

**2005 No. 363**

**PENSIONS**

**The Occupational Pension Schemes (Winding Up)  
(Modification for Multi-employer Schemes and Miscellaneous  
Amendments) Regulations (Northern Ireland) 2005**

*Made* - - - - - *3rd August 2005*

*Coming into operation* - - - - - *31st August 2005*

The Department for Social Development, in exercise of the powers conferred by Articles 56(3), 73(7), 73B(4)(a) and (b)(i) and (ii) and (5), 115(1)(a) 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, by this statutory rule which is consequential upon Article 247 of the Pensions (Northern Ireland) Order 2005(c), hereby makes the following Regulations:

**Citation, commencement and interpretation**

1.—(1) These Regulations may be cited as the Occupational Pension Schemes (Winding Up) (Modification for Multi-employer Schemes and Miscellaneous Amendments) Regulations (Northern Ireland) 2005 and shall come into force on 31st August 2005.

(2) In these Regulations—

“the 1995 Order” means the Pensions (Northern Ireland) Order 1995;

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

“assessment period” is to be read in accordance with Article 116 of the 2005 Order.

**Modification for multi-employer schemes of rules about reduction of benefits during winding up period**

2.—(1) This paragraph applies to an occupational pension scheme at any time (“the relevant time”) if—

- (a) Article 73 of the 1995 Order (preferential liabilities on winding up) applies to the scheme;
- (b) the scheme has been a relevant multi-employer scheme at any time after 5th April 2005;
- (c) at a time after that date when the scheme was such a scheme an event that is an insolvency event for the purposes of Part III of the 2005 Order (see Article 105 of that Order) has occurred in relation to a person who immediately before the event was an employer in relation to the scheme; and

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(a) S.I. 1995/3213 (N.I. 22); Article 73 was substituted and Articles 73A and 73B were inserted by Article 247(1) of the Pensions (Northern Ireland) Order 2005 (S.I. 2005/255 (N.I. 1)) and modified by regulations 12 to 12B of S.R. 1996 No. 621 (Regulation 12 was amended by paragraph 12 of the Schedule to S.R. 1997 No. 160 and modified by paragraph 6 of the Schedule to S.R. 2005 No. 171 and regulations 12A and 12B were inserted by paragraph 7 of that Schedule)

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

(c) S.I. 2005/255 (N.I. 1)

- (d) the trustees or managers of the scheme have reasonably determined not more than 3 months before the relevant time that it is probable that an assessment period will begin in relation to the scheme not more than 12 months after the time of the determination.

(2) In paragraph (1) “relevant multi-employer scheme” means an occupational pension scheme—

- (a) in relation to which there are 2 or more employers; and
- (b) the rules of which do not provide for the partial winding up of the scheme if one of the employers ceases to participate in the scheme.

(3) If paragraph (1) applies to a scheme, Article 73A(2)(a) of the 1995 Order (which requires the trustees or managers during the winding up period to secure that pensions or other benefits paid in respect of members are reduced, so far as necessary, to reflect the liabilities in respect of the members which will be satisfied in accordance with Article 73 of that Order) applies to the scheme with the modification specified in paragraph (4).

(4) The modification is that Article 73A(2)(a) applies as if the reference to the liabilities in respect of the members which will be satisfied in accordance with Article 73 of the 1995 Order were a reference to those liabilities or, if the trustees or managers consider it appropriate, to the liabilities in respect of the members which would be satisfied in accordance with that section on the assumption that the liabilities mentioned in—

- (a) Article 73(4)(a) and (b) of that Order (liabilities under certain pre-1997 contracts of insurance and liabilities for pensions or other benefits) will be fully satisfied (but in the case of the liabilities mentioned in Article 73(4)(b) only to the extent that they do not exceed the corresponding PPF liability, as defined in Article 73(5) of that Order); and
- (b) Article 73(4)(c) and (d) of that Order will not be satisfied in whole or in part.

(5) If—

- (a) the trustees or managers of a scheme have made payments in accordance with the requirement in Article 73A(2)(a) of the 1995 Order on the assumption mentioned in paragraph (4); and
- (b) subsequently paragraph (1) ceases to apply to the scheme because the condition in paragraph (1)(d) ceases to be met,

Article 73A(2)(b) of the 1995 Order (which for the purposes of Article 73A(2)(a) permits the recovery of overpayments and payment of shortfalls) applies as if the reference to the purposes of Article 73A(2)(a) included a reference to the purpose of recovering any overpayment or paying any shortfall that has occurred as a result of payments having been made on that assumption.

(6) In any case where, by virtue of regulation 12, 12A or 12B of the Occupational Pension Schemes (Winding Up) Regulations (Northern Ireland) 1996<sup>(a)</sup> (winding up of sectionalised schemes, schemes with partial government guarantee and partly foreign schemes), Articles 73 to 74 of the 1995 Order<sup>(b)</sup> apply to a scheme as if different parts of the scheme were separate schemes—

- (a) this regulation (apart from this paragraph) also applies; and
- (b) references to schemes, employers and members must be read accordingly.

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<sup>(a)</sup> S.R. 1996 No. 621; relevant amending regulations are S.R. 1997 No. 160 and S.R. 2005 No. 171  
<sup>(b)</sup> Article 74 was amended by paragraph 45 of Schedule 9 to the Welfare Reform and Pensions (Northern Ireland) Order 1999 (S.I. 1999/3147 (N.I. 11)), Article 247(2) of the Pensions (Northern Ireland) Order 2005 and Article 60 of S.I. 2002/1555 and modified by regulations 12 to 12B of S.R. 1996 No. 621

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

3. In regulation 6(1) of the Occupational Pension Schemes (Minimum Funding Requirement and Actuarial Valuations) Regulations (Northern Ireland) 1996<sup>(a)</sup> (excluded assets) after sub-paragraph (c) there shall be added the following sub-paragraph—

“(d) any assets representing the value of any rights in respect of money purchase benefits under the scheme rules.”.

### **Amendment of the Occupational Pension Schemes (Winding up, etc.) Regulations**

4.—(1) The Occupational Pension Schemes (Winding up, etc.) Regulations (Northern Ireland) 2005<sup>(b)</sup> shall be amended in accordance with paragraphs (2) and (3).

(2) In regulation 4 (corresponding PPF liability: modifications of the pension compensation provisions, etc.) paragraph (5) shall be omitted.

(3) In regulation 9 (calculation of the value or amount of scheme assets and liabilities) for “For regulation 4” there shall be substituted “For regulations 4 to 4C”.

Sealed with the Official Seal of the Department for Social Development on 3rd August 2005.



*John O'Neill*

A senior officer of the Department for Social Development

### **EXPLANATORY NOTE**

*(This note is not part of the Regulations.)*

These Regulations modify the position under the Pensions (Northern Ireland) Order 1995 (“the 1995 Order”) where an occupational pension scheme that has more than one employer or has had more than one employer at any time since 6th April 2005 and whose rules do not provide for the partial winding up of the scheme if it is being wound up. They also amend the Occupational Pension Schemes (Minimum Funding Requirement and Actuarial Valuations) Regulations (Northern Ireland) 1996 (“the MFR Regulations”) and the Occupational Pension Schemes (Winding up etc.) Regulations 2005 (“the 2005 Regulations”).

Regulation 2 provides for cases where an insolvency event has occurred in relation to one of the persons who is an employer in relation to an occupational pension scheme since 6th April 2005 and the trustees or managers of the scheme have determined in the last 3 months that it is probable that the scheme will enter an assessment period in the next 12 months (that is, a period when the Board of the Pensions Protection Fund (“the Board”) determine whether to assume responsibility for the scheme for the purposes of pension protection). In such cases the normal obligation of the trustees or managers under Article 73A of the 1995 Order to reduce the benefits that they pay out in respect of a member during the winding up period so that members do not receive more than they should according to priority rules in Article 73 of the 1995 Order is modified. The modification enables the trustees, if they wish, to pay in full the level of benefits that would be payable if the Board were to assume responsibility for the scheme. Regulation 2 also modifies Article 73A of the 1995 Order so that if the trustees cease to expect the scheme to enter an assessment period in the next 12 months, they may recover any overpayments made as a result of

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(a) S.R. 1996 No. 570; regulation 6(1) was amended by regulation 12(1) of S.R. 1996 No. 584 and paragraph 7(2) of the Schedule to S.R. 1997 No. 160

(b) S.R. 2005 No. 171

exercising the power to pay greater amounts. Where Articles 73 to 74 of the 1995 Order apply as if a part of a scheme were a scheme, regulation 2 applies in the same way.

Regulation 3 amends regulation 6(1) of the MFR Regulations so that assets representing the value of any rights in respect of money purchase benefits under an occupational pension scheme are excluded from minimum funding valuations for the purposes of Article 56 of the 1995 Order. This is consequential on the exclusion by Article 73(10) of the 1995 Order of a scheme's money purchase liabilities from the liabilities mentioned in Article 73(4) of that Order, because it is those liabilities that are valued for the purposes of those valuations and the valuation would be misleading if the corresponding assets were not also excluded.

Regulation 4 omits regulation 4(5) of the 2005 Regulations with the result that the order of priority to be given to scheme liabilities being paid out during the winding up period of an occupational pension scheme under Article 73(4) of the 1995 Order is the same whether or not during the winding up period there is an assessment period. (Regulation 4(5) modified Article 73(4) where there was no assessment period.) It also amends regulation 9 of the 2005 Regulations to provide that the new regulation 4, as substituted by that regulation, supersedes regulations 4A to 4C of the Occupational Pension Schemes (Winding Up) Regulations (Northern Ireland) 1996.

Article 247(1) of the Pensions (Northern Ireland) Order 2005 ("the 2005 Order") which inserted Article 73B(4)(a) and (b)(i) and (ii) into the 1995 Order, one of the enabling provisions under which these Regulations are made, was brought into operation on 6th April 2005, by virtue of the Pensions (2005 Order) (Commencement No. 1 and Transitional Provisions) Order (Northern Ireland) 2005 (S.R. 2005 No. 48 (C. 5)).

As these Regulations are made before the end of the period of six months beginning with the coming into operation of Article 247 of the 2005 Order upon which they are consequential, the requirement to consult under Article 289(1) of the Order does not apply by virtue of paragraph (2)(c) of that Article.

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