STATUTORY RULES OF NORTHERN IRELAND

1997 No. 141

PENSIONS

The Occupational Pension Schemes (Pensions Compensation Provisions) Regulations (Northern Ireland) 1997

Made - - - -	*10th March 1997*
Coming into operation	*6th April 1997*

The Department of Health and Social Services, in exercise of the powers conferred on it by Articles 56(3), 79(1)(*c*) and (2), 80(1), 81(2) and (3)(*a*), 82(1)(*b*), (2) and (3), 84, 122(2) and 166(1) to (3) of the Pensions (Northern Ireland) Order 1995(**1**) 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 Occupational Pension Schemes (Pensions Compensation Provisions) Regulations (Northern Ireland) 1997 and shall come into operation on 6th April 1997.

(2) In these Regulations—

"the audited accounts" means the accounts prepared by the auditor;

"approved scheme" means a scheme which is approved or was formerly approved under section 590 or 591 of the Taxes Act 1988 (conditions for approval of retirement benefit schemes and discretionary approval), or in respect of which an application for such approval has been duly made which has not been determined;

"the auditor" means an individual or a firm appointed by the trustees as auditor of the scheme;

"base rate" means the rate for the time being quoted by the reference banks as applicable to sterling deposits or, where there is for the time being more than one such base rate, the rate which, when the base rate quoted by each bank is ranked in a descending sequence of four, is first in the sequence;

"beneficiary" means a person, other than a member of the scheme, who is entitled to the payment of benefits under the scheme;

"ear-marked scheme" means an occupational pension scheme which is a money purchase scheme under which all the benefits are secured by one or more policies of insurance or annuity

(**1**) S.I. 1995/3213 (N.I. 22); *see also* Article 79(7)

contracts and such policies or contracts are specifically allocated to the provision of benefits for individual members or any other person who has a right to benefits under the scheme;

"guaranteed minimum pension" has the meaning given in section 4(2);

"the loss" means the reduction falling within Article 79(1)(*c*);

"money purchase benefits" has the meaning given in section 176(1);

"money purchase scheme" means an occupational pension scheme under which all the benefits that may be provided, other than death benefits, are money purchase benefits;

"reference banks" means the 4 largest institutions for the time being which—

(a) are authorised by the Bank of England under the Banking Act 1987(**2**);

(b) are incorporated in, and carrying on within, the United Kingdom a deposit-taking business (as defined in section 6, but subject to any order under section 7, of that Act); and

(c) quote a base rate applicable to sterling deposits;

"relevant insurer" means, in relation to an annuity contract or policy of insurance under which scheme benefits are or were secured, the person with whom the contract is made;

"scheme" means an occupational pension scheme which is a trust scheme;

"unallocated assets" means any assets of a money purchase scheme which have not been specifically allocated for the provision of benefits to, or in respect of, members (whether generally or individually).

(3) In these Regulations—

(a) any reference to a numbered section is a reference to the section of the Pension Schemes Act bearing that number; and

(b) any reference to a numbered Article is a reference to the Article of the Pensions (Northern Ireland) Order 1995 bearing that number.

(4) For the purposes of these Regulations, and notwithstanding section 39(2) of the Interpretation Act (Northern Ireland) 1954(**3**), where a period of time is expressed to begin on, or to be reckoned from, a particular day, that day shall be included in the period.

Schemes to which the compensation provisions and these Regulations do not apply

2.—(1) The compensation provisions and these Regulations shall not apply to—

(a) a scheme which has fewer than 2 members and no beneficiaries;

(b) a scheme the only benefits provided by which are death benefits and under the provisions of which no member has accrued rights;

(c) a scheme which provides relevant benefits, but is neither an approved scheme nor a relevant statutory scheme;

(d) a scheme whose members are fewer than 12, all of whom are trustees and under the rules of which all trustee decisions must be made by unanimous agreement, save that the non-participation of a pensioneer trustee in any such decision shall be disregarded;

(e) a public service pension scheme;

(f) a relevant lump sum retirement benefits scheme;

(g) a scheme in respect of which any Minister of the Crown or government department has given a guarantee or made any other arrangements for the purpose of securing that the assets of the scheme are sufficient to meet its liabilities;

(**2**) 1987 c. 22
(**3**) 1954 c. 33 (N.I.)

(h) a section 615(6) scheme.

(2) In this regulation—

"lump sum benefits" does not include benefits paid by way of commuted retirement pension;

"pensioneer trustee" has the meaning given in regulation 2(1) of the Retirement Benefits Schemes (Restriction on Discretion to Approve) (Small Self-administered Schemes) Regulations 1991(**4**);

"relevant benefits" has the meaning given in section 612(1) of the Taxes Act 1988;

"relevant lump sum retirement benefits scheme" means an approved scheme—

(a) which has been categorised by the Commissioners of Inland Revenue for the purposes of its approval as a centralised scheme for non-associated employers;

(b) which is not contracted out; and

(c) under the provisions of which the only benefits which may be provided on or after retirement (other than money purchase benefits derived from the payment of additional contributions by any person) are lump sum benefits which are not calculated by reference to any member's salary;

"relevant statutory scheme" has the meaning given in section 611A of the Taxes Act 1988(**5**);

"section 615(6) scheme" means a scheme with such a superannuation fund as is mentioned in section 615(6) of the Taxes Act 1988 (exemption from tax in respect of certain pensions).

Relevant offences

3. For the purposes of Article 79(1)(*c*) (cases where compensation provisions apply: reduction to be attributable to prescribed offence), the prescribed offence is any offence involving dishonesty, and for the avoidance of doubt dishonesty shall include an intent to defraud.

Applications for compensation

4. An application for compensation under Article 80 in respect of a scheme may only be made by—

(a) the trustees of a scheme, or their representative;

(b) a person concerned with the administration of, or the provision of benefits under, the scheme, or his representative; or

(c) a member of, or beneficiary under, the scheme, or his representative.

Amount of compensation

5.—(1) If the Compensation Board decide to make a payment to the trustees of the scheme in accordance with Article 81, the amount of any such payment or (if there is more than one) the aggregate must be determined in accordance with paragraph (2) of this regulation.

(2) The amount shall be the lower of the amounts specified in Article 81(3)(*a*) and (*b*), less the amount of any payment already made under Article 82 (payments made in anticipation), except to the extent that any such payment has been recovered by the Compensation Board.

(3) For the purposes of Article 81(3)(*a*) (compensation not to exceed 90 per cent. of the shortfall at the application date), and subject to paragraph (4), the amount of the shortfall at the application date shall be calculated in accordance with the formula—

(**4**) S.I. 1991/1614; *see also* regulation 2(4) to (8) of that instrument for the meaning of "connected with" in regulation 2(1)
(**5**) Section 611A was inserted by paragraph 15 of Schedule 6 to the Finance Act 1989 (c. 26)

$$P - Q$$

where—

a P is—

(i) the value of the assets as stated in the audited accounts which most immediately precede the loss, adjusted by the auditor so as to take into account subsequent alterations in their value (if any) which occur prior to the application date, but disregarding the alteration in their value attributable to the loss itself; or

(ii) if there are no such audited accounts, the value of the assets on such date as immediately precedes the loss, as reported by the auditor, adjusted in the same manner as for the calculation under head (i); and

b Q is the value of the assets immediately before the application date, as reported by the auditor,

and the same principles are used to value the assets for the purposes of P and Q.

(4) In the case of an ear-marked scheme, the amount of the shortfall at the application date for the purposes of Article 81(3)(*a*), shall be calculated in accordance with the formula—

$$P + R - Q$$

where—

a P is the value of the assets on such date as immediately precedes the loss, adjusted so as to take into account the loss and other alterations in their value (if any) between that date and the application date, as certified by the relevant insurer;

b R is the value of the assets constituting the loss on such date as immediately precedes its occurrence adjusted so as to reflect any alteration in the value of those assets which would have occurred had they remained in the scheme until immediately before the application date, as certified by the relevant insurer;

c Q is the value of the assets immediately before the application date, as certified by the relevant insurer,

and the same principles are used to value the assets for the purposes of P, R and Q.

(5) For the purposes of Article 81(3)(*b*) (amount required to secure assets equal to 90 per cent. of liabilities), the value of the assets and the amount of the liabilities of the scheme on the settlement date shall be determined under an actuarial valuation carried out in accordance with regulations 3 to 9 of the Occupational Pension Schemes (Minimum Funding Requirement and Actuarial Valuations) Regulations (Northern Ireland) 1996(**6**) and the mandatory guidelines on the minimum funding requirement contained in Guidance Note 27 (GN27), prepared and published by the Institute of Actuaries and the Faculty of Actuaries(**7**).

(6) For the purposes of Article 81(3)(*a*)—

(a) the prescribed rate of interest shall be—

(base rate plus 2 per cent.) × 90 per cent.; and

(b) the prescribed period by reference to which the rate of interest specified in sub-paragraph (*a*) is calculated shall commence on the application date and end on the settlement date.

(**6**) S.R. 1996 No. 570, amended by S.R. 1996 No. 584

(**7**) Copies of GN27 may be obtained from the Faculty of Actuaries, 17 Thistle Street, Edinburgh EH2 1DF

Payments made in anticipation

6.—(1) The prescribed class of liabilities referred to in Article 82(1)(*b*) (liabilities the trustees would not otherwise be able to meet) are—

(a) any liability for payment of pensions which has arisen at the application date;

(b) any liability which arises between the application date and the settlement date for payment of—

(i) guaranteed minimum pensions;

(ii) pensions, other than guaranteed minimum pensions, payable to persons reaching normal pension age;

(iii) pensions payable to beneficiaries;

(iv) ill-health retirement pensions;

(c) in the case of a scheme where some or all of the benefits that may be provided are money purchase benefits, any liability such as is specified in paragraph (2).

(2) The liability referred to in paragraph (1)(*c*) is the approximate amount of any monthly pension that would have been payable in respect of money purchase benefits prior to the settlement date but for the loss.

(3) Except where any liability for payment of a pension arises in connection with terminal illness, such liability shall not for the purposes of this regulation include any liability for payment of a lump sum, whether or not deriving from the commutation of pension rights.

(4) For the purposes of paragraph (3), a person shall be regarded as terminally ill where his expectation of life is less than one year, and the expression terminal illness shall be construed accordingly.

(5) Payments made in anticipation shall be calculated—

(a) so that, so far as the Compensation Board are reasonably able to achieve, the extent to which liabilities specified in paragraph (1) are satisfied after the Compensation Board have made a payment under Article 81 is undiminished;

(b) so as to counter-balance any payments in anticipation made previously which were too great or too small;

(c) so as not to exceed the amount required to enable the trustees of a scheme, prior to the settlement date, to meet such liabilities as are specified in paragraph (1); and

(d) so as not to exceed 90 per cent. of the shortfall at the application date.

(6) For the purposes of Article 82(3), the prescribed circumstances in which any payment made under Article 82(1) may not be recovered, in whole or in part, are where such recovery would cause pensions in payment to be reduced.

Mixed benefit schemes

7.—(1) This paragraph applies where some, but not all, of the benefits that may be provided under a scheme are money purchase benefits.

(2) Where paragraph (1) applies to a scheme, and the assets out of which money purchase benefits are provided—

(a) are distinct from the assets out of which other benefits are provided; and

(b) cannot be used for the purposes of providing any other benefits,

then the compensation provisions and these Regulations shall apply as if the assets out of which money purchase benefits are provided, and the proportion of the liabilities which is attributable to the provision of money purchase benefits, were the assets and liabilities of a separate scheme.

(3) Where paragraph (1) applies to a scheme, and the assets out of which money purchase benefits are provided—

(a) are not distinct from the assets out of which other benefits are provided; or

(b) are so distinct but can be used for the purposes of providing other benefits,

then the compensation provisions and these Regulations shall apply as if the proportion of the liabilities which, in the opinion of the Compensation Board, is attributable to the provision of money purchase benefits, and a like proportion of the assets, were the liabilities and assets of a separate scheme.

Multi-employer schemes

8.—(1) Where a scheme applies to earners in employments under different employers—

(a) Article 79(1)(*b*) shall have effect as if "the employers are insolvent" were substituted for "the employer is insolvent"; and

(b) Article 79(3)(*c*) shall have effect as if "the last employer became insolvent" were substituted for "the employer became insolvent".

(2) Where a scheme in relation to which there is more than one employer is divided into 2 or more sections and the provisions of the scheme are such that—

(a) different sections of the scheme apply to different employers or groups of employers (whether or not more than one section applies to any particular employer or groups including any particular employer);

(b) contributions payable to the scheme by an employer, or by a member in employment under that employer, are allocated to that employer's section (or, if more than one section applies to the employer, the section which is appropriate in respect of the employment in question); and

(c) a specified part or proportion of the assets of the scheme is attributable to each section and cannot be used for the purposes of any other section;

or where—

(d) a scheme which has been such a scheme as is mentioned in sub-paragraphs (*a*) to (*c*) is divided into 2 or more sections some or all of which apply only to members who are not in pensionable service under the section; and

(e) the provisions of the scheme have not been amended so as to prevent the conditions mentioned in sub-paragraphs (*a*) to (*c*) being satisfied in relation to 2 or more sections; but

(f) those conditions have ceased to be satisfied in relation to one or more sections by reason only of there being no members in pensionable service under the section and no contributions which are to be allocated to it,

the compensation provisions and these Regulations shall apply as if each section of the scheme were a separate scheme.

(3) For the purposes of paragraph (2), there shall be disregarded any provisions of the scheme by virtue of which contributions or transfers of assets may be made to make provision for death benefits; and where that paragraph applies and contributions or transfers so made to a section ("the death benefits section"), the assets of which may only be applied for the provision of death benefits, the death benefits section shall also be treated as if it were a separate scheme for the purposes of the compensation provisions and these Regulations.

(4) For the purposes of paragraphs (2) and (3), there shall be disregarded any provisions of the scheme by virtue of which, on the winding up of the scheme or a section, assets attributable to one section may be used for the purposes of another section.

Partially approved schemes

9. Where a scheme is not an approved scheme but contains a section which, by virtue of section 611(3) of the Taxes Act 1988 (retirement benefit schemes), is treated by the Commissioners of Inland Revenue as an approved scheme, the compensation provisions and these Regulations shall apply to that section as if it were a separate scheme.

Modifications for money purchase schemes

10.—(1) In the case of a money purchase scheme, and subject to paragraph (2)—

(a) the compensation provisions shall have effect as if—

(i) in Article 79(1) for sub-paragraph (*d*) there were substituted the following sub-paragraph—

"(d) in the case of a money purchase scheme, immediately before the application date the value of the assets of the scheme, as reported by the auditor, is less than 90 per cent. of their value immediately before the reduction falling within sub-paragraph (*c*), where the value of the assets immediately before that reduction is adjusted by the auditor so as to take account of subsequent alterations in their value (if any) which occur prior to the application date, but disregarding the alteration in their value attributable to the reduction itself, and";

(ii) in Article 81(3) for sub-paragraph (*b*) there were substituted the following sub-paragraph—

"(b) in the case of a money purchase scheme, must not exceed the amount, as reported by the auditor, which on the settlement date is required to be paid to the trustees of the scheme in order to secure that the value on that date of the assets of the scheme is equal to 90 per cent. of their value immediately before the reduction falling within Article 79(1)(*c*), where the value of the assets of the scheme immediately before that reduction is adjusted by the auditor so as to take account of subsequent alterations in their value (if any) which occur prior to the settlement date, but disregarding the alteration in their value attributable to the reduction itself."; and

(b) these Regulations shall have effect as if in regulation 5 for paragraph (5) there were substituted the following paragraph—

"(5) For the purposes of Article 81(3)(*b*) (amount required to secure that assets are equal to 90 per cent. of their pre-loss value), the amount required to be paid to the trustees of the scheme shall be calculated in accordance with the formula—

$$T \times 90\% - V$$

where—

a T is—

(i) the value of the assets (excluding unallocated assets) as stated in the audited accounts which most immediately precede the loss, adjusted by the auditor so as to take into account subsequent alterations in their value (if any) which occur prior to the settlement date, but disregarding the alteration in their value attributable to the loss itself; or

(ii) if there are no such audited accounts, the value of the assets (excluding unallocated assets) immediately before the loss, as

reported by the auditor, adjusted in the same manner as for the calculation under head (i); and

b V is the value of the assets at the settlement date as reported by the auditor,

and the same principles are used to value the assets for the purposes of T and V.".

(2) In the case of an ear-marked scheme—

(a) the compensation provisions shall have effect as if—

(i) in Article 79(1) for sub-paragraph (*d*) there were substituted the following sub-paragraph—

"(d) in the case of an ear-marked scheme, immediately before the application date the value of the assets of the scheme, as certified by the relevant insurer, is less than 90 per cent. of their value immediately before the reduction falling within sub-paragraph (*c*), where the value of the assets immediately before that reduction is adjusted so as to take account of subsequent alterations in their value (if any) which occur prior to the application date, including those which would have occurred if the reduction had not taken place, and";

(ii) in Article 79(3) after sub-paragraph (*b*) there were inserted the following sub-paragraph—

"(*bb*) "ear-marked scheme" means an occupational pension scheme which is a money purchase scheme under which all the benefits are secured by one or more policies of insurance or annuity contracts and such policies or contracts are specifically allocated to the provision of benefits for individual members or any other person who has a right to benefits under the scheme,";

(iii) in Article 79(3) after sub-paragraph (*f*) there were inserted the following sub-paragraph—

"(g) "relevant insurer" means, in relation to an annuity contract or policy of insurance under which scheme benefits are or were secured, the person with whom the contract is made.";

(iv) in Article 81(3) for sub-paragraph (*b*) there were substituted the following sub-paragraph—

"(b) in the case of an ear-marked scheme, must not exceed the amount, as certified by the relevant insurer, which on the settlement date is required to be paid to the trustees of the scheme in order to secure that the value on that date of the assets of the scheme is equal to 90 per cent. of their value immediately before the reduction falling within Article 79(1)(*c*), where the value of the assets of the scheme immediately before that reduction is adjusted so as to take account of subsequent alterations in their value (if any) which occur prior to the settlement date, including those which would have occurred if that reduction had not taken place."; and

(b) these Regulations shall have effect as if in regulation 5 for paragraph (5) there were substituted the following paragraph—

"(5) For the purposes of Article 81(3)(*b*) (amount required to secure that assets are equal to 90 per cent. of their pre-loss value), the amount required to be paid to the trustees of the scheme shall be calculated in accordance with the formula—

$$(T + S) \times 90\% - V$$

where—

a T is the value of the assets (excluding unallocated assets) on such date as immediately precedes the loss, adjusted so as to take into account the loss, and other alterations in their value (if any) between that date and the settlement date, as certified by the relevant insurer;

b S is the value of the assets constituting the loss on such date as immediately precedes its occurrence, adjusted so as to reflect any alteration in the value of those assets which would have occurred had they remained in the scheme until the settlement date, as certified by the relevant insurer;

c V is the value of the assets at the settlement date, as certified by the relevant insurer,

and the same principles are used to value the assets for the purposes of T, S and V.".

Sealed with the Official Seal of the Department of Health and Social Services on

L.S.

John O'Neill

10th March 1997. Assistant Secretary

EXPLANATORY NOTE

(This note is not part of the Regulations.)

These Regulations relate to the payment of compensation to occupational pension schemes by the Pensions Compensation Board ("the Board"), as provided for under Articles 79 to 83 ("the compensation provisions") of the Pensions (Northern Ireland) Order 1995 ("the Order").

Regulation 1 provides for the citation, commencement and interpretation of the Regulations.

Regulation 2 provides for exemptions to the compensation provisions.

Article 79(1) of the Order specifies the conditions which must be met for a scheme to establish eligibility for compensation. Article 79(1)(*c*) of the Order provides that the value of the scheme assets must have been reduced and that there must be reasonable grounds for believing that the reduction is attributable to an act or omission constituting a prescribed offence. Regulation 3 provides that the prescribed offence is one involving dishonesty.

Regulation 4 sets out who may make an application for compensation.

Article 81(3) of the Order provides that the amount of compensation must not exceed, firstly, 90 per cent. of the reduction falling within Article 79(1)(*c*) of the Order at the application date ("the shortfall") together with interest on the shortfall at the prescribed rate for the prescribed period, and secondly, in the case of a salary-related scheme, the amount required to restore the scheme to a funding level of 90 per cent. at the date after which the Board determine further recoveries of value are unlikely to be made without disproportionate cost or within a reasonable time. Regulation 5 provides that the total amount of compensation paid shall equal whichever is the lower of those amounts, and makes provision as to the manner in which such amounts are to be calculated.

Regulation 6 concerns payments made in anticipation of a final payment of compensation. It specifies the liabilities which a scheme must be unable to meet, either fully or in part, before anticipatory payments can be made; lays down criteria by reference to which such payments are to be calculated; and prescribes the circumstances in which such payments may not be recovered.

Regulations 7 to 10 provide for modification of the compensation provisions, where some but not all the benefits that a scheme provides are money purchase benefits (regulation 7), where a scheme applies to earners in employments under different employers (regulation 8), where only part of a scheme is approved for tax exemption purposes (regulation 9), and where all the benefits that a scheme provides (other than death benefits) are money purchase benefits (regulation 10).

These Regulations are made under Articles 56(3), 79(1)(*c*) and (2), 80(1), 81(2) and (3)(*a*), 82(1)(*b*) to (3), 84, 122(2) and 166(1) to (3) of the Order. The Pensions (1995 Order) (Commencement No. 2) Order (Northern Ireland) 1996 (S.R. 1996 No. 91 (C. 4)) provides for the coming into operation of Article 56, for the purpose only of authorising the making of regulations, and Article 166, in so far as it was not already in operation, on 6th April 1996. The Pensions (1995 Order) (Commencement No. 4) Order (Northern Ireland) 1996 (S.R. 1996 No. 307 (C. 18)) provides for the coming into operation of Article 79(1)(*c*) and (2), 80(1), 81(2) and (3)(*a*), 82(1)(*b*), (2) and (3) and 84, for the purpose only of authorising the making of regulations, on 23rd July 1996. The Pensions (1995 Order) (Commencement No. 5) Order (Northern Ireland) 1996 (S.R. 1996 No. 534 (C. 25)) provides for the coming into operation of Article 122(2), in so far as it was not already in operation, on 19th November 1996.

As these Regulations make in relation to Northern Ireland only provision corresponding to provision contained in regulations made by the Secretary of State for Social Security 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.