STATUTORY RULES OF NORTHERN IRELAND

2006 No. 161

The Occupational Pension Schemes (Payments to Employer) Regulations (Northern Ireland) 2006

PART 2

Schemes not in wind up

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3.—(1) Subject to paragraph (2) and regulations 12 to 14, the prescribed requirements for the purposes of Article 37(3)(b) (payment of surplus to employer) are that the scheme is not in wind up, and—

(a) it is a scheme which—

(i) is subject to Part IV of the 2005 Order(**1**) (scheme funding), and

(ii) is not a regulatory own funds scheme, or

(b) it is a scheme that is an earmarked scheme.

(2) A scheme to which—

(a) paragraph (1)(a) applies must also comply with regulations 4 to 7 and 9 to 11, or

(b) paragraph (1)(b) applies must also comply with regulation 8.

Schemes that are subject to Part IV of the 2005 Order - determination of assets and liabilities

4.—(1) In the case of a scheme to which regulation 3(1)(a) applies, where the trustees propose to make a payment to the employer, either—

(a) the written valuation of the scheme's assets and liabilities required under Article 37(3)(a) (payment of surplus to employer) shall be prepared in accordance with this regulation and regulations 5 and 6, or

(b) where—

(i) an actuarial valuation has been prepared for the purposes of Part IV of the 2005 Order(**2**) (scheme funding), and

(ii) this valuation is valid for the purposes of regulation 9,

the trustees may use this valuation for the purposes of regulation 7(1) and Article 37(3)(a), ("a Part IV valuation").

(2) Where the trustees use a Part IV valuation—

(**1**) Part IV was modified by Schedule 2 to S.R. 2005 No. 568 and regulation 5(1) of S.R. 2005 No. 570
(**2**) *See* Article 203(2)(a) of the Pensions (Northern Ireland) Order 2005

(a) the value to be placed on the scheme's liabilities shall be the value placed by the actuary on the scheme's liabilities for the purposes of the actuary's estimate of the solvency of the scheme included in that valuation, in accordance with—

(i) regulation 7(6)(a), or

(ii) regulation 7(6)(b),

as the case may be, of the Occupational Pension Schemes (Scheme Funding) Regulations (Northern Ireland) 2005(**3**) (actuarial valuations and reports), and

(b) the value to be placed on the scheme's assets shall be the value placed by the actuary on the scheme's assets for the purposes of the actuary's estimate of the solvency of the scheme included in that valuation.

(3) Subject to paragraph (7), the assets of the scheme to be taken into account for the purposes of the written valuation specified in paragraph (1)(a) are the assets attributed to the scheme in the relevant accounts, excluding—

(a) any resources invested (or treated as invested by Article 40(**4**)) in contravention of Article 40(1) (restriction on employer-related investments);

(b) any amount treated as a debt under Article 207(3) of the 2005 Order (failure to make payments) which are unlikely to be recovered without disproportionate cost or within a reasonable time, and

(c) where it appears to the actuary that the circumstances are such that it is appropriate to exclude them, any rights under an insurance policy.

(4) Subject to paragraph (6), the liabilities of the scheme to be taken into account for the purposes of the written valuation specified in paragraph (1)(a) are any liabilities—

(a) in relation to a member of the scheme by virtue of—

(i) any right that has accrued to or in respect of him to future benefits under the scheme rules, or

(ii) any entitlement to the present payment of a pension or other benefit which he has under the scheme rules, and

(b) in relation to the survivor of a member of the scheme, by virtue of any entitlement to benefits, or right to future benefits which he has under the scheme rules in respect of the member.

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

"right" includes a pension credit right, and

"the survivor" of a member is a person who—

(a) is the widow, widower or surviving civil partner of the member, or

(b) has survived the member and has any entitlement to benefit, or right to future benefits, under the scheme in respect of the member.

(6) Where rights under an insurance policy are excluded under paragraph (3)(c), the liabilities secured by the policy shall be disregarded for the purposes of paragraph (4).

(7) Where arrangements are being made by the 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—

(**3**) S.R. 2005 No. 568

(**4**) Article 40 was amended by Article 152 of S.I. 2001/3649, Article 26 of S.I. 2004/355 and paragraph 45 of Schedule 10 to the Pensions (Northern Ireland) Order 2005

(a) that those 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 the receiving scheme.

Schemes that are subject to Part IV of the 2005 Order - valuation of assets and liabilities

5.—(1) In the case of a valuation specified in regulation 4(1)(a), and subject to paragraph (2), the value to be given to the assets of a scheme for the purposes of Article 37(3)(a) (payment of surplus to employer) is the value given to those assets in the relevant accounts, less the amount of the external liabilities.

(2) The value to be given to any rights under an insurance policy not excluded under regulation 4(3) is the value the actuary considers appropriate in the circumstances of the case on the effective date.

(3) The value to be placed on the liabilities of the scheme shall be the actuary's estimate of the value of the liabilities of the scheme on the effective date.

(4) In paragraph (3), "estimate of the value of the liabilities of the scheme" means—

(a) an estimate by the actuary of the cost of purchasing annuities, of the type described in Article 74(3)(c)(**5**) (discharge of liabilities by purchase of annuities satisfying prescribed requirements) and on terms consistent with those in the available market, which would be sufficient to satisfy the liabilities taken into account under regulation 4(4), and

(b) other expenses which, in the opinion of the actuary, would be likely to be incurred in connection with the winding up of the scheme.

(5) Where the actuary considers that it is not practicable to make an estimate in accordance with paragraph (4)(a), he shall make an estimate of the value of the liabilities of the scheme on the effective date, in such manner as he considers appropriate in the circumstances of the case.

(6) Where the actuary's estimate of the liabilities of the scheme is made under paragraph (5), the valuation shall include a brief account of the principles adopted in making the estimate.

(7) In paragraph (1), "the external liabilities" of a scheme are such liabilities of the scheme (other than liabilities within regulation 4(4)) 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.

(8) The assets of the scheme shall be valued, and the amount of the liabilities determined, by reference to the effective date.

Prescribed persons for the purposes of Article 37(3)(a)

6. The prescribed persons for the purposes of Article 37(3)(a) (payment of surplus to employer) are in the case of a scheme that is subject to Part IV of the 2005 Order (scheme funding)—

(a) where it is a scheme for which an actuary is required to be appointed under Article 47(1)(b) (professional advisers), the actuary appointed under that Article, or

(b) where it is a scheme which is exempt from the application of Article 47(1)(b) by virtue of regulations made under paragraph (5) of that Article—

(i) a Fellow of the Faculty of Actuaries(**6**), or

(ii) a Fellow of the Institute of Actuaries(**7**).

(**5**) Article 74(3)(c) was amended by Article 60 of S.I. 2002/1555

(**6**) The Faculty of Actuaries is located at Faculty of Actuaries, Maclaurin House, 18 Dublin Street, Edinburgh EH1 3PP

(**7**) The Institute of Actuaries is located at Institute of Actuaries, Staple Inn Hall, High Holborn, London WC1V 7QJ

Schemes that are subject to Part IV of the 2005 Order – valuation certificate and amount of payment to employer

7.—(1) Where a written valuation prepared in accordance with regulation 4(1) shows that the value of the assets of the scheme is greater than the value of the scheme's liabilities, the prescribed person shall prepare a valuation certificate in the form prescribed in Schedule 1.

(2) Where paragraph (1) applies, the maximum payment that may be made to the employer is, in the case of a valuation prepared in accordance with—

(a) regulation 4(1)(a), the amount by which the value of the scheme's assets exceeds the value of the scheme's liabilities at the effective date of the valuation, or

(b) regulation 4(1)(b), the amount of the excess of the scheme's assets over its liabilities specified in the actuary's estimate of the solvency of the scheme prepared in accordance with regulation 7(4)(b) of the Occupational Pension Schemes (Scheme Funding) Regulations (Northern Ireland) 2005 (actuarial valuations and reports).

Earmarked schemes

8.—(1) In the case of a scheme to which regulation 3(1)(b) applies, a payment may only be made to the employer where all liabilities accruing in respect of a member, beneficiary or his estate have been—

(a) secured by the purchase of one or more insurance policies, or

(b) paid in full.

(2) Where paragraph (1) applies, the maximum payment that may be made to the employer is a payment no greater than the excess of the scheme assets in relation to that member after all the liabilities accruing in respect of that member have been secured or paid in full.

Period for which a valuation certificate is to remain in force

9. A valuation certificate shall remain in force—

(a) in the case of a scheme that falls within regulation 3(1)(a) for fifteen months where the valuation is prepared pursuant to Part IV of the 2005 Order, or

(b) twelve months in other cases,

from the effective date of the valuation.

Notification to members

10.—(1) Where the trustees of a scheme to which regulation 3(1)(a) applies propose to make a payment under Article 37(1)(a) (payment of surplus to employer), the prescribed requirements in accordance with which the notice referred to in Article 37(3)(g) shall be given are that—

(a) the trustees of the scheme shall make a written statement that they have decided to make such a payment;

(b) the amount of the proposed payment shall be stated;

(c) the date that the payment is to be made, which is—

(i) not later than the last day on which the valuation certificate is valid for the purposes of Article 37(4)(e), and

(ii) at least three months after the day the information is sent to the members or survivors,

shall be stated, and

(d) the notice shall provide that the member may, within one month of the date of the notice, request a copy of the relevant valuation certificate prepared in accordance with regulation 7(1).

(2) Where a member requests a copy of the relevant valuation certificate under paragraph (1)(d), the trustees of the scheme shall provide this information within one month from the date that the request is received by them.

(3) A notice under Article 37(3)(g) does not have to be given to any excluded person.

Notification to the Regulator

11. Where the trustees of a scheme to which regulation 3(1)(a) applies have made a payment in accordance with Article 37(1)(a) (payment of surplus to employer), they shall notify the Regulator that the payment has been made by no later than one week after the day on which the payment was made.