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STATUTORY RULES OF NORTHERN IRELAND

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**2005 No. 568**

**PENSIONS**

**The Occupational Pension Schemes (Scheme Funding) Regulations (Northern Ireland) 2005**

*Made - - - - 16th December 2005*

*Coming into operation 30th December 2005*

The Department for Social Development, in exercise of the powers conferred by Article 68(2)(e) of the Pensions (Northern Ireland) Order 1995<sup>(1)</sup>, and now vested in it<sup>(2)</sup>, and Articles 64(2)(a), 200(1)(b) and (2), 201(3) and (4)(b) and (c), 202(1)(b) and (3), 203(1)(b), (4) and (6), 205(1) and (4) to (6), 206(3)(a) and (b) and (4), 207(2), 208(2) and (5), 209(2) and (3), 210(4), 211 and 287(2), (3) and (4) of the Pensions (Northern Ireland) Order 2005<sup>(3)</sup>, 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 (Scheme Funding) Regulations (Northern Ireland) 2005 and shall come into operation on 30th December 2005.

**Interpretation**

2.—(1) In these Regulations—

“the Order” means the Pensions (Northern Ireland) Order 2005 and any reference to a numbered Article is a reference to the Article of the Order bearing that number;

“the Taxes Act 1988” means the Income and Corporation Taxes Act 1988<sup>(4)</sup>;

“the actuary”, in relation to a scheme, means the actuary appointed under Article 47(1)(b) of the 1995 Order (professional advisers) in relation to that scheme;

“the commencement date” means 30th December 2005;

“insurance policy” means an insurance policy which is a contract on human life or a contract of annuity on human life, but excluding a contract which is linked to investment funds;

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(1) S.I. 1995/3213 (N.I. 22)  
(2) See Article 8(b) of S.R. 1999 No. 481  
(3) S.I. 2005/255 (N.I. 1)  
(4) 1988 c. 1

- “pension credit rights” has the meaning given by Article 121(1) of the 1995 Order<sup>(5)</sup>;
- “the Regulator” means the Pensions Regulator<sup>(6)</sup>;
- “the relevant accounts”, for the purposes of identifying and valuing the assets of a scheme, are audited accounts for the scheme—
- (a) which comply with the requirements imposed under Article 41 of the 1995 Order<sup>(7)</sup> (provision of documents for members), and
  - (b) which are prepared in respect of a period ending with the effective date of the valuation.

(2) In these Regulations “scheme” must be read in appropriate cases in accordance with the modifications of Part IV of the Order made by paragraphs 1, 4, 5 and 7 of Schedule 2 (multi-employer sectionalised schemes, partly foreign schemes and schemes with a partial government guarantee), and “employer” and “member” must be construed accordingly.

### **Determination of assets and liabilities**

3.—(1) The assets of a scheme to be taken into account for the purposes of Part IV of the Order are the assets attributed to the scheme in the relevant accounts, excluding—

- (a) any resources invested (or treated as invested by or under Article 40 of the 1995 Order) in contravention of Article 40(1) of the 1995 Order (restriction on employer-related investments);
- (b) any amounts treated as a debt due to the trustees or managers under Article 75(2) or (4) of the 1995 Order<sup>(8)</sup> (deficiencies in the assets) or Article 207(3) (amounts due in accordance with a schedule of contributions) 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.

(2) The liabilities of a scheme to be taken into account for the purposes of Part IV of the Order 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.

(3) For the purposes of paragraph (2)—

“right” includes a pension credit right;

“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.

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(5) The definition of “pension credit rights” was 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))

(6) See section 1 of the Pensions Act 2004 (c. 35)

(7) Article 41 was amended by paragraph 10 of Schedule 5 to the Child Support, Pensions and Social Security Act (Northern Ireland) 2000 (c. 4 (N.I.)) and is amended by paragraph 46 of Schedule 10 to the Pensions (Northern Ireland) Order 2005

(8) Article 75 was amended by Article 248 of the Pensions (Northern Ireland) Order 2005

(4) Where rights under an insurance policy are excluded under paragraph (1)(c), the liabilities secured by the policy shall be disregarded for the purposes of paragraph (2).

(5) 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—

- (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.

### **Valuation of assets and determination of the amount of liabilities**

4.—(1) Subject to paragraph (2), the value to be given to the assets of a scheme for the purposes of Part IV of the Order 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 taken into account under regulation 3(1) is the value the actuary considers appropriate in the circumstances of the case.

(3) In paragraph (1), “the external liabilities” of a scheme are such liabilities of the scheme (other than liabilities within regulation 3(2)) 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.

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

### **Calculation of technical provisions**

5.—(1) Subject to paragraphs (2) and (3), it is for the trustees or managers of a scheme to determine which method and assumptions are to be used in calculating the scheme’s technical provisions.

(2) The method used in calculating a scheme’s technical provisions must be an accrued benefits funding method.

(3) In determining which accrued benefits funding method and which assumptions are to be used, the trustees or managers must—

- (a) follow the principles set out in paragraph (4), and
- (b) in the case of a scheme under which the rates of contributions payable by the employer are determined—
  - (i) by or in accordance with the advice of a person other than the trustees or managers, and
  - (ii) without the employer’s agreement,take account of the recommendations of that person.

(4) The principles to be followed under paragraph (3) are—

- (a) the economic and actuarial assumptions must be chosen prudently, taking account, if applicable, of an appropriate margin for adverse deviation;
- (b) the rates of interest used to discount future payments of benefits must be chosen prudently, taking into account either or both—
  - (i) the yield on assets held by the scheme to fund future benefits and the anticipated future investment returns, and
  - (ii) the market redemption yields on government or other high-quality bonds;

- (c) the mortality tables used and the demographic assumptions made must be based on prudent principles, having regard to the main characteristics of the members as a group and expected changes in the risks to the scheme, and
- (d) any change from the method or assumptions used on the last occasion on which the scheme's technical provisions were calculated must be justified by a change of legal, demographic or economic circumstances.

### **Statement of funding principles**

6.—(1) A statement under Article 202 must include the following matters, in addition to those specified in that Article—

- (a) any funding objectives provided for in the rules of the scheme, or which the trustees or managers have adopted, in addition to the statutory funding objective;
- (b) whether there are arrangements for a person other than the employer or a member of the scheme to contribute to the funds held by the scheme and, if there are such arrangements, the circumstances in which they apply;
- (c) whether there is a power to make payments to the employer out of funds held for the purposes of the scheme and, if there is such a power, the circumstances in which it may be exercised;
- (d) whether there are discretionary powers to provide or increase benefits for, or in respect of, all or any of the members and, if there are such powers, the extent to which they are taken into account in the funding of the scheme;
- (e) the policy of the trustees or managers regarding the reduction of the cash equivalent of benefits which have accrued to or in respect of members on account of the state of the funding of the scheme, and
- (f) the intervals at which the trustees or managers will obtain actuarial valuations in accordance with Article 203(1)(a), and the circumstances in which and occasions on which they will, or will consider whether to, obtain actuarial valuations in addition to those obtained at such intervals.

(2) The first statement under Article 202 in respect of a scheme must be prepared by the trustees or managers within 15 months after the effective date of the first actuarial valuation obtained by them under Article 203.

(3) A statement under Article 202 must be reviewed, and if necessary revised—

- (a) within 15 months after the effective date of each subsequent actuarial valuation, and
- (b) within a reasonable period after any occasion on which the Regulator has exercised any of the powers conferred by Article 210(2) in relation to the scheme.

(4) A statement under Article 202 must specify the date on which it was prepared, or, if it has been revised, the date on which it was last revised.

### **Actuarial valuations and reports**

7.—(1) In addition to the regular valuations provided for in Article 203(1)(a), the trustees or managers of a scheme must obtain an actuarial valuation where the Regulator has given directions under Article 210(2)(b)(i) as to the manner in which the scheme's technical provisions are to be calculated.

(2) Where the trustees or managers have obtained an actuarial valuation or an actuarial report, they must ensure that it is received by them—

- (a) in the case of a valuation under Article 203(1)(a), within 15 months after its effective date;

- (b) in the case of a valuation where the Regulator has given directions under Article 210(2)
  - (b)(i)—
    - (i) within three months after the date of the directions if the effective date of the valuation is before the date of the directions, and
    - (ii) within six months after the effective date of the valuation if that date is the same as or later than the date of the directions;
  - (c) in the case of a report, within 12 months after its effective date.
- (3) Where the assets taken into account in an actuarial valuation include rights under an insurance policy, the valuation must state the reason why the value given to such rights is considered appropriate in the circumstances of the case.
- (4) An actuarial valuation must include—
  - (a) the actuary’s certification of the calculation of the technical provisions, in the form set out in Schedule 1, and
  - (b) the actuary’s estimate of the solvency of the scheme.
- (5) An actuarial report must include an assessment by the actuary of changes in the value of the scheme’s assets since the last actuarial valuation was prepared.
- (6) In paragraph (4), “the actuary’s estimate of the solvency of the scheme” means—
  - (a) except in the case referred to in paragraph (b), an estimate by the actuary of whether, on the effective date of a valuation, the value of assets of the scheme to be taken into account under regulation 3(1) exceeded or fell short of the sum of—
    - (i) the cost of purchasing annuities, of the type described in Article 74(3)(c) of the 1995 Order<sup>(9)</sup> and on terms consistent with those in the available market, which would be sufficient to satisfy the liabilities taken into account under regulation 3(2), and
    - (ii) the other expenses which, in the opinion of the actuary, would be likely to be incurred in connection with a winding up of the scheme,and the amount of the excess or, as the case may be, the shortfall, and
  - (b) where the actuary considers that it is not practicable to make an estimate in accordance with paragraph (a), an estimate of the solvency of the scheme on the effective date of the valuation made in such manner as the actuary considers appropriate in the circumstances of the case.
- (7) Where the actuary’s estimate of solvency is made under paragraph (6)(b), the valuation must include a brief account of the principles adopted in making the estimate.

## **Recovery plan**

- 8.—**(1) Where Article 205(1) applies, and the trustees or managers of a scheme are required, following an actuarial valuation, either to prepare a recovery plan or to review and, if necessary, revise an existing recovery plan, they must do so—
- (a) in the case of the first actuarial valuation obtained by them under Article 203 and each subsequent valuation under Article 203(1)(a), within 15 months after the effective date of the valuation;
  - (b) in the case of a valuation under Article 203(1)(b) and regulation 7(1), within whichever period is applicable under regulation 7(2)(b).
- (2) In preparing or revising a recovery plan, the trustees or managers must take account of the following matters—

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

- (a) the asset and liability structure of the scheme;
- (b) its risk profile;
- (c) its liquidity requirements;
- (d) the age profile of the members, and
- (e) in the case of a scheme under which the rates of contributions payable by the employer are determined—
  - (i) by or in accordance with the advice of a person other than the trustees or managers, and
  - (ii) without the agreement of the employer, the recommendations of that person.

(3) A recovery plan must be reviewed, and if necessary revised, where the Regulator has given directions under Article 210(2)(b)(ii) as to the period within which, and manner in which, a failure to meet the statutory funding objective is to be remedied.

(4) Where paragraph (3) applies, the review and any necessary revision must be completed within a reasonable period after the date of the Regulator’s directions.

(5) A recovery plan may be reviewed and, if necessary, revised where the trustees or managers consider that there are reasons that may justify a variation to it.

(6) A recovery plan must specify the date on which it was prepared, or, if it has been revised, the date on which it was last revised.

(7) A copy of any recovery plan sent to the Regulator by the trustees or managers of a scheme must be accompanied—

- (a) in a case where the plan has been prepared or revised following an actuarial valuation, by a summary of the information contained in the valuation, and
- (b) in a case where the plan has been revised in the circumstances described in paragraph (5), by an explanation of the reasons for the revision.

(8) The commencement of the winding up of an eligible scheme, as defined in Article 110 (eligible schemes), during the recovery period specified in the scheme’s recovery plan is a notifiable event for the purposes of Article 64(2)(a).

### **Schedule of contributions**

**9.—**(1) A schedule of contributions for a scheme must be prepared within 15 months after the effective date of the first actuarial valuation following the establishment of the scheme.

(2) Where a schedule of contributions has been prepared, it must be reviewed and, if necessary, revised—

- (a) within 15 months after the effective date of each subsequent actuarial valuation under Article 203(1)(a);
- (b) within whichever period is applicable under regulation 7(2)(b) after any valuation under Article 203(1)(b) and regulation 7(1), and
- (c) within a reasonable period after any revision of a recovery plan under regulation 8(3) or (5).

### **Content and certification of schedules of contributions**

**10.—**(1) A schedule of contributions must show the rates and due dates of all contributions (other than voluntary contributions) payable towards the scheme by, or on behalf of, the employer and the active members during the relevant period.

(2) In this regulation, “the relevant period” means the period of five years after the date on which the schedule is certified or, in a case where—

- (a) a recovery plan is in force, and
- (b) the period set out in the recovery plan as the period within which the statutory funding objective is to be met is longer than five years after the date on which the schedule is certified,

that longer period.

(3) The schedule must show separately—

- (a) the rates and due dates of contributions payable by, or on behalf of, active members of the scheme;
- (b) the rates and due dates of the contributions payable by, or on behalf of, the employer, and
- (c) if separate contributions to satisfy liabilities other than those referred to in regulation 3(2) which are likely to fall due for payment by the trustees or managers during the relevant period are made to the scheme, the rates and due dates of those contributions.

(4) Where additional contributions are required in order to give effect to a recovery plan, the rates and dates of those contributions must be shown separately from the rates and dates of contributions otherwise payable.

(5) The schedule must be signed by the trustees or managers of the scheme, and make provision for signature by the employer in order to signify his agreement to the matters included in it.

(6) The schedule must incorporate the actuary’s certification, in the relevant form set out in Schedule 1.

## Records

**11.**—(1) The trustees or managers of a scheme to which Part IV of the Order applies must keep records of all contributions made to the scheme by any person, showing separately—

- (a) the aggregate amounts of contributions paid by, or on behalf of, active members of the scheme (whether by deductions from their earnings or otherwise) and the dates on which they are paid, distinguishing voluntary contributions from other contributions, and showing the amounts of voluntary contributions paid by each member, and
- (b) the aggregate amounts of contributions paid by, or on behalf of, each person who is an employer in relation to the scheme and the dates on which they are paid.

(2) The trustees or managers must also keep records of any action taken by them to recover—

- (a) the amount of any contributions which are not paid on the date on which they are due, and
- (b) the amount of any debt which has arisen under Article 75(2) or (4) of the 1995 Order.

## Failure to make payments

**12.** The trustees or managers of a scheme are not required to give notice, under Article 207(2) (requirement to notify Regulator of failure likely to be of material significance), of a failure to make a payment in accordance with the schedule of contributions where they have given the Regulator notice of the failure under—

- (a) Article 49(9)(b) of the 1995 Order<sup>(10)</sup> (failure to remit deductions from member’s earnings), or

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<sup>(10)</sup> Article 49(9)(b) was inserted by Article 11(1) of the Welfare Reform and Pensions (Northern Ireland) Order 1999 (S.I. 1999/3147 (N.I. 11))

- (b) Article 26(7)(c) (failure to pay employer’s contributions in accordance with Regulator’s order).

### **Period for obtaining employer’s agreement**

**13.** Where, following an actuarial valuation, the trustees or managers of a scheme are required under Article 208(1) to obtain the agreement of the employer to any of the matters mentioned in sub-paragraphs (a) to (d) of that provision, they must do so within 15 months after the effective date of the valuation.

### **Powers of the Regulator**

**14.—(1)** In exercising any of the powers conferred by Article 210 in the case of a scheme of the kind referred to in regulations 5(3)(b) and 8(2)(e), the Regulator must take into account any relevant recommendations made to the trustees or managers under those regulations.

(2) In exercising the power in Article 210(2)(b)(i) to give directions as to the manner in which a scheme’s technical provisions are to be calculated, the Regulator must include a direction specifying the effective date by reference to which assets are valued and the amount of liabilities is determined.

### **Guidance relating to actuarial advice**

**15.** When advising the trustees or managers of a scheme on any of the matters specified in Article 209(1), the actuary shall have regard to the guidance note “Occupational Pension Schemes – scheme funding matters on which advice of actuary must be obtained” (GN 49) prepared and published by the Institute of Actuaries and the Faculty of Actuaries and approved for the purposes of these Regulations by the Department, with such revisions as have been so approved<sup>(11)</sup>.

### **Modification of shared cost schemes**

**16.—(1)** The trustees of a shared cost scheme to which Part IV of the Order applies may by resolution modify the scheme with a view to making such provision that, where any additional contributions are required to give effect to a recovery plan, those contributions are payable by the employer and the members in the appropriate proportions, unless the employer and the trustees or managers agree—

- (a) that the additional contributions should be payable by the employer alone, or
- (b) that he should pay a greater proportion than would otherwise fall to be paid by him.

(2) In paragraph (1)—

“shared cost scheme” means a scheme under the provisions of which—

- (a) the level of benefits expected to be provided is defined;
- (b) contributions are payable by the employer and the active members in specified proportions, and
- (c) if—
  - (i) it appears to the trustees or managers, or
  - (ii) an actuarial valuation shows,

that otherwise the assets of the scheme will (or are likely to) fall short of its technical provisions, the rates of contributions payable by both the active members and the employer may be increased in specified proportions, and

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<sup>(11)</sup> Copies of GN 49 may be obtained from the Institute of Actuaries, Staple Inn Hall, High Holburn, London WC1V 7QJ and from the Faculty of Actuaries, Maclaurin House, 18 Dublin Street, Edinburgh EH1 3PP



“the appropriate proportions” means those specified proportions.

- (3) For the purposes of paragraph (2) there shall be disregarded—
- (a) voluntary contributions by members and any associated contributions by the employer, and
  - (b) any temporary suspension of the liability to make contributions, or alteration in the proportions in which the contributions are payable, under any provision of the scheme allowing such a suspension or alteration in any circumstances.

### **Exemptions - general**

- 17.—(1) Part IV of the Order does not apply to—
- (a) a scheme which—
    - (i) is established by, or under, a statutory provision, and
    - (ii) is guaranteed by a public authority;
  - (b) a pay-as-you-go scheme;
  - (c) a scheme which is established under section 48 of the Northern Ireland Act 1998<sup>(12)</sup> (pensions of members), or which was established under Part II of the Ministerial Salaries and Members' Pensions Act (Northern Ireland) 1965<sup>(13)</sup> or Article 3 of the Assembly Pensions (Northern Ireland) Order 1976<sup>(14)</sup>;
  - (d) a section or part of a scheme which is treated as a scheme by virtue of paragraph 4 or 5, as the case may be, of Schedule 2 and—
    - (i) in the cases described in paragraphs 4(2) and 5(2)(a) of that Schedule, applies to members in employment outside the member States, and
    - (ii) in the cases described in paragraphs 4(3) and 5(2)(b) of that Schedule, applies to members in employment outside the United Kingdom;
  - (e) a scheme which—
    - (i) provides relevant benefits;
    - (ii) is neither a relevant statutory scheme nor a tax approved scheme, or, from 6th April 2006, is not a tax registered scheme, and
    - (iii) has fewer than 100 members;
  - (f) a section 615(6) scheme which has fewer than 100 members;
  - (g) a scheme which has fewer than two members;
  - (h) a scheme which has fewer than 12 members, where all the members are trustees of the scheme and either—
    - (i) the provisions of the scheme provide that all decisions which fall to be made by the trustees are made by the unanimous agreement of the trustees who are members of the scheme, or
    - (ii) the scheme has a trustee who is an independent trustee in relation to the scheme for the purposes of Article 23 of the 1995 Order<sup>(15)</sup> (power to appoint independent trustees) and is registered in the register maintained by the Regulator in accordance with regulations made under paragraph (4) of that Article;
  - (i) a scheme which has fewer than 12 members, where a company is a trustee of the scheme and all the members of the scheme are directors of the company and either—

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<sup>(12)</sup> 1998 c. 47

<sup>(13)</sup> 1965 c. 18 (N.I.)

<sup>(14)</sup> S.I. 1976/1779

<sup>(15)</sup> Article 23 was substituted by Article 32(3) of the Pensions (Northern Ireland) Order 2005 (S.I. 2005/255 (N.I. 1))

- (i) the provisions of the scheme provide that any decision made by the company in its capacity as trustee is made only by the unanimous agreement of the directors who are members of the scheme, or
- (ii) one of the directors is a trustee who is independent in relation to the scheme for the purposes of Article 23 of the 1995 Order and is registered in the register maintained by the Regulator in accordance with regulations made under paragraph (4) of that Article;
- (j) a scheme under which the only benefits provided for (other than money purchase benefits) are death benefits, if the death benefits are secured by insurance policies or annuity contracts;
- (k) a scheme which is the subject of a scheme failure notice under Article 106 or 114, or
- (l) subject to regulation 18, a scheme which is being wound up.

(2) In paragraph (1)—

“pay-as-you-go scheme” means an occupational pension scheme under which there is no requirement for assets to be set aside in advance for the purpose of providing benefits under the scheme (disregarding any requirements relating to additional voluntary contributions);

“public authority” means—

- (a) a Minister of the Crown (within the meaning of the Ministers of the Crown Act 1975<sup>(16)</sup>);
- (b) a government department (including any body or authority exercising statutory functions on behalf of the Crown), or
- (c) a local authority;

“relevant benefits” has the meaning given in section 612(1) of the Taxes Act 1988<sup>(17)</sup> (interpretation) or, from 6th April 2006, section 393B of the Income Tax (Earnings and Pensions) Act 2003<sup>(18)</sup>;

“relevant statutory scheme” has the meaning given in section 611A(1) of the Taxes Act 1988<sup>(19)</sup>;

“section 615(6) scheme” means a scheme with such a superannuation fund as is mentioned in section 615(6) of the Taxes Act 1988<sup>(20)</sup> (funds for the provision of benefits in respect of employment outside the United Kingdom);

“a tax approved scheme” means a scheme which is approved or was formerly approved under section 590 or 591 of the Taxes Act 1988<sup>(21)</sup> (approval of retirement benefit schemes) or in respect of which an application for such approval has been duly made but has not been determined;

“a tax registered scheme” means a scheme which is, or is treated as, registered under Chapter 2 of Part 4 of the Finance Act 2004<sup>(22)</sup> (registration of pension schemes).

(3) In paragraph (2), “local authority” has the meaning given by Article 2(2) of the Superannuation (Northern Ireland) Order 1972<sup>(23)</sup>.

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<sup>(16)</sup> 1975 c. 26

<sup>(17)</sup> The definition of “relevant benefits” was amended by paragraph 10(1) of Schedule 10 to the Finance Act 1999 (c. 16). Section 612(1) is repealed by Part 3 of Schedule 42 to the Finance Act 2004 (c. 12) with effect from 6th April 2006

<sup>(18)</sup> 2003 c. 1; section 393B is inserted by section 249(3) of the Finance Act 2004 with effect from 6th April 2006

<sup>(19)</sup> Section 611A was inserted by paragraph 15 of Schedule 6 to the Finance Act 1989 (c. 26) and subsection (1) was substituted by paragraph 5 of Schedule 5 to the Finance Act 1999. The section is repealed by Part 3 of Schedule 42 to the Finance Act 2004 with effect from 6th April 2006

<sup>(20)</sup> Section 615(6) was amended by paragraph 11 of Schedule 10 to the Finance Act 1999

<sup>(21)</sup> Section 590 was amended by paragraph 3 of Schedule 6 to the Finance Act 1989

<sup>(22)</sup> 2004 c. 12

<sup>(23)</sup> S.I. 1972/1073 (N.I. 10)

(4) Where Part IV of the Order ceases to apply to a scheme to which it previously applied, because the scheme satisfies any of the criteria for exemption in paragraph (1), that does not affect any rights or obligations arising before that Part ceased to apply.

### **Exemption connected with winding up**

**18.**—(1) Where the winding up of a scheme begins on or after the commencement date, the exemption provided for in regulation 17(1)(l) is subject to the condition set out in paragraph (2).

(2) The condition referred to in paragraph (1) is that the trustees or managers of the scheme ensure that they receive, before the end of each scheme year following the scheme year in which the winding up of the scheme begins, the actuary's estimate of the solvency of the scheme as at the end of the preceding scheme year.

(3) In paragraph (2)—

“the actuary's estimate of the solvency of the scheme” means—

- (a) except in the case referred to in paragraph (b), an estimate by the actuary of whether, at the end of the relevant scheme year, the value of assets of the scheme to be taken into account under regulation 3(1) exceeded or fell short of the sum of—
  - (i) the cost of purchasing annuities, of the type described in Article 74(3)(c) of the 1995 Order<sup>(24)</sup> and on terms consistent with those in the available market, which would be sufficient to satisfy the liabilities to be taken into account under regulation 3(2), and
  - (ii) the other expenses which, in the opinion of the actuary, would be likely to be incurred in connection with the winding up of the scheme,and the amount of the excess or, as the case may be, the shortfall;
- (b) where the actuary considers that it is not practicable to make an estimate in accordance with paragraph (a), an estimate of the solvency of the scheme at the end of the relevant scheme year made in such manner as the actuary considers appropriate in the circumstances of the case;

“scheme year” means—

- (a) either—
  - (i) a year specified for the purposes of the scheme rules in any document which contains those rules, or
  - (ii) if no such year is specified, the period of 12 months commencing on 1st April or on such date as the trustees or managers select, or
- (b) such other period (if any) exceeding six months but not exceeding 18 months as is selected by the trustees or managers in connection with—
  - (i) the commencement or termination of the scheme, or
  - (ii) a variation of the date on which the year or period referred to in paragraph (a) is to commence.

### **Modification of provisions of the Order**

**19.** Schedule 2 has effect for the purpose of modifying Part IV of the Order and these Regulations as they apply in the circumstances specified in that Schedule.

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<sup>(24)</sup> Article 74(3)(c) was amended by Article 60 of S.I. 2002/1555

**Supplementary, consequential and transitional provisions and savings**

**20.**—(1) Schedule 3 has effect for the purpose of making supplementary provisions and consequential amendments connected with the commencement of Part IV of the Order and the coming into operation of these Regulations.

(2) Schedule 4 has effect for the purpose of making transitional modifications of the Order and these Regulations, and saving the effect of repealed provisions of the 1995 Order and provisions revoked by these Regulations.

**Revocations**

**21.** The regulations specified in column (1) of Schedule 5 are revoked to the extent specified in column (3), subject to the savings in Schedule 4.

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

L.S.

*John O'Neill*  
A senior officer of the  
Department for Social Development

SCHEDULE 1

Regulations 7(4)(a) and 10(6)

Actuary's Certificates

**Form of actuary's certification of the calculation of technical provisions**

Name of scheme

Calculation of technical provisions

I certify that, in my opinion, the calculation of the scheme's technical provisions as at [*insert effective date of valuation on which the calculation is based*] is made in accordance with regulations under Article 201 of the Pensions (Northern Ireland) Order 2005. The calculation uses a method and assumptions determined by the [trustees][managers] [*delete whichever does not apply*] of the scheme and set out in the Statement of Funding Principles dated [*dd/mm/yyyy*].

Signature

Date

Name

Qualification

Address

Name of employer (if applicable)

**Form of actuary's certification of schedule of contributions**

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Name of scheme

Adequacy of rates of contributions

1. I hereby certify that, in my opinion, the rates of contributions shown in this schedule of contributions are such that—

the statutory funding objective can be expected to be met by the end of the period specified in the recovery plan dated [dd/mm/yyyy](a).

the statutory funding objective can be expected to continue to be met for the period for which the schedule is to be in force (b).

*[delete whichever alternative does not apply]*

Adherence to statement of principles

2. I hereby certify that, in my opinion, this schedule of contributions is consistent with the Statement of Funding Principles dated [dd/mm/yyyy].

The certification of the adequacy of the rates of contributions for the purpose of securing that the statutory funding objective can be expected to be met is not a certification of their adequacy for the purpose of securing the scheme’s liabilities by the purchase of annuities, if the scheme were to be wound up.

Signature

Date

Name

Qualification

Address

Name of employer (if applicable)

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(a) This applies where the statutory funding objective was not met on the effective date of the last actuarial valuation  
(b) This applies where the statutory funding objective was met on the effective date of the last actuarial valuation

SCHEDULE 2

Regulation 19

Modifications of the Order and Regulations

*Multi-employer schemes*

1.—(1) Where—

- (a) a scheme in relation to which there is more than one employer is divided into two or more sections, and

(b) the provisions of the scheme are such that they meet conditions A and B,

Part IV of the Order and these Regulations shall apply as if each section of the scheme were a separate scheme.

(2) Condition A is that 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, to the section which is appropriate in respect of the employment in question).

(3) Condition B is that 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.

(4) In their application to a scheme—

- (a) which has been such a scheme as is mentioned in sub-paragraph (1);
- (b) which is divided into two or more sections, at least one of which applies only to members who are not in pensionable service under the section;
- (c) the provisions of which have not been amended so as to prevent conditions A and B being met in relation to two or more sections, and
- (d) in relation to one or more sections of which those conditions have ceased to be met at any time by reason only of there being no members in pensionable service under the section and no contributions which are to be allocated to it,

Part IV of the Order and these Regulations shall apply as if the section in relation to which those conditions have ceased to be satisfied were a separate scheme.

(5) For the purposes of sub-paragraphs (1) to (4), any provisions of the scheme by virtue of which contributions or transfers of assets may be made to make provision for death benefits are disregarded.

(6) Where sub-paragraph (1) or (4) applies and, by virtue of any provisions of the scheme, contributions or transfers of assets to make provision for death benefits are 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 be treated as if it were a separate scheme for the purpose of Part IV of the Order and these Regulations.

(7) For the purpose of this paragraph, any provisions of a scheme by virtue of which assets attributable to one section may on the winding up of the scheme or a section be used for the purposes of another section are disregarded.

(8) In their application in a case of the kind described in sub-paragraph (1) or (4), the forms set out in Schedule 1 are modified as follows—

- (a) after "Name of scheme" there shall be added "and name of section", and
- (b) for "scheme" and "scheme's", wherever else they occur, there shall be substituted "section" and "section's" respectively.

2. In the application of Article 208 (matters requiring agreement of the employer) to a scheme in relation to which there is more than one employer, references to the employer shall have effect as if they were references to a person nominated by the employers, or by the rules of the scheme, to act as the employers' representative for the purposes of the section or, if no such nomination is made—

- (a) for the purposes of agreement to any of the matters mentioned in paragraph (1) of that Article, to all of the employers other than any employer who has waived his rights under that paragraph, and
- (b) for the purposes of agreement to a modification of the scheme under paragraph (2) of that Article, to all of the employers.

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*Frozen or paid-up schemes*

3. In the application of Part IV of the Order and these Regulations to a scheme which has no active members, references to the employer have effect as if they were references to the person who was the employer immediately before the occurrence of the event after which the scheme ceased to have any such members.

*Schemes covering United Kingdom and foreign employment*

- 4.—(1) This paragraph applies in the cases described in sub-paragraphs (2) and (3).
- (2) The first case referred to in sub-paragraph (1) is where a scheme—
- (a) has its main administration in the United Kingdom;
  - (b) applies to members in employment in the member States and members in employment outside the member States;
  - (c) is divided into two or more sections, and
  - (d) makes provision whereby—
    - (i) different sections of the scheme apply to members in employment in the member States and to members in employment outside the member States;
    - (ii) contributions payable to the scheme in respect of a member are allocated to the section applying to that member's employment, and
    - (iii) 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.
- (3) The second case referred to in sub-paragraph (1) is where a scheme—
- (a) has its main administration outside the member States;
  - (b) applies to members in employment in the United Kingdom and members in employment outside the United Kingdom;
  - (c) is divided into two or more sections, and
  - (d) makes provision whereby—
    - (i) different sections of the scheme apply to members in employment in the United Kingdom and to members in employment outside the United Kingdom;
    - (ii) contributions payable to the scheme in respect of a member are allocated to the section applying to that member's employment, and
    - (iii) 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.
- (4) Subject to regulation 17, where this paragraph applies, Part IV of the Order and these Regulations shall apply as if each section of the scheme were a separate scheme.

- 5.—(1) This paragraph applies in the case described in sub-paragraph (2).
- (2) The case referred to in sub-paragraph (1) is where a scheme either—
- (a) satisfies the criteria in heads (a) and (b) of paragraph 4(2), but is not divided into sections in the manner described in heads (c) and (d) of that paragraph, or
  - (b) satisfies the criteria in heads (a) and (b) of paragraph 4(3), but is not divided into sections in the manner described in heads (c) and (d) of that paragraph,



and part of the scheme is or was treated as a separate scheme under section 611(3) of the Taxes Act 1988(25).

(3) Subject to regulation 17, where this paragraph applies, Part IV of the Order and these Regulations shall apply as if the separated parts of the scheme were separate schemes.

*Schemes undertaking cross-border activities*

6.—(1) This paragraph applies where the trustees or managers of a scheme are authorised under Article 264 to accept contributions from European employers or approved under Article 265 to accept contributions from a particular European employer.

(2) Where this paragraph applies, and subject to sub-paragraphs (3) and (4), Part IV of the Order and these Regulations shall apply as if they were subject to the following modifications—

(a) in Article 203—

- (i) in paragraph (1)(a) the words from “or, if they” to the end of the paragraph;
- (ii) in paragraph (2) sub-paragraphs (c) and (d);
- (iii) in paragraph (3) sub-paragraph (b) and the word “and” immediately preceding it;
- (iv) in paragraphs (4), (6) and (7) the words “or report”, and
- (v) in paragraph (5) the words “or reports”,

shall be omitted;

(b) in Article 205—

(i) in paragraph (1) for the words from “within the prescribed time” to the end there shall be substituted—

“(a) send a summary of the valuation to the Regulator within a reasonable period, and

(b) take such steps as are necessary to ensure that the statutory funding objective is met within two years after that date.”, and

(ii) paragraphs (2) to (6) shall be omitted;

(c) in Article 206(6)(b)(i) for “by the end of the period specified in the recovery plan” there shall be substituted “within two years after that date”;

(d) in Article 210(1)(d) the words from “with respect to” to the end shall be omitted;

(e) in regulations 6(2) and (3)(a), 7(2)(a), 9(1) and (2)(a) and 13 for “15 months” there shall be substituted “12 months”;

(f) in regulation 7(2) the words “or an actuarial report” shall be omitted;

(g) regulations 7(2)(c) and (5), 8, 9(2)(c) and 17(1)(a) and (e) to (i) shall be omitted;

(h) in regulation 10—

(i) in paragraph (2)—

(aa) for “five years”, in the first place where it occurs, there shall be substituted “two years”, and

(bb) the words from “or, in a case where” to the end shall be omitted, and

(ii) in paragraph (4) for “give effect to a recovery plan” there shall be substituted “comply with Article 205”, and

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- (i) in Schedule 1, in the first of the alternative statements in the form of certification of the adequacy of the rates of contributions for “by the end of the period specified in the recovery plan dated [dd/mm/yyyy]” there shall be substituted “within two years after the effective date of the last actuarial valuation”.
- (3) In the case of a pre-23rd September 2005 scheme—
  - (a) Article 205 applies as if it were subject to the following modifications in place of the modifications in sub-paragraph (2)(b)—
    - (i) in paragraph (1) for the words from “they must, within the prescribed time” to the end there shall be substituted—
      - “they must—
        - (a) send a summary of the valuation to the Regulator within a reasonable period, and
        - (b) take such steps as are necessary to ensure that the statutory funding objective is met—
          - (i) if the valuation is the first valuation the trustees or managers have obtained under Article 203, by 22nd September 2008, and
          - (ii) in any other case, within two years after that date.”, and
      - (ii) paragraphs (2) to (6) shall be omitted, and
    - (b) these Regulations apply as if, in addition to the modifications in sub-paragraph (2)(e) to (i), paragraph 2(a)(i) of Schedule 4 were modified so that, after “this Schedule” there were inserted “and, without prejudice to any of those requirements, by reference to an effective date which is no later than 22nd September 2006”.
- (4) In sub-paragraph (3), “pre-23rd September 2005 scheme” has the meaning given by Article 3 of the Pensions (2005 Order) (Commencement No. 7) Order (Northern Ireland) 2005(26).

*Schemes with a partial guarantee by a public authority*

7. Where such a guarantee has been given as is mentioned in regulation 17(1)(a)(ii) in respect of only part of a scheme, Part IV of the Order and these Regulations shall apply as if that part and the other part of the scheme were separate schemes.

*Schemes under which the rates of contributions are determined by the trustees or managers or by the actuary*

- 8.—(1) In the case of a scheme under which—
- (a) the rates of contributions payable by the employer are determined by the trustees or managers without the agreement of the employer, and
  - (b) no person other than the trustees or managers is permitted to reduce those rates or to suspend payment of contributions,

Article 208 and regulation 13 shall apply as if they were subject to the modifications set out in sub-paragraphs (2) and (3).

- (2) The modifications of Article 208 are as follows—
- (a) in the heading for “agreement of the employer” there shall be substituted “consultation or agreement”;

- (b) in paragraph (1) for “obtain the agreement of the employer to” there shall be substituted “consult the employer regarding”;
  - (c) in paragraph (2) for the words before “(if the employer agrees)” there shall be substituted “After consulting the employer regarding any such matter, the trustees or managers may”;
  - (d) paragraph (5) shall be omitted, and
  - (e) in paragraph (6), for “(1), (4) or (5)” there shall be substituted “(1) or (4)”.
- (3) The modifications of regulation 13 are as follows—
- (a) in the heading for “obtaining employer’s agreement” there shall be substituted “consulting employer”, and
  - (b) for “obtain the agreement of the employer to” there shall be substituted “consult the employer regarding”.
- (4) Where the power of the trustees or managers to determine the rates of contributions payable by the employer without the employer’s agreement is subject to conditions, the modifications provided for in sub-paragraphs (2) and (3) have effect only in circumstances where the conditions are satisfied.
- (5) In the case of a scheme under which the rates of contributions payable by the employer are determined by the actuary without the agreement of the employer, Article 206(6) shall apply as if it required that, in addition to the matters specified there, the actuary’s certificate must state that the rates shown in the schedule of contributions are not lower than the rates he would have provided for if he, rather than the trustees or managers of the scheme, had the responsibility of preparing or revising the schedule, the statement of funding principles and any recovery plan.
- (6) In the case to which sub-paragraph (5) applies, regulation 10(6) and Schedule 1 apply as if the form of certification of the adequacy of the rates of contributions shown in the schedule of contributions included an additional statement that—
- “I also certify that the rates of contributions shown in this schedule are not lower than I would have provided for had I had responsibility for preparing or revising the schedule, the statement of funding principles and any recovery plan.”
- (7) Where the power of the actuary to determine the rates of contributions payable by the employer without the employer’s agreement is subject to conditions, the modifications provided for in sub-paragraphs (5) and (6) have effect only in circumstances where the conditions are satisfied.

*Schemes which are not required to appoint an actuary*

9. Where a scheme is exempt from the application of Article 47(1)(b) of the 1995 Order (requirement to appoint a scheme actuary) by virtue of regulations made under paragraph (5) of that Article, Part IV of the Order and these Regulations shall apply as if references to the actuary were to an actuary authorised by the trustees or managers to provide such valuations and certifications as may be required under that Part and these Regulations.

*Schemes with fewer than 100 members*

- 10.—(1) This paragraph applies in the case of a scheme which—
- (a) had fewer than 100 members on the effective date of its last actuarial valuation;
  - (b) is not exempted from the application of Part IV of the Order by regulation 17(1), and
  - (c) is not a scheme in relation to which the application of that Part of the Order is modified by paragraph 6.
- (2) Where this paragraph applies—

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- (a) Article 203(1)(a) shall apply as if it required the trustees or managers of the scheme to obtain an actuarial valuation the effective date of which is not more than three years after that of the last such valuation, and an actuarial report for any intervening year at any time in which the scheme had 100 or more members, and
- (b) Article 203(3) shall apply as if—
  - (i) all but sub-paragraph (b) were omitted, and
  - (ii) that sub-paragraph required that the effective date of any actuarial report must be an anniversary of the effective date of the last actuarial valuation.

*Schemes subject to a change of circumstances affecting  
the certification of a schedule of contributions*

11.—(1) In circumstances where the actuary considers that, because of the possibility of significant changes in the value of the assets of the scheme or in the scheme’s technical provisions since the effective date of the last actuarial valuation, he is unable to certify the schedule of contributions in the terms set out in sub-paragraph (b) of Article 206(6), that sub-paragraph shall apply as if it provided for a statement that the rates shown in that schedule are such that—

- (a) where the statutory funding objective was not met on the effective date of the last actuarial valuation, the statutory funding objective could have been expected on that date to be met by the end of the period specified in the recovery plan, or
- (b) where the statutory funding objective was met on the effective date of the last actuarial valuation, the statutory funding objective could have been expected on that date to continue to be met for the period for which the schedule is to be in force.

(2) In circumstances where the statutory funding objective was met on the effective date of the last actuarial valuation but the actuary considers that, having regard to—

- (a) the rates of contributions payable towards the scheme since that date, or
- (b) the rates of contributions payable since that date taken together with the possibility of significant changes in the value of the assets of the scheme or in the scheme’s technical provisions,

he is unable to certify the schedule of contributions in the terms set out in sub-paragraph (b)(ii) of Article 206(6), that sub-paragraph shall apply as if it provided for a statement that the rates shown in that schedule are such that the statutory funding objective could have been expected on that date to be met by the end of the period for which the schedule is to be in force.

(3) In the case to which sub-paragraph (1) applies, regulation 10(6) and Schedule 1 apply as if for the alternative statements in the form of certification of the adequacy of the rates of contributions shown in the schedule of contributions there were substituted—

“the statutory funding objective could have been expected on [*insert effective date of valuation on which the schedule is based*] to be met by the end of the period specified in the recovery plan.

the statutory funding objective could have been expected on [*insert effective date of valuation on which the schedule is based*] to continue to be met for the period for which the schedule is to be in force.”.

(4) In the case to which sub-paragraph (2) applies, regulation 10(6) and Schedule 1 apply as if for the alternative statements in the form of certification of the adequacy of the rates of contributions shown in the schedule of contributions there were substituted—

“the statutory funding objective could have been expected on [*insert effective date of valuation on which the schedule is based*] to be met by the end of the period for which the schedule is to be in force.”.

(5) Where paragraph 6 applies, sub-paragraphs (1) and (3) of this paragraph apply as if the references to the period specified in the recovery plan were to the period of two years from the effective date of the last actuarial valuation.

### SCHEDULE 3

Regulation 20(1)

#### Supplementary and Consequential Provisions

#### **Amendment of the Occupational Pension Schemes (Contracting-out) Regulations**

1.—(1) The Occupational Pension Schemes (Contracting-out) Regulations (Northern Ireland) 1996<sup>(27)</sup> shall be amended in accordance with sub-paragraphs (2) to (5).

(2) In regulation 1(2) (interpretation)—

(a) before the definition of “the Act” there shall be inserted the following definition—

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

(b) the definition of “minimum funding requirement” shall be omitted.

(3) In regulation 6(2) (information to be included in an election) for sub-paragraph (g) there shall be substituted the following sub-paragraph—

“(g) in the case of a scheme to which Part IV of the 2005 Order (scheme funding) applies, that the requirements of Articles 203, 204, 205 (if applicable) and 206 of that Order and any regulations under those provisions are complied with.”.

(4) In regulation 18 (requirement as to resources of the scheme)—

(a) in paragraph (1) for the words from “the amount of the resources of the scheme must be” to the end there shall be substituted “either the resources of the scheme must be sufficient to enable the scheme to meet the statutory funding objective provided for in Article 201(1) of the 2005 Order, or the actuary to the scheme must have certified under Article 206(6) (b)(i) of that Order that in his opinion the rates shown in the schedule of contributions are such that the statutory funding objective can be expected to be met by the end of the period specified in the recovery plan.”;

(b) in paragraph (2) for “Article 56 of the Order” there shall be substituted “Part IV of the 2005 Order”, and

(c) after paragraph (2) there shall be added the following paragraph—

“(3) In a case where the trustees of a scheme are authorised under Article 264 of the 2005 Order to accept contributions from European employers or approved under Article 265 of that Order to accept contributions from a particular European employer, paragraph (1) has effect with the substitution for “by the end of the period specified in the recovery plan” of “within two years after the date of the last actuarial valuation under Article 203 of the 2005 Order.””.

(5) In regulation 72 (transitional requirements as to sufficiency of resources of salary-related schemes)—

(a) in paragraph (1A)<sup>(28)</sup>, for “Article 58 of the Order” there shall be substituted “Article 206 of the 2005 Order”;

<sup>(27)</sup> S.R. 1996 No. 493; relevant amending regulations are S.R. 1997 No. 160 and S.R. 2002 No. 109

<sup>(28)</sup> Paragraph (1A) was inserted by regulation 2(16)(b) of S.R. 2002 No. 109

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- (b) in paragraph (3)(29), for “Article 56(3) of the Order (minimum funding requirement)” there shall be substituted “Article 201(3) of the 2005 Order (the statutory funding objective)”, and
  - (c) in paragraph (6)(30), for “Article 56 of the Order” there shall be substituted “Part IV of the 2005 Order”.
- (6) The amendments in this paragraph have effect subject to paragraph 17 of Schedule 4.

### **Amendment of the Occupational Pension Schemes (Transfer Values) Regulations**

2.—(1) The Occupational Pension Schemes (Transfer Values) Regulations (Northern Ireland) 1996(31) shall be amended in accordance with sub-paragraphs (2) to (4).

(2) In regulation 1(2) (interpretation) after the definition of “the 1985 Regulations” there shall be inserted the following definition—

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

- (3) In regulation 7(32) (manner of calculation and verification of cash equivalents)—
  - (a) in paragraph (3)(b), head (iv) and the word “and” immediately preceding it, and
  - (b) paragraph (4),

shall be omitted.

(4) In regulation 8 (further provisions as to calculation of cash equivalents and increases and reductions of cash equivalents (other than guaranteed cash equivalents))—

- (a) in paragraph (4)(33) for “Article 56 (minimum funding requirement)” there shall be substituted “Part IV of the 2005 Order (scheme funding)”;
- (b) in paragraph (4B) “then, subject to paragraph (4D)” shall be omitted;
- (c) paragraphs (4D) to (4I), (4K), (4L) and (6) shall be omitted, and
- (d) in paragraph (5)(34)—
  - (i) for “Article 61, Article 56” there shall be substituted “Article 211 of the 2005 Order, Part IV of that Order”, and
  - (ii) for “paragraphs (4), (4A) and (4G)” there shall be substituted “paragraphs (4) and (4A)”.

### **Amendment of the Occupational Pension Schemes (Winding Up) Regulations**

3.—(1) The Occupational Pension Schemes (Winding Up) Regulations (Northern Ireland) 1996(35) shall be amended in accordance with sub-paragraphs (2) and (3).

(2) In regulation 12(3) (winding up of sectionalised schemes, etc.)—

- (a) for “Schedule 5 to the MFR Regulations” there shall be substituted “Schedule 2 to the Occupational Pension Schemes (Scheme Funding) Regulations (Northern Ireland) 2005”, and
- (b) for “Article 56” there shall be substituted “Part IV of the Pensions (Northern Ireland) Order 2005”.

(29) Paragraph (3) was amended by paragraph 5(13)(b) of the Schedule to [S.R. 1997 No. 160](#)

(30) Paragraph (6) was amended by regulation 2(16)(c) of [S.R. 2002 No. 109](#)

(31) [S.R. 1996 No. 619](#); relevant amending regulations are [S.R. 1997 No. 160](#) and [S.R. 2005 No. 171](#)

(32) Regulation 7(3) was amended by paragraph 11(4) of the Schedule to [S.R. 1997 No. 160](#)

(33) Paragraphs (4) to (4L) were substituted for paragraphs (4) to (4B) by regulation 15(3) of [S.R. 2005 No. 171](#)

(34) Paragraph (5) was amended by regulation 15(4) of [S.R. 2005 No. 171](#)

(35) [S.R. 1996 No. 621](#), to which there are amendments not relevant to these Regulations

- (3) In regulation 13 (hybrid schemes) paragraphs (6) and (7) shall be omitted.

### **Amendment of the Personal and Occupational Pension Schemes (Pensions Ombudsman) Regulations**

4. In regulation 4(2) of the Personal and Occupational Pension Schemes (Pensions Ombudsman) Regulations (Northern Ireland) 1997<sup>(36)</sup> (exclusions from jurisdiction), after sub-paragraph (g) there shall be added “or the requirements under Part IV of the Pensions (Northern Ireland) Order 2005 (scheme funding).”.

### **Amendment of the Occupational Pension Schemes (Scheme Administration) Regulations**

5.—(1) The Occupational Pension Schemes (Scheme Administration) Regulations (Northern Ireland) 1997<sup>(37)</sup> shall be amended in accordance with sub-paragraphs (2) and (3).

(2) In regulation 1(2) (interpretation) after the definition of “the 2000 Act”<sup>(38)</sup> there shall be inserted the following definition—

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

(3) In regulation 16A(2)<sup>(39)</sup> (circumstances in which notice of an employer’s failure to make payments to trustees or managers need not be given) for sub-paragraph (b) there shall be substituted the following sub-paragraph—

“(b) where the scheme is exempt from the requirement to prepare, review and if necessary revise a schedule of contributions under Article 206 of the 2005 Order, by virtue of any of sub-paragraphs (a) to (i) and (k) of regulation 17(1) of the Occupational Pension Schemes (Scheme Funding) Regulations (Northern Ireland) 2005, or”

### **Amendment of the Occupational Pension Schemes (Disclosure of Information) Regulations**

6.—(1) Subject to paragraph 7, the Occupational Pension Schemes (Disclosure of Information) Regulations (Northern Ireland) 1997<sup>(40)</sup> (“the Disclosure Regulations”) shall be amended in accordance with sub-paragraphs (2) to (6).

(2) In regulation 1(2) (interpretation)—

(a) before the definition of “accrued rights” there shall be inserted the following definition—

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

(b) after the definition of “prospective member” there shall be inserted the following definition—

““the Regulator” means the Pensions Regulator;”.

(3) In regulation 5 (information to be made available to individuals)—

(a) in paragraph (1) for “paragraphs (2) to (12)” there shall be substituted “paragraphs (2) to (12ZA)”;

(b) after paragraph (12) there shall be inserted the following paragraph—

“(12ZA) Where the trustees of a scheme to which Part IV of the 2005 Order applies have obtained an actuarial valuation or report under Article 203 of that Order, they shall furnish the information mentioned in paragraphs 17 to 22 of Schedule 2, in the form of a summary funding statement, as of course to all members and beneficiaries (except

<sup>(36)</sup> S.R. 1997 No. 39, to which there are amendments not relevant to these Regulations

<sup>(37)</sup> S.R. 1997 No. 94; relevant amending regulations are S.R. 2000 No. 69, S.R. 2003 No. 256 and S.R. 2005 No. 421

<sup>(38)</sup> The definition of “the 2000 Act” was inserted by regulation 11(2) of S.R. 2003 No. 256

<sup>(39)</sup> Regulation 16A was inserted by regulation 2(3) of S.R. 2000 No. 69 and amended by regulation 3(7) of S.R. 2005 No. 421

<sup>(40)</sup> S.R. 1997 No. 98; relevant amending regulations are S.R. 1997 No. 160, S.R. 2000 No. 262 and S.R. 2002 No. 74

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- excluded persons), within a reasonable period after the date by which they are required by that Article to ensure that the valuation or report is received by them.”;
- (c) after paragraph (12AA)(41) there shall be inserted the following paragraph—
- “(12AB) If a scheme has been modified by the Regulator under Article 210(2)(a) of the 2005 Order (modifications as regards the future accrual of benefits), the trustees must inform all active members of the fact within one month of the modification taking effect.”, and
- (d) in paragraph (12A)(42)—
- (i) for “Schedule 5 to the Occupational Pension Schemes (Minimum Funding Requirement and Actuarial Valuations) Regulations (Northern Ireland) 1996” there shall be substituted “Schedule 2 to the Occupational Pension Schemes (Scheme Funding) Regulations (Northern Ireland) 2005”;
- (ii) for “Article 56 applies” there shall be substituted “Part IV of the 2005 Order applies”, and
- (iii) for “Article 56 does not apply” there shall be substituted “Part IV of that Order does not apply”.
- (4) In regulation 6(1)(c)(43) (availability and content of annual report)—
- (a) for “Article 56” there shall be substituted “Part IV of the 2005 Order”, and
- (b) for “the Order” there shall be substituted “Article 206 of that Order”.
- (5) In regulation 7 (availability of actuarial valuation, schedule of contributions, payment schedule and statement of investment principles)—
- (a) for the heading there shall be substituted “Availability of other documents”, and
- (b) in paragraph (1) for sub-paragraphs (a) to (c) there shall be substituted the following sub-paragraphs—
- “(a) the statement of funding principles prepared under Article 202 of the 2005 Order;
- (b) where Part IV of that Order applies to the scheme, the last actuarial valuation under Article 203 of that Order received by the trustees, or, if an actuarial report under that Article was received by them more recently than the last actuarial valuation, both that valuation and any report received subsequently;
- (c) any recovery plan prepared under Article 205 of that Order which is currently in force;
- (ca) the payment schedule where required under Article 85, or the schedule of contributions where required under Article 206 of the 2005 Order, and”.
- (6) In Schedule 2 (information to be made available to individuals) after paragraph 16 there shall be added the following paragraphs—
- “17. A summary, based on the last actuarial valuation under Article 203 of the 2005 Order received by the trustees and any actuarial report received subsequently, of the extent to which the assets of the scheme are adequate to cover its technical provisions.
18. An explanation of any change in the funding position of the scheme—
- (a) in the case of the first summary funding statement issued in respect of the scheme, since the last actuarial valuation in respect of the scheme under regulation 30 of the Occupational

(41) Paragraph (12AA) was inserted by regulation 14(3) of [S.R. 2002 No. 74](#)

(42) Paragraph (12A) was inserted by paragraph 19(4)(d) of the Schedule to [S.R. 1997 No. 160](#)

(43) Sub-paragraph (c) was substituted by paragraph 19(5) of the Schedule to [S.R. 1997 No. 160](#)



Pension Schemes (Minimum Funding Requirement and Actuarial Valuations) Regulations (Northern Ireland) 1996<sup>(44)</sup> (ongoing actuarial valuation and statements) or, if no such valuation was obtained, since the last actuarial valuation under the rules of the scheme, and

- (b) in the case of any subsequent summary funding statement, since the date of the last summary funding statement.

19. The actuary's estimate of solvency contained in the last actuarial valuation under Article 203 of the 2005 Order received by the trustees.

20. A summary of any recovery plan prepared under Article 205 of the 2005 Order which is currently in force.

21. Whether the scheme has been modified under Article 210(2)(a) of the 2005 Order, is subject to directions under Article 210(2)(b) of that Order or bound by a schedule of contributions imposed under Article 210(2)(c) of that Order, and if so an account of the circumstances in which the modification was made, the direction given or the schedule of conditions imposed.

22. Whether any payment has been made to the employer under Article 37 (payment of surplus to employer)—

- (a) in the case of the first summary funding statement issued in respect of the scheme, in the 12 months preceding the date on which it is prepared, and
- (b) in the case of any subsequent summary funding statement, since the date of the last statement,

and, if so, the amount of the payment.”.

7.—(1) Until the trustees or managers of a scheme have prepared a schedule of contributions under Article 206 (in accordance with regulation 9(1) or paragraph 5 of Schedule 4), the Disclosure Regulations have effect in relation to a scheme to which Part IV of the Order applies as if—

- (a) the amendments in paragraph 4 had not been made;
- (b) those Regulations included the requirement in sub-paragraph (2), and
- (c) regulations 1(2) (so far as material), 10 and 11 of those Regulations applied in respect of that requirement.

(2) The requirement referred to in sub-paragraph (1)(b) is that, before 22nd September in 2006 and each subsequent year the trustees or managers of the scheme furnish all members and beneficiaries (except excluded persons) with the following information, in the form of a summary funding statement—

- (a) a summary, based on the last actuarial valuation under regulation 30 of the Occupational Pension Schemes (Minimum Funding Requirement and Actuarial Valuations) Regulations (Northern Ireland) 1996 (“the MFR Regulations”) received by the trustees or managers or, if no such valuation was obtained, the last actuarial valuation under the rules of the scheme, of the extent to which the assets of the scheme are adequate to meet its liabilities as they fall due;
- (b) an explanation of any change in the funding position of the scheme—
  - (i) in the case of the first summary statement issued in respect of the scheme, since the last actuarial valuation in respect of the scheme under regulation 30 of the MFR Regulations or, if no such valuation was obtained, since the last actuarial valuation under the rules of the scheme, and
  - (ii) in the case of any subsequent summary funding statement, since the date of the last summary funding statement;

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<sup>(44)</sup> S.R. 1996 No. 570; regulation 30 was amended by regulation 7(8) of S.R. 1997 No. 160

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- (c) any estimate by the actuary of the solvency of the scheme, or, if the actuary has made more than one estimate of solvency, the latest such estimate;
- (d) whether any payment has been made to the employer under Article 37 of the 1995 Order—
  - (i) in the case of the first summary funding statement issued in respect of the scheme, in the 12 months preceding the date on which it is prepared, and
  - (ii) in the case of any subsequent summary funding statement, since the date of the last such statement,
 and if so, the amount of the payment.

(3) The trustees or managers of a scheme are not required to comply with the requirement in sub-paragraph (2) in any year if the scheme had fewer than 100 members during the 12 months ending on 31st August in that year.

(4) A summary funding statement furnished under sub-paragraph (2) must be accompanied by a written statement that further information about the scheme is available, giving the address to which enquiries about it should be sent.

#### **Amendment of the Pension Sharing (Valuation) Regulations 2000**

8.—(1) The Pension Sharing (Valuation) Regulations (Northern Ireland) 2000<sup>(45)</sup> shall be amended in accordance with sub-paragraphs (2) to (4).

(2) In regulation 1(2) (interpretation) after the definition of “the 1999 Order” there shall be inserted the following definition—

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

(3) In regulation 4 (occupational pension schemes: manner and calculation and verification of cash equivalents)—

- (a) in paragraph (3)(b), head (iii) and the word “and” immediately preceding it, and
- (b) paragraph (4),

shall be omitted.

(4) In regulation 5 (occupational pension schemes: further provisions as to calculation of cash equivalents and increases and reductions of cash equivalents)—

- (a) in paragraph (3)<sup>(46)</sup> for “Article 56 (minimum funding requirement)” there shall be substituted “Part IV of the 2005 Order (scheme funding)”;
- (b) in paragraph (3B) “then, subject to paragraph (3D)” shall be omitted;
- (c) paragraphs (3D) to (3I), (3K) and (3L) shall be omitted;
- (d) in paragraph (4)<sup>(47)</sup>—
  - (i) for “Schedule 5 to the Minimum Funding Requirement Regulations, Article 56” there shall be substituted “Schedule 2 to the Occupational Pension Schemes (Scheme Funding) Regulations (Northern Ireland) 2005, Part IV of the 2005 Order”, and
  - (ii) for “paragraphs (3), (3A) and (3G)” there shall be substituted “paragraphs (3) and (3A)”, and
- (e) in paragraph (5)<sup>(48)</sup> for “paragraphs (3) and (3F)” there shall be substituted “paragraph (3)”.

<sup>(45)</sup> S.R. 2000 No. 144; relevant amending regulations are S.R. 2000 No. 335 and S.R. 2005 No. 171

<sup>(46)</sup> Paragraphs (3) to (3L) were substituted for paragraphs (3) to (3B) by regulation 16(3) of S.R. 2005 No. 171

<sup>(47)</sup> Paragraph (4) was amended by regulation 16(4) of S.R. 2005 No. 171

<sup>(48)</sup> Paragraph (5) was substituted by regulation 10(4) of S.R. 2000 No. 335 and amended by regulation 16(5) of S. R. 2005 No. 171

### **Amendment of the Pension Sharing (Implementation and Discharge of Liability) Regulations**

9.—(1) The Pension Sharing (Implementation and Discharge of Liability) Regulations (Northern Ireland) 2000(49) shall be amended in accordance with sub-paragraphs (2) and (3).

(2) In regulation 1(2) (interpretation) after the definition of “the 2000 Act”(50) there shall be inserted the following definition—

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

(3) In regulation 16 (adjustments to the amount of pension credit - occupational pension schemes which are underfunded on the valuation day)—

- (a) in paragraph (2)(51) for “Article 56 of the 1995 Order (minimum funding requirement)” there shall be substituted “Part IV of the 2005 Order (scheme funding)”;
- (b) in paragraph (2B) “then, subject to paragraph (2D)” shall be omitted;
- (c) paragraphs (2D) to (2I), (2K) and (2L) shall be omitted, and
- (d) in paragraph (3)(52)—
  - (i) for “Schedule 5 to the Occupational Pension Schemes (Minimum Funding Requirement and Actuarial Valuations) Regulations (Northern Ireland) 1996, Article 56 of the 1995 Order (minimum funding requirement)” there shall be substituted “Schedule 2 to the Occupational Pension Schemes (Scheme Funding) Regulations (Northern Ireland) 2005, Part IV of the 2005 Order (scheme funding)”, and
  - (ii) for “paragraphs (2), (2A) and (2G)” there shall be substituted “paragraphs (2) and (2A)”.

### **Amendment of the Pension Sharing (Pension Credit Benefit) Regulations**

10.—(1) The Pension Sharing (Pension Credit Benefit) Regulations (Northern Ireland) 2000(53) shall be amended in accordance with sub-paragraphs (2) to (4).

(2) In regulation 1(2) (interpretation) after the definition of “the 2000 Act”(54) there shall be inserted the following definition—

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

(3) In regulation 24 (manner of calculation and verification of cash equivalents)—

- (a) in paragraph (3)(b), head (iv) and the word “and” immediately preceding it, and
- (b) paragraph (4),

shall be omitted.

(4) In regulation 27 (increases and reductions of cash equivalents before a statement of entitlement has been sent to the eligible member)—

- (a) in paragraph (4)(55) for “Article 56 (minimum funding requirement)” there shall be substituted “Part IV of the 2005 Order (scheme funding)”;
- (b) in paragraph (4B) “then, subject to paragraph (4D)” shall be omitted;
- (c) paragraphs (4D) to (4I), (4K) and (4L) shall be omitted;

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(49) [S.R. 2000 No. 145](#); relevant amending regulations are [S.R. 2003 No. 256](#) and [S.R. 2005 No. 171](#)

(50) The definition of “the 2000 Act” was inserted by regulation 15(2)(a)(i) of [S.R. 2003 No. 256](#)

(51) Paragraphs (2) to (2L) were substituted for paragraphs (2) to (2B) by regulation 17(2) of [S.R. 2005 No. 171](#)

(52) Paragraph (3) was amended by regulation 17(3) of [S.R. 2005 No. 171](#)

(53) [S.R. 2000 No. 146](#); relevant amending regulations are [S.R. 2003 No. 256](#) and [S.R. 2005 No. 171](#)

(54) The definition of “the 2000 Act” was inserted by regulation 16(2)(a)(i) of [S.R. 2003 No. 256](#)

(55) Paragraphs (4) to (4M) were substituted for paragraphs (4) to (4B) by regulation 18(5) of [S.R. 2005 No. 171](#)

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- (d) in paragraph (4M) for “paragraphs (4J) and (4K)” there shall be substituted “paragraph (4J)”, and
- (e) in paragraph (5)(~~56~~)—
  - (i) for “Schedule 5 to the Minimum Funding Requirement Regulations, Article 56” there shall be substituted “Schedule 2 to the Occupational Pension Schemes (Scheme Funding) Regulations (Northern Ireland) 2005, Part IV of the 2005 Order”, and
  - (ii) for “paragraphs (4), (4A) and (4G)” there shall be substituted “paragraphs (4) and (4A)”.

#### **Amendment of the Stakeholder Pension Schemes Regulations**

11. In regulation 19 of the Stakeholder Pension Schemes Regulations (Northern Ireland) 2000(~~57~~) (requirement for trustees of a stakeholder pension scheme established under a trust) the words “except the reference to Article 56 (minimum funding requirement) in Article 35(2) and Article 35(5)(b) of that Order” shall be omitted.

#### **Amendment of the Occupational Pension Schemes (Republic of Ireland Schemes Exemption) Regulations**

12.—(1) The Occupational Pension Schemes (Republic of Ireland Schemes Exemption) Regulations (Northern Ireland) 2000(~~58~~) shall be amended in accordance with sub-paragraphs (2) to (4).

(2) In regulation 1(2) (interpretation) after the definition of “the Order” there shall be inserted the following definition—

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

(3) In regulation 2(a) (exemption of Republic of Ireland schemes - general provision) after “the Order” there shall be inserted “or the 2005 Order”.

(4) In the Schedule (legislation from which the Republic of Ireland schemes are exempt) at the end there shall be added—

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“Part IV of the 2005 Order

Scheme funding”.

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#### **Amendment of the Occupational Pension Schemes (Administration and Audited Accounts) (Amendment) Regulations**

13. In regulation 4(5) of the Occupational Pension Schemes (Administration and Audited Accounts) (Amendment) Regulations (Northern Ireland) 2005(~~59~~) (circumstances in which trustees or managers do not need to notify failure to pay contributions), in the substituted regulation 16A of the Occupational Pension Schemes (Scheme Administration) Regulations (Northern Ireland) 1997, for paragraph (d) there shall be substituted the following paragraph—

“(d) the scheme is exempt from the requirement to prepare, review and if necessary revise a schedule of contributions under Article 206 of the 2005 Order, by virtue of any of sub-paragraphs (a) to (i), (k) and (l) of regulation 17(1) of the Occupational Pension Schemes (Scheme Funding) Regulations (Northern Ireland) 2005.”.

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(~~56~~) Paragraph (5) was amended by regulation 18(6) of S. R. 2005 No. 171

(~~57~~) S.R. 2000 No. 262, to which there are amendments not relevant to these Regulations

(~~58~~) S.R. 2000 No. 382, to which there are amendments not relevant to these Regulations

(~~59~~) S.R. 2005 No. 421

## SCHEDULE 4

Regulation 20(2)

### Transitional Provisions and Savings

## PART 1

### Transitional provisions

1. Paragraphs 2 to 7 apply in relation to a scheme which—
  - (a) is either—
    - (i) subject to Article 56 of the 1995 Order (minimum funding requirement), or
    - (ii) exempted from the application of that Article by regulation 28 of the Occupational Pension Schemes (Minimum Funding Requirement and Actuarial Valuations) Regulations (Northern Ireland) 1996<sup>(60)</sup> (“the 1996 Regulations”),  
immediately before the commencement date, and
  - (b) becomes subject to Part IV of the Order (scheme funding) on that date.
2. Article 203 (actuarial valuations and reports) shall apply to the scheme as if—
  - (a) it included a requirement for the trustees or managers of the scheme—
    - (i) to obtain an actuarial valuation (“the first valuation under the Order”), in accordance with the requirements specified in paragraph 3 of this Schedule, and
    - (ii) to ensure that the first valuation under the Order is received by them within the relevant period specified in paragraph 4 of this Schedule;
  - (b) neither paragraph (1)(a) nor paragraph (4) applied in relation to the first valuation under the Order, and
  - (c) paragraph (3)(a) were omitted.
- 3.—(1) Except where sub-paragraph (3), (5) or (7) applies, the trustees or managers of the scheme must obtain the first valuation under the Order by reference to an effective date not more than one year after the commencement date.
  - (2) Sub-paragraph (3) applies where—
    - (a) the trustees or managers received, before the commencement date, in accordance with any provisions of Article 57 of the 1995 Order (valuation and certification of assets and liabilities) and the 1996 Regulations, or receive—
      - (i) on or after the commencement date, and
      - (ii) within one year of its effective date,in accordance with any such provisions which continue in operation under Part 2 of this Schedule, an actuarial valuation by reference to an effective date on or after 21st September 2002, and
    - (b) where neither sub-paragraph (5) nor sub-paragraph (7) applies.
  - (3) Where this sub-paragraph applies, the trustees or managers must obtain the first actuarial valuation under the Order by reference to an effective date which is—
    - (a) no earlier than 22nd September 2005, and

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<sup>(60)</sup> S.R. 1996 No. 570; relevant amending regulations are S.R. 1997 Nos. 160 and 544

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(b) not more than three years after the effective date of the last valuation they received under the 1995 Order.

(4) Subject to sub-paragraph (8), sub-paragraph (5) applies where—

(a) immediately before the commencement date, the trustees or managers were required under Article 57(2)(a) of the 1995 Order to obtain an actuarial valuation by virtue of a certificate in the terms set out in that provision, or

(b) on or after the commencement date, the trustees or managers receive a certificate in the terms set out in Article 57(2)(a) of the 1995 Order in consequence of the requirements saved by paragraph 15 of this Schedule,

and the trustees or managers have determined before that date, or determine subsequently, that the valuation should be obtained by reference to an effective date which is no earlier than 22nd September 2005 and not more than three years after the effective date of the last valuation they received under the 1995 Order.

(5) Where this sub-paragraph applies, the trustees or managers must obtain the first valuation under the Order by reference to the effective date they have determined.

(6) Subject to sub-paragraph (8), sub-paragraph (7) applies where—

(a) immediately before the commencement date, the trustees or managers were required under Article 57(2)(b) of the 1995 Order to obtain an actuarial valuation by virtue of the occurrence of an event of the kind described in regulation 13 of the 1996 Regulations (Article 75 debts in multi-employer schemes), and

(b) they have determined before that date, or determine subsequently, that the valuation should be obtained by reference to an effective date which is no earlier than 22nd September 2005 and not more than three years after the effective date of the last valuation they received under the 1995 Order.

(7) Where this sub-paragraph applies, the trustees or managers must obtain the first valuation under the Order by reference to the effective date they have determined.

(8) In a case where, but for this provision, sub-paragraph (5) would apply, by virtue of the receipt by the trustees or managers of a certificate in the terms set out in Article 57(2)(a) of the 1995 Order, and sub-paragraph (7) would also apply, by virtue of the occurrence of an event of the kind described in regulation 13 of the 1996 Regulations, sub-paragraph (5) applies only if the certificate was received before the event occurred and sub-paragraph (7) applies only if the event occurred before the certificate was received.

4. The trustees or managers must ensure that the first valuation under the Order is received by them—

(a) where paragraph 3(1) applies, or where paragraph 3(3) applies and the trustees or managers obtained that valuation by reference to an effective date which is after 29th December 2005, within 15 months after its effective date;

(b) where paragraph 3(3) applies and the trustees or managers obtained that valuation by reference to an effective date between 22nd September and 29th December 2005, within 18 months after its effective date;

(c) where paragraph 3(5) applies, within 18 months after the date on which the certificate referred to in paragraph 3(4) is signed, and

(d) where paragraph 3(7) applies, within 18 months after the date on which the event referred to in paragraph 3(6) occurred.

5. Article 206 (schedule of contributions) shall apply to the scheme as if it included a requirement for the trustees or managers of the scheme to prepare a schedule of contributions (“the first schedule

of contributions under the Order”) within the same period as that within which they are required by paragraph 4 of this Schedule to ensure that they receive the first valuation under the Order.

6. In the circumstances described in paragraph 4(b), (c), and (d), regulation 6(2) (first statement of funding principles) applies to the scheme, and regulations 8(1)(a) (recovery plan) and 13 (period for obtaining employer’s agreement) apply in relation to the first valuation under the Order, as if the period there referred to were the same period as that within which the trustees or managers are required by paragraph 4 to ensure that they receive the first valuation under the Order.

7. References in Articles 203 to 210 to actuarial valuations or schedules of contributions shall be taken to exclude any such valuation or schedule of contributions under the 1995 Order as in force before the commencement date or as continued in force by paragraphs 9 to 16.

## PART 2

### Savings

8. Paragraphs 9 to 19 apply to a scheme which—

- (a) is subject to Article 56 of the 1995 Order immediately before the commencement date, and
- (b) becomes subject to Part IV of the Order on that date.

9. Articles 56 and 58 to 60 of the 1995 Order and regulations 15 to 17 and 19 to 27 of, and Schedules 2 and 4 to, the 1996 Regulations continue to apply in relation to the scheme from the commencement date until the date on which the first schedule of contributions under the Order comes into force.

10. Where—

- (a) immediately before the commencement date, the trustees or managers of the scheme were required under Article 57(1)(a) of the 1995 Order and regulation 10 of the 1996 Regulations (time limits for minimum funding valuations) to obtain an actuarial valuation within a period ending on or after the commencement date, and
- (b) they have determined before that date, or determine subsequently, that the valuation should be obtained by reference to an effective date before 22nd September 2005,

those provisions shall apply to the scheme on and after the commencement date in respect of that valuation.

11. Where—

- (a) immediately before the commencement date, the trustees or managers of the scheme were required under Article 57(2)(a) of the 1995 Order to obtain an actuarial valuation within the period specified in Article 57(4)(a) of that Order, and
- (b) they have determined before that date, or determine subsequently, that the valuation should be obtained by reference to an effective date before 22nd September 2005,

those provisions shall apply to the scheme on and after the commencement date in respect of that valuation.

12. Where—

- (a) immediately before the commencement date, the trustees or managers of the scheme were required under Article 57(2)(b) of the 1995 Order to obtain an actuarial valuation by virtue of the occurrence of an event of the kind described in regulation 13 of the 1996 Regulations, and
- (b) they have determined before that date, or determine subsequently, that the valuation should be obtained by reference to an effective date before 22nd September 2005,

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those provisions shall apply to the scheme on and after the commencement date in respect of that valuation, subject to the modification that the valuation must be obtained within the period of six months beginning with the date on which the relevant event occurred.

13. Where—

- (a) immediately before the commencement date, the trustees or managers of the scheme were required under Article 41(1)(a) and (2)(c) of the 1995 Order and regulation 30 of the 1996 Regulations (ongoing actuarial valuations and statements) to obtain an actuarial valuation within a period ending on or after the commencement date, and an accompanying statement in the form set out in Schedule 6 to those Regulations, and
- (b) they have determined before that date, or determine subsequently, that the valuation should be obtained by reference to an effective date before 22nd September 2005,

those provisions shall apply to the scheme on and after the commencement date in respect of that valuation and statement.

14. Where a requirement to obtain a valuation is preserved by any of paragraphs 10 to 13, Article 57(5) to (7) of the 1995 Order, regulations 3 to 9 of the 1996 Regulations and (except in the case to which paragraph 13 applies) regulation 14 of, and Schedule 1 to, those Regulations shall apply in respect of that valuation.

15. Where, immediately before the commencement date, the trustees or managers of the scheme were required under Article 57(1)(b) of the 1995 Order and regulation 18 of the 1996 Regulations (occasional and periodic certification of adequacy of contributions) to obtain annual certificates as to the adequacy of contributions payable towards the scheme, those provisions, Article 57(5) to (7) of that Order and Schedule 3 to those Regulations shall apply to the scheme until the effective date of the first valuation under the Order relating to the scheme.

16. Article 61 of the 1995 Order (supplementary), regulations 2 (interpretation) and 29 of, and Schedule 5 to, the 1996 Regulations (modifications) shall apply, so far as material, on and after the commencement date in relation to the provisions of that Order and those Regulations saved by paragraphs 9 to 15.

17. Where any provision of the 1995 Order or the 1996 Regulations applies to the scheme on or after the commencement date by virtue of this Schedule, any reference to that provision in the Occupational Pension Schemes (Contracting-out) Regulations (Northern Ireland) 1996<sup>(61)</sup> (“the Contracting-out Regulations”) shall apply in relation to the scheme on and after the commencement date as if—

- (a) in the case of a provision of the 1995 Order, the repeal of that provision by the Order had not come into operation on that date in accordance with the Pensions (2005 Order) (Commencement No. 7) Order (Northern Ireland) 2005<sup>(62)</sup> (“the Commencement Order”);
- (b) in the case of a provision in the 1996 Regulations, those Regulations had not been revoked by regulation 21, and
- (c) the amendments to the Contracting-out Regulations in paragraph 1 of Schedule 3 had not come into operation.

18. Where any provision of the 1995 Order or the 1996 Regulations applies to the scheme on or after the commencement date by virtue of this Schedule, regulation 4(2) of the Personal and Occupational Pension Schemes (Pensions Ombudsman) Regulations (Northern Ireland) 1997<sup>(63)</sup> shall be taken to include a reference to that provision notwithstanding its repeal by the Order

<sup>(61)</sup> S.R. 1996 No. 493; relevant amending regulations are S.R. 1997 No. 160 and S.R. 2002 No. 109

<sup>(62)</sup> S.R. 2005 No. 543 (C. 37)

<sup>(63)</sup> S.R. 1997 No. 39, to which there are amendments not relevant to these Regulations



in accordance with the Commencement Order or the revocation of the 1996 Regulations by regulation 21.

19. Any reference to the 1995 Order or the 1996 Regulations in—
- (a) the Occupational Pension Schemes (Winding Up) Regulations (Northern Ireland) 1996<sup>(64)</sup>;
  - (b) the Occupational Pension Schemes (Deficiency on Winding Up, etc.) Regulations (Northern Ireland) 1996<sup>(65)</sup>, or
  - (c) the Occupational Pension Schemes (Employer Debt) Regulations (Northern Ireland) 2005<sup>(66)</sup>,

shall apply to the scheme on and after the commencement date as if, where the reference is to a provision of the 1995 Order, the repeal of that provision by the Order had not come into operation on that date in accordance with the Commencement Order, and, where the reference is to a provision in the 1996 Regulations, those Regulations had not been revoked by regulation 21.

## SCHEDULE 5

Regulation 21

## Regulations revoked

<i>Column (1)</i> Citation	<i>Column (2)</i> Reference	<i>Column (3)</i> Extent of Revocation
The Occupational Pension Schemes (Minimum Funding Requirement and Actuarial Valuations Regulations) (Northern Ireland) 1996	<a href="#">S.R. 1996 No. 570</a>	The whole Regulations
The Occupational Pension Schemes (Investment) Regulations (Northern Ireland) 1996	<a href="#">S.R. 1996 No. 584</a>	Regulation 12
The Personal and Occupational Pension Schemes (Miscellaneous Amendments) Regulations (Northern Ireland) 1997	<a href="#">S.R. 1997 No. 160</a>	In the Schedule, paragraph 7
The Personal and Occupational Pension Schemes (Miscellaneous Amendments No. 2) Regulations (Northern Ireland) 1997	<a href="#">S.R. 1997 No. 544</a>	Regulation 3
The Personal and Occupational Pension Schemes	<a href="#">S.R. 1999 No. 486</a>	Regulation 6

<sup>(64)</sup> [S.R. 1996 No. 621](#), amended by [S.R. 1997 No. 160](#), [S.R. 1999 No. 486](#), [S.R. 2000 No. 335](#), [S.R. 2002 No. 64](#), [S.R. 2004 Nos. 60, 187](#), [S.R. 2005 Nos. 20, 168](#) and [171](#)

<sup>(65)</sup> [S.R. 1996 No. 585](#); relevant amending regulations are [S.R. 1997 Nos. 160](#) and [544](#), [S.R. 2002 No. 64](#), [S.R. 2004 No. 60](#) and [S.R. 2005 No. 20](#)

<sup>(66)</sup> [S.R. 2005 No. 168](#), amended by [S.R. 2005 No. 387](#)

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<i>Column (1)</i> Citation	<i>Column (2)</i> Reference	<i>Column (3)</i> Extent of Revocation
(Miscellaneous Amendments) Regulations (Northern Ireland) 1999		
The Occupational Pension Schemes (Miscellaneous Amendments) Regulations (Northern Ireland) 2000	<a href="#">S.R. 2000 No. 69</a>	Regulation 3
The Pension Sharing (Consequential and Miscellaneous Amendments) Regulations (Northern Ireland) 2000	<a href="#">S.R. 2000 No. 335</a>	Regulation 3
The Occupational Pension Schemes (Minimum Funding Requirement and Miscellaneous Amendments) Regulations (Northern Ireland) 2002	<a href="#">S.R. 2002 No. 64</a>	Regulation 2
The Social Security and Pensions (Financial Services and Markets Act 2000) (Consequential Amendments) Regulations (Northern Ireland) 2003	<a href="#">S.R. 2003 No. 256</a>	Regulation 7
The Occupational Pension Schemes (Minimum Funding Requirement and Actuarial Valuations) (Amendment) Regulations (Northern Ireland) 2004	<a href="#">S.R. 2004 No. 481</a>	The whole Regulations
The Occupational Pension Schemes (Employer Debt) Regulations (Northern Ireland) 2005	<a href="#">S.R. 2005 No. 168</a>	In Schedule 2, paragraph 1
The Occupational Pension Schemes (Winding up, etc.) Regulations (Northern Ireland) 2005	<a href="#">S.R. 2005 No. 171</a>	In the Schedule, paragraph 9
The Occupational Pension Schemes (Winding Up) (Modification for Multi-employer Schemes and Miscellaneous Amendments) Regulations (Northern Ireland) 2005	<a href="#">S.R. 2005 No. 363</a>	Regulation 3

<i>Column (1)</i> Citation	<i>Column (2)</i> Reference	<i>Column (3)</i> Extent of Revocation
The Occupational Pension Schemes (Employer Debt, etc.) (Amendment) Regulations (Northern Ireland) 2005	<a href="#">S.R. 2005 No. 387</a>	Regulation 4

## EXPLANATORY NOTE

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

These Regulations together with Part IV of the Pensions (Northern Ireland) Order 2005 (“the Order”) implement Articles 15 and the funding requirements in Article 16 of European Union Directive [2003/41/EC](#) on the activities and supervision of institutions for occupational retirement provision (OJ No. L 235, 23.9.03, p.10) (“the Directive”). They replace the Occupational Pension Schemes (Minimum Funding Requirement and Actuarial Valuations) Regulations (Northern Ireland) 1996, which are revoked together with provisions that amend those Regulations.

Article 201 of the Order imposes on every occupational pension scheme a requirement, derived from Article 16 the Directive, to hold sufficient and appropriate assets to cover the scheme’s “technical provisions” - the amount required, on an actuarial calculation, to make provision for its liabilities. Regulation 3 identifies the assets and liabilities to be taken into account in determining whether this requirement (“the statutory funding objective”) is met. Regulation 4 makes provision in respect of the valuation of the assets and the determination of the amount of the liabilities and regulation 5 prescribes matters to be taken into account and principles to be followed in calculating a scheme’s technical provisions.

Article 202 of the Order requires the trustees or managers of a scheme to maintain a statement of their policy for securing that the statutory funding objective is met. Regulation 6 prescribes other matters to be covered in the statement. Articles 203 and 204 of the Order provide for actuarial valuations calculating a scheme’s technical provisions, actuarial reports at intervals between valuations, and for the calculation of technical provisions to be certified by the scheme actuary. Regulation 7 includes provision about the circumstances in which “out-of-cycle” valuations are required, the content of valuations and reports and the form of the actuary’s certification.

Article 205 of the Order and regulation 8 implement provisions in Article 16 of the Directive for schemes to adopt a recovery plan where a valuation indicates that the statutory funding objective was not met. Article 206 of the Order provides for trustees or managers to maintain a schedule of contributions payable towards a scheme. Regulation 9 imposes time limits in respect of the preparation and review of such schedules and regulation 10 requirements as to their content and certification. Regulation 11 requires trustees or managers to keep records of contributions made to a scheme. Regulation 12 sets out exceptions to the requirement in Article 207 of the Order that any failure to pay contributions due which is likely to be of material significance must be reported to the Pensions Regulator (“the Regulator”).

Under Article 208 of the Order trustees or managers are required to obtain the agreement of the employer contributing towards a scheme with regard to the calculation of technical provisions, the statement of funding principles, the recovery plan and the schedule of contributions. Regulation 13 imposes a time limit for this. Article 210 of the Order sets out powers relating to the funding of a

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scheme which are exercisable by the Regulator in particular circumstances. Regulation 14 provides that, where the contribution rate is set by someone other than the trustees or managers, such as the scheme actuary, the Regulator must take account of that person's recommendations in determining whether to exercise any of these powers.

Regulation 15 requires scheme actuaries to take account of professional guidance approved for the purposes of these Regulations. Regulation 16 enables the trustees of certain schemes to modify the terms of the scheme where additional contributions are required in order to give effect to a recovery plan. Regulation 17 exempts certain schemes from Part IV of the Order; these are either schemes to which the Directive does not apply or schemes that may be exempted from the requirements of the Directive under Article 5 of the Directive because they are guaranteed statutory schemes or because they have fewer than 100 members. The schemes exempted include schemes in the course of winding up; where the winding up begins after the Regulations come into operation, regulation 18 makes the exemption conditional upon annual estimates of solvency. The remaining regulations give effect to Schedules.

Schedule 1 prescribes the form in which a scheme actuary is required to certify the calculation of technical provisions in respect of the scheme and its schedule of contributions. The terms in which the certification of a schedule of contributions is given, set out in Article 206(6) of the Order, are modified in particular circumstances by paragraphs 6 and 11 of Schedule 2. Schedule 2 contains other modifications of provisions of Part IV of the Order and provisions of these Regulations which apply in relation to particular kinds of scheme.

Schedule 3 to the Regulations makes consequential amendments to other secondary legislation. It also includes, in paragraphs 6 and 7, provisions which supplement the Occupational Pension Schemes (Disclosure of Information) Regulations (Northern Ireland) 1997 by requiring that scheme members and beneficiaries receive a summary funding statement following actuarial valuations and reports. The statement must include specified information relating to the funding of the scheme and, where applicable, information about its recovery plan, interventions by the Regulator and the payment of surplus funds to the employer.

Schedule 4 contains transitional provisions, which determine the period within which the trustees or managers of a scheme have to obtain the first actuarial valuation under the Order and to prepare the first schedule of contributions. It also contains savings, which preserve the application of provisions of the Pensions (Northern Ireland) Order 1995 ("the 1995 Order") and regulations during the transitional period.

Article 64(2), Articles contained in Part IV and Article 287(4) of the Order, are some of the enabling provisions under which these Regulations are made. 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 Article 64(2) of the Order to be brought fully into operation on 6th April 2005. The Pensions (2005 Order) (Commencement No. 7) Order (Northern Ireland) 2005 ([S.R. 2005 No. 543 \(C. 37\)](#)) provides for the coming into operation of Articles 200 to 203, 205 to 211 and 287(4) of the Order, for the purpose of authorising the making of regulations, on 6th December 2005, and for all other purposes, on 30th December 2005.

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 1995 Order does not apply by virtue of paragraph (2)(e) of that Article and the requirement for consultation under Article 289(1) of the Order does not apply by virtue of paragraph (2)(e) of that Article.

The transposition of Articles 15 and 16 of the Directive is detailed in the Transposition Note, a copy of which has been laid in the Business Office and the Library of the Northern Ireland Assembly. Copies of the Note are available from the Department for Social Development, Social Security Policy and Legislation Division, Level 1, James House, 2-4 Cromac Avenue, Gasworks Business Park, Ormeau Road, Belfast, BT7 2JA.

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