits, attributable (directly or indirectly) to pension credits (including any increase to a pension) that have arisen on or before the crystallisation date or, as the case may be, the amount of the liabilities for any entitlement of members of the scheme to the payment of any pension or other benefit (including any increase to a pension) that has arisen on or before that date –

(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) in paragraph (5) for “Article 73(3)(aa) or (b)” there were substituted “Article 73(3)”.

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 (5).

(2) In regulation 3(1)(b) (calculation of the value of scheme liabilities and assets) for “regulations 3A and 3B” there shall be substituted “regulations 3A to 3D”.

(3) In regulation 3B(1)(c) (valuation of liabilities where employer not insolvent and where winding up commences on or after 11th June 2003) at the beginning there shall be inserted “Subject to regulation 3C,”.

(4) After regulation 3B there shall be inserted the following regulations –

“Valuation of liabilities where winding up commences, and date of calculation falls, on or after 15th February 2005

3C.—(1) This regulation shall apply in the case of a scheme which begins to wind up on or after 15th February 2005 (“the commencement date”), and the date by reference to which the liabilities and assets of the scheme are determined, calculated and verified for the purposes of Article 75 is a date falling on or after the commencement date.

(2) In the case of a scheme to which this regulation applies, 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)”;

(a) S.R. 1996 No. 585; relevant amending regulations are S.R. 2002 No. 64 and S.R. 2004 No. 60

(b) Regulation 3(1) was amended by regulation 3(2) of S.R. 2002 No. 64 and regulation 3(2) of S.R. 2004 No. 60

(c) Regulation 3B was inserted by regulation 3(4) of S.R. 2004 No. 60

- (v) in sub-paragraph (c) after “and 4 to 8 of the MFR Regulations” there were inserted “or as respects paragraphs (1A) and (1B)”;
- and
- (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 for any –

- (a) accrued rights that exist on or before the applicable time to the payment of any pension or other benefit under the scheme (including any increase to a pension);
- (b) future pensions, or other future benefits, attributable (directly or indirectly) to pension credits (including any increase to a pension) which have arisen on or before the applicable time; and
- (c) entitlement to the payment of a pension or other benefit (including any increase to a pension) that has arisen on or before the applicable time,

it shall be assumed that all such liabilities will be discharged by the purchase of annuities of the type described in Article 74(3)(c) and, for the purposes of the calculation, the actuary shall estimate the costs of purchasing any such annuities.”.

Valuation of liabilities where there is more than one employer

3D.—(1) This regulation shall apply where there is a scheme to which regulation 4 (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) and the circumstances described in paragraph (2) apply.

(2) The circumstances are that –

- (a) the scheme is not being wound up,
- (b) a relevant insolvency event occurs in relation to an employer in relation to the scheme; and
- (c) the applicable time is on or after 15th February 2005.

(3) In the case of a scheme to which this regulation applies, regulation 3 shall have effect with the modifications set out in regulation 3C(2)(a) and (b).”.

(5) In Schedule 1 (form of actuary’s certificate), in the Note at the end of the form of certificate, for “does not reflect the cost” there shall be substituted “may not reflect the actual cost”.

Amendment of the Occupational Pension Schemes (Transfer Values) Regulations

4. In regulation 11 of the Occupational Pension Schemes (Transfer Values) Regulations (Northern Ireland) 1996(a) (disclosure) –

(a) in paragraph (4)(b) –

- (i) the word “and” after head (iv) shall be omitted, and
- (ii) after head (v) there shall be added –

“and

(vi) where the scheme has begun to wind up, explaining that –

- (aa) the value of the member’s guaranteed cash equivalent may be affected by the scheme’s winding up;
- (bb) a decision to take a guaranteed cash equivalent should be given careful consideration; and

(a) S.R. 1996 No. 619 to which there are amendments not relevant to these Regulations

- (cc) the member should consider taking independent financial advice before deciding whether to take the guaranteed cash equivalent.”; and
- (b) after paragraph (4) there shall be inserted the following paragraph –
- “(4A) For the purposes of paragraph (4)(b)(vi), the question whether a scheme has begun to wind up shall be determined in accordance with Article 121(4) to (7).”.

Revocations

5. Regulations 2(2) and 3(2) of the Occupational Pension Schemes (Winding Up and Deficiency on Winding Up, etc.) (Amendment) Regulations (Northern Ireland) 2004(a) are hereby revoked.

Sealed with the Official Seal of the Department for Social Development on 21st January 2005.

(L.S.)

John O'Neill

A senior officer of the Department for Social Development

(a) S.R. 2004 No. 60

EXPLANATORY NOTE

(This note is not part of the Regulations.)

These Regulations make amendments to the Occupational Pension Schemes (Winding Up) Regulations (Northern Ireland) 1996 (“the Winding Up Regulations”), the Occupational Pension Schemes (Deficiency on Winding Up, etc.) Regulations (Northern Ireland) 1996 (“the Deficiency on Winding Up Regulations”) and the Occupational Pension Schemes (Transfer Values) Regulations (Northern Ireland) 1996 (“the Transfer Values Regulations”).

Regulation 1 provides for citation and commencement.

Regulation 2 amends regulations 4 and 4B of, and inserts regulation 4C into, the Winding Up Regulations and regulation 3 amends regulations 3 and 3A of, and inserts regulations 3C and 3D into, the Deficiency on Winding Up Regulations to provide for the calculation of liabilities in the case of any occupational pension scheme to which Article 75 of the Pensions (Northern Ireland) Order 1995 (“the Order”) applies and apply to schemes which begin to wind up on or after 15th February 2005 (“the commencement date”) and where the date by reference to which the liabilities and assets of the scheme are determined, calculated and verified falls on or after the commencement date. The inserted regulation 3D of the Deficiency on Winding Up Regulations applies to multi-employer schemes where the scheme is not being wound up but the employer becomes insolvent on or after the commencement date.

Regulation 4C of the Winding Up Regulations and regulations 3C and 3D of the Deficiency on Winding Up Regulations require the scheme’s liabilities to be calculated and valued on a basis which assumes that any accrued rights to a pension or other benefit under the scheme for members with more than two years of pensionable service, as well as any entitlement to the payment of a pension that has arisen under the scheme (including any increase in a pension), will be discharged by the purchase of annuities.

Regulation 4 amends regulation 11 of the Transfer Values Regulations to require trustees who receive a request for a statement of entitlement to a guaranteed cash equivalent to inform the member, where the scheme is being wound up, that the value of the member’s guaranteed cash equivalent may be affected by the scheme winding up, that a decision to take a guaranteed cash equivalent should be given careful consideration, and that the member should consider taking independent financial advice before deciding whether to take the guaranteed cash equivalent.

Regulation 5 makes consequential revocations.

As these Regulations 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 under Article 117(1) of the Order does not apply by virtue of paragraph (2)(e) of that Article.

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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