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STATUTORY RULES OF NORTHERN IRELAND

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**1996 No. 621**

**The Occupational Pension Schemes (Winding Up) Regulations (Northern Ireland) 1996**

*Discharge of Liabilities by Insurance, Etc.*

**Arrangements for discharge of liabilities under Article 74**

**6.—(1)** For the purposes of Article 74(2), the arrangements with which the trustees or managers of a scheme must comply in providing for the discharge of a liability under that Article are as follows.

(2) Where the trustees or managers of a scheme propose to discharge a liability of the scheme to or in respect of a member—

- (a) they must give him or, if he has died, each beneficiary who is entitled to benefits in respect of him, notice in writing of that fact;
- (b) if they propose to discharge the liability wholly or partly—
  - (i) in the way mentioned in Article 74(3)(a) or (b); or
  - (ii) in the way mentioned in paragraph (5) of regulation 8, in a case where subparagraph (a) of that paragraph applies,then, subject to paragraph (4), they must obtain the written consent of the member or, as the case may be, the beneficiary to discharging the liability in that way; and
- (c) in the case of discharge in the way mentioned in regulation 8(5), any other requirements which apply to the making of a payment so mentioned must have been met.

(3) A notice under paragraph (2)(a) must comply with the requirements of regulation 7.

(4) In a case where regulation 12 of the Occupational Pension Schemes (Preservation of Benefit) Regulations (Northern Ireland) 1991(1) (transfer of member's accrued rights without consent) applies, no consent need be obtained to a discharge of liability in the way mentioned in Article 74(3)(a).

(5) Where—

- (a) the trustees or managers have complied with paragraphs (2) and (3); and
- (b) an election has been made under regulation 7(3)(a),

they may discharge the liability in pursuance of the election without complying with those paragraphs again.

**Requirements applicable to notices of discharge under regulation 6**

**7.—(1)** A notice under regulation 6(2)(a) (“a discharge notice”) must specify—

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(1) [S.R. 1991 No. 37](#); regulation 12 was amended by regulation 35 of [S.R. 1992 No. 304](#), regulation 2 of [S.R. 1993 No. 324](#), paragraph 26(16) of Schedule 2 to [S.R. 1994 No. 300](#), regulation 3(4) of [S.R. 1995 No. 441](#) and regulation 2(7) of [S.R. 1996 No. 620](#)

- (a) the sum which is available to be used to discharge the liability of the scheme to the member or, as the case may be, the beneficiary in respect of his rights under the scheme; and
  - (b) if the full amount of that liability, as calculated in accordance with regulation 4, is greater than that sum, that amount and the reason for the difference.
- (2) A discharge notice must—
- (a) specify the way or ways in which it is proposed to discharge the liability;
  - (b) if the proposed way or any of the proposed ways requires the consent of the member or, as the case may be, the beneficiary, state—
    - (i) that his consent is so required;
    - (ii) the period within which his consent must be given, being at least three months beginning on the date on which the notice is given; and
    - (iii) the way or ways in which it is proposed to discharge the liability if he does not give his consent; and
  - (c) if the proposed way is that mentioned in regulation 8(5), state any further requirements which must be met before discharge may be made in that way.
- (3) If there are any options available to the member or beneficiary, the discharge notice must specify them and state—
- (a) that if he wishes to elect that, instead of the liability being discharged in the proposed way, it should be discharged in one or more of the other ways mentioned in Article 74(3) which are available in his case (or partly in the proposed way and partly in another way), then he must give notice to that effect in writing to the trustees or managers, specifying—
    - (i) the way or ways in which he wishes the liability to be discharged; and
    - (ii) the name of the relevant provider;
  - (b) that such a notice must be given by him before the expiry of the period of 3 months beginning on the date on which the discharge notice is given to him; and
  - (c) that it would be advisable for him to obtain independent financial advice before deciding whether to make such an election.
- (4) The statement mentioned in paragraph (3)(c) must also be included in any case where the consent of the member or the beneficiary is required.
- (5) Where it is proposed to discharge the liability in the way mentioned in Article 74(3)(a), the discharge notice must specify the name of the relevant provider and the scheme address.
- (6) Where it is proposed to discharge the liability in the way mentioned in Article 74(3)(b), the discharge notice must specify the name of the relevant provider and (if different) of the person who is the scheme administrator and the scheme address.
- (7) Where it is proposed to discharge the liability in the way mentioned in Article 74(3)(c) or in regulation 8(4), the discharge notice must specify—
- (a) the name and address of the relevant provider;
  - (b) if different, the name and address of the person from whom information about the terms of the contract for the provision of the annuity which is to be purchased or, as the case may be, the benefit of which is to be transferred can be obtained; and
  - (c) in a case where the contract for the provision of the annuity has not been made at the time the notice is given, whether information about its terms will be given on the assumption that they will coincide with the terms of a quotation.
- (8) In this regulation—
- “the relevant provider” means—

- (a) in the case of the acquisition of transfer credits under another occupational pension scheme, the trustees or managers of the scheme;
- (b) in the case of the acquisition of rights under a personal pension scheme, the person who is responsible for the provision of pensions and other benefits under the scheme; and
- (c) in the case of the purchase or transfer of the benefit of an annuity, the insurance company or companies from which the annuity is to be or, as the case may be, has been purchased;

“the scheme address”, in relation to a scheme, means the place in the United Kingdom where the management of the scheme is conducted or, if there is more than one such place, the principal place;

“scheme administrator” means the person referred to in section 630(1) of the Taxes Act 1988.

(9) A discharge notice and any notice under paragraph (3) shall be treated as having been given to a person if it has been sent to him by ordinary post at the address at which he was last known by the trustees or managers of the scheme to be living.

(10) Discharge notices and notices under paragraph (3) are not required to be given to a person if—

- (a) the trustees or managers know no such address as is mentioned in paragraph (9) for him; or
- (b) correspondence sent to the address at which he was last known by them to be living has been returned.

#### **Requirements to be satisfied by transferee schemes, annuities, etc.**

**8.—**(1) For the purpose of Article 74(3)(a) (discharge of liability to or in respect of a member by the acquisition of transfer credits under another occupational pension scheme), the requirements to be satisfied by the other scheme are the same as those which would apply by virtue of section 91(2)(a) of the Act (ways of taking right to cash equivalent) if—

- (a) the member were entitled to a cash equivalent under Chapter IV of Part IV of the Act in respect of the rights liability in respect of which is being discharged; and
- (b) he required his cash equivalent to be used to acquire transfer credits allowed under the rules of the scheme.

(2) For the purpose of Article 74(3)(b) (discharge of liability to or in respect of a member by the acquisition of rights under a personal pension scheme), the requirements to be satisfied by the personal pension scheme are the same as those which would apply by virtue of section 91(2)(b) of the Act if the member were so entitled and he required his cash equivalent to be used to acquire rights allowed under the rules of the scheme.

(3) For the purpose of Article 74(3)(c) (discharge of liability to or in respect of a member by the purchase of one or more annuities) the requirements to be satisfied by the annuities are the same as those which would apply by virtue of section 91(2)(c) of the Act if the member were so entitled and he required his cash equivalent to be used to purchase annuities from such insurance companies as are mentioned in section 91(2)(c) of the Act.

(4) For the purpose of Article 74(3)(d) (discharge of liability to or in respect of a member by subscribing to other pension arrangements satisfying prescribed requirements) the discharge of a liability to or in respect of a member may be provided for by transferring to him, or to any person who is entitled to benefits in respect of him, the benefit—

- (a) of one or more contracts to provide annuities which—
  - (i) satisfy the requirements mentioned in paragraph (3); and
  - (ii) are provided by insurance companies which consent to the transfer; or

(b) of one or more policies of insurance which satisfy the requirements mentioned in section 15(4) of the Act (appropriate policies and annuity contracts).

(5) For the purpose of Article 74(3)(d), the discharge of a liability to or in respect of a member of a contracted-out scheme may also be provided for in a case where paragraph 5(3B) of Schedule 1 to the Act<sup>(2)</sup> applies by a payment to the Department of the amount mentioned in paragraph 5(3B) (b) of that Schedule (amount required for restoring the member's State scheme rights) if—

(a) the member has duly made such an application as is required for the restoration of his State scheme rights in accordance with that provision; or

(b) in a case where such an application may be made by the trustees or managers, they have duly made such an application,

and in this paragraph “State scheme rights” has the same meaning as in paragraph 5(3B) of Schedule 1 to the Act.

#### **Relationship of these Regulations and requirements under section 28A of the Act**

9. In any case where the liability to or in respect of the member is a liability in respect of protected rights, nothing in regulations 6 to 8 affects any requirements imposed by or under section 28A of the Act<sup>(3)</sup> (discharge of protected rights on winding up: insurance policies) or any rules of the scheme reflecting those requirements.

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(2) Paragraph 5(3B) was inserted by Article 138(2)(b) of the Pensions (Northern Ireland) Order 1995

(3) Section 28A was inserted by Article 143(1) of the Pensions (Northern Ireland) Order 1995