
STATUTORY RULES OF NORTHERN IRELAND

1997 No. 96

PENSIONS

The Occupational Pension Schemes (Payments to Employers) Regulations (Northern Ireland) 1997

Made - - - - *24th February 1997*

Coming into operation *6th April 1997*

The Department of Health and Social Services, in exercise of the powers conferred on it by Articles 37(3), (4)(e) and (10), 69(3)(a) and (b), 76(2), (3)(d) and (8), 77(4)(a) and (6), 122(4)(a) and 166 of the Pensions (Northern Ireland) Order 1995(1) and of all other powers enabling it in that behalf, hereby makes the following Regulations:

Preliminary

Citation, commencement and interpretation

1.—(1) These Regulations may be cited as the Occupational Pension Schemes (Payments to Employers) Regulations (Northern Ireland) 1997 and shall come into operation on 6th April 1997.

(2) In these Regulations—

“surplus” means an excess in the value of the assets in a scheme over its liabilities by more than the maximum percentage prescribed under Schedule 22 to the Taxes Act 1988 (reduction of pension fund surpluses).

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

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

Meaning of “member”

2. For the purposes of these Regulations and Articles 37 and 76, the meaning of “member” in relation to any scheme is extended to include any person who is entitled to the present payment of benefits under the scheme.

(1) S.I. 1995/3213 (N.I. 22)
(2) 1954 c. 33 (N.I.)

Application to these Regulations

3. These Regulations do not apply to a scheme unless it is a trust scheme which is an exempt approved scheme within the meaning given by section 592(1) of the Taxes Act 1988.

Payments from Surplus — Ongoing Schemes

Notice of proposed payment from surplus

4.—(1) For the purposes of Article 37 (which sets out the requirements which must be satisfied before a power to make payments to the employer out of funds held for the purposes of a scheme may be exercised) the prescribed requirements as to notice referred to in Article 37(4)(e) are set out in paragraphs (2) to (5).

(2) The trustees shall take all reasonable steps to ensure that each member is given 2 written notices in accordance with the following provisions of this regulation.

(3) The first notice shall be given after proposals to reduce or eliminate a surplus have been approved under paragraph 6(1) of Schedule 22 to the Taxes Act 1988. It shall—

- (a) inform the member as to—
 - (i) how it is proposed that the surplus shall be reduced or eliminated, by reference to the ways permitted under paragraph 3(3) of that Schedule; and
 - (ii) whether the requirements of Article 37(4) are satisfied;
- (b) invite the member, if he wishes, to make written representations in relation to the proposals to the trustees before a specified date (which is not earlier than 2 months from the date on which the first notice is given);
- (c) advise the member—
 - (i) that a second notice will be given to him if the trustees intend to proceed with the proposals; and
 - (ii) that no payment may be made to the employer in accordance with the proposals until at least 3 months after the date on which the second notice is given.

(4) The second notice shall be given after the date specified in accordance with paragraph (3)(b) and at least 3 months before the power is exercised. It shall—

- (a) contain the information referred to in paragraph (3)(a), including any modifications to the proposals; and
- (b) advise the member that he may make written representations to the Authority before a specified date (which is not earlier than 3 months from the date on which the second notice is given) if he considers that any of the requirements of Article 37(4) are not satisfied.

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

- (a) a notice shall be treated as having been given to a member if it has been sent to him by post either at the address at which he was last known to be living or, in the case of an active member, at an address at which he is known to be currently employed; and
- (b) notices are not required to be given where a member has no known address or where correspondence sent to a member's last known address has been returned.

Circumstances in which the Authority must be satisfied that the requirements of Article 37 are met

5.—(1) For the purposes of Article 37(3) (which provides that, in prescribed circumstances, the power to make payments to an employer out of funds held for the purposes of a scheme cannot

be exercised unless the Authority are of the opinion that the requirements of Article 37(4) and any prescribed requirements are satisfied) the prescribed circumstances are—

- (a) that, subject to paragraph (2) of this regulation, the Authority receive (in relation to any proposals to which that Article applies)—
 - (i) written representations from a member to the effect that any of the requirements of Article 37(4) are not satisfied; or
 - (ii) information from any source sufficient to raise a doubt as to whether all those requirements are satisfied; and
- (b) the Authority notify the trustees in writing that no payment should be made to the employer in accordance with the proposals until the Authority have confirmed in writing that the Authority are satisfied that those requirements are satisfied.

(2) Where the trustees have given notice to a member in accordance with regulation 4, paragraph (1)(a)(i) shall only apply in the case of representations received by the Authority from the member before the date specified in accordance with regulation 4(4)(b) (expiry date of the second notice).

Additional requirement for the purposes of Article 37

6.—(1) For the purposes of Article 37(3) (which provides for requirements to be prescribed in addition to those mentioned in Article 37(4)) the requirement set out in paragraph (2) of this regulation applies where—

- (a) the date specified in accordance with regulation 4(4)(b) (expiry date of the second notice) has passed; and
- (b) the trustees have not received notification from the Authority in accordance with regulation 5(1)(b).

(2) The requirement is that the trustees obtain written confirmation from the Authority that the Authority have not received any representations or information referred to in regulation 5(1)(a) and accordingly Article 37(5) does not apply.

Distribution of Excess Assets — Schemes Winding Up

Notice of proposal to distribute excess assets to the employer

7.—(1) For the purposes of Article 76 (which sets out the requirements which must be satisfied before a power to distribute assets to the employer on a winding up may be exercised) the prescribed requirements as to notice referred to in Article 76(3)(d) are set out in paragraphs (2) to (5).

(2) Where the trustees or the employer propose to exercise a power such as is referred to in paragraph (1), the trustees or, as the case may be, the employer, shall take all reasonable steps to ensure that each member is given 2 written notices of the proposal in accordance with the following provisions of this regulation.

- (3) The first notice shall—
 - (a) inform the member as to—
 - (i) the trustees' estimate of the value of the assets remaining after the liabilities of the scheme have been fully discharged and the persons or class of person to whom, and in what proportions, it is proposed that they should be distributed; and
 - (ii) whether the requirements of Article 76(3) are satisfied;
 - (b) invite the member, if he wishes, to make written representations in relation to the proposal to the trustees or, as the case may be, to the employer, before a specified date (which is not earlier than 2 months from the date on which the first notice is given);

- (c) advise the member—
 - (i) that a second notice will be given to him if the trustees or the employer, as the case may be, intend to proceed with the proposal; and
 - (ii) that no excess assets may be distributed to the employer in accordance with the proposal until at least 3 months after the date on which the second notice is given.
- (4) The second notice shall be given after the date specified in accordance with paragraph (3)(b) and at least 3 months before the power is exercised. It shall—
 - (a) contain the information referred to in paragraph (3)(a), including any modifications to the proposal;
 - (b) advise the member that he may make written representations to the Authority before a specified date (which is not earlier than 3 months from the date on which the second notice is given) if he considers that any of the requirements of Article 76(3) are not satisfied.
- (5) For the purposes of paragraph (2)—
 - (a) a notice shall be treated as having been given to a member if it has been sent to him by post either at the address at which he was last known to be living or, in the case of an active member, at an address at which he is known to be currently employed; and
 - (b) notices are not required to be given where a member has no known address or where correspondence sent to a member's last known address has been returned.

Circumstances in which the Authority must be satisfied that the requirements of Article 76 are met

8.—(1) For the purposes of Article 76(2) (which provides that, in prescribed circumstances, the power to distribute assets to the employer on a winding up cannot be exercised unless the Authority are of the opinion that the requirements of Article 76(3) and any prescribed requirements are satisfied) the prescribed circumstances are—

- (a) that, subject to paragraph (2) of this regulation, the Authority receive (in relation to any proposal to which that Article applies)—
 - (i) written representations from a member to the effect that any of the requirements of Article 76(3) are not satisfied; or
 - (ii) information from any source sufficient to raise a doubt as to whether all those requirements are satisfied; and
 - (b) the Authority notify the trustees or, as the case may be, the employer in writing that the power should not be exercised until the Authority have confirmed in writing that the Authority are satisfied that those requirements are satisfied.
- (2) Where notice has been given to a member in accordance with regulation 7, paragraph (1)(a) (i) shall only apply in the case of representations received by the Authority from the member before the date specified in accordance with regulation 7(4)(b) (expiry date of the second notice).

Additional requirement for the purposes of Article 76

9.—(1) For the purposes of Article 76(2) (which provides for requirements to be prescribed in addition to those mentioned in Article 76(3)) the requirement set out in paragraph (2) of this regulation applies where—

- (a) the date specified in accordance with regulation 7(4)(b) (expiry date of the second notice) has passed; and
- (b) the trustees or, as the case may be, the employer have not received notification from the Authority in accordance with regulation 8(1)(b).

(2) The requirement is that the trustees or, as the case may be, the employer obtain written confirmation from the Authority that the Authority have not received any representations or information referred to in regulation 8(1)(a) and accordingly Article 76(4) does not apply.

Requirement to increase benefits — maximum limits

10.—(1) For the purposes of Article 77 (which provides, where a scheme prohibits the distribution of assets to the employer, for excess assets to be distributed after benefits have been increased, subject to prescribed limits) the prescribed limits referred to in Article 77(4)(a) are the maximum benefits that may be provided by the scheme as an exempt approved scheme within the meaning of section 592(1) of the Taxes Act 1988.

(2) For the purposes of calculating the maximum benefits referred to in paragraph (1), final remuneration may, if the trustees so determine, be taken to be any one of the following amounts—

- (a) the amount of annual remuneration on which the scheme benefits are calculated;
- (b) the highest amount of annual remuneration on which, under the rules of the scheme, benefits could be calculated; or
- (c) the amount referred to in regulation 5(4)(f)(iii) of the Retirement Benefits Schemes (Restriction on Discretion to Approve) (Additional Voluntary Contributions) Regulations 1993(3) (which is an amount based on the average of the total emoluments paid to an employee during the last 3 years of assessment).

Miscellaneous

Modification of schemes

11. For the purposes of Article 69 (grounds for applying for modifications)—

- (a) a further requirement prescribed for the purposes of Article 69(3)(a) (which provides for modification of schemes for the purpose of reducing or eliminating a surplus) is that the second notice referred to in regulation 4 also advises the member of the requirement for an order under that Article;
- (b) the prescribed requirements referred to in Article 69(3)(b) (which provides for modification of schemes for the purposes of distributing excess assets on winding up) are—
 - (i) any requirements under Article 76(3) or (4) or regulation 7 which must be satisfied before a power to distribute assets to the employer on a winding up can be exercised;
 - (ii) a requirement that the trustees are satisfied that any proposal to distribute excess assets to the employer is in the interests of the members; and
 - (iii) a requirement that the second notice referred to in regulation 7 also advises the member of the requirement for an order under Article 69(3)(b) and both the first and second notices referred to in that regulation also advise the member of the requirement referred to in sub-paragraph (ii).

Schemes with more than one employer

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

- (a) different sections of the scheme apply to different employers or groups of employers (whether or not more than one section applies to any particular employer or groups including any particular employer);
- (b) contributions payable to the scheme by an employer, or by a member in employment under that employer, are allocated to that employer's section (or, if more than one section applies to the employer, the section which is appropriate in respect of the employment in question); and
- (c) a specified part or proportion of the assets of the scheme is attributable to each section and cannot be used for the purposes of any other section,

Articles 37, 76 and 77 and these Regulations shall apply as if each section of the scheme were a separate scheme.

(2) Where—

- (a) a scheme which has been such a scheme as is mentioned in paragraph (1) is divided into 2 or more sections some or all of which apply only to members who are not in pensionable employment under the scheme; and
- (b) the provisions of the scheme have not been amended so as to prevent the conditions in paragraph (1)(a) to (c) being satisfied in relation to 2 or more sections; but
- (c) those conditions have ceased to be satisfied in relation to one or more sections (whether before or after 6th April 1997) by reason only of there being no members in pensionable service under the section and no contributions which are to be allocated to it,

Articles 37, 76 and 77 and these Regulations shall apply as if each section in relation to which those conditions have ceased to be satisfied were a separate scheme.

(3) Where on the winding up of a scheme—

- (a) the liabilities of the scheme are satisfied in accordance with the requirements of Article 73; and
- (b) paragraph (1) or (2) would apply to the scheme but for the fact that undistributed assets attributable to one section (“the first section”) may be applied to another section if—
 - (i) the annual rates of pension under the first section have been increased by the appropriate percentage; and
 - (ii) in relation to that section, additional benefits have been provided or the value of any benefits has been increased within the limits referred to in regulation 10,

Articles 76 and 77 and regulations 7 to 10 shall apply as if each section of the scheme were a separate scheme.

(4) In paragraph (3)(b)(i) “annual rate”, “appropriate percentage” and “pension” have the same meaning as in Articles 76 and 77.

Other multi-employer schemes

13. In the application of Article 37(4) to a scheme in relation to which there is more than one employer (other than a scheme to which regulation 12 applies), Article 37(4)(c) has effect with the substitution for “employer”, where it appears for the second time, of “person whom the employers nominate to act as their representative for the purposes of this sub-paragraph or, if no such nomination is made, all the employers”.

Exemptions

14. Articles 37 and 76 do not apply to a scheme where—

- (a) any Minister of the Crown or government department has given a guarantee or made any other arrangements for the purpose of securing that the assets of the scheme are sufficient to meet its liabilities; or
- (b) arrangements for the payment of any surplus or for the distribution of any excess assets on the winding up of the scheme are provided for by virtue of any enactment or are subject to the approval of any Minister of the Crown or government department.

Revocations and savings

15.—(1) Subject to paragraph (2), the following provisions are hereby revoked—

- (a) the Occupational Pension Schemes (Transitional Provisions and Savings) Regulations (Northern Ireland) 1990(4);
- (b) regulations 2 and 3 of the Occupational Pension Schemes (Modification) Regulations (Northern Ireland) 1990(5);
- (c) the Occupational Pension Schemes (Transitional Provisions and Savings) (Amendment) Regulations (Northern Ireland) 1991(6);
- (d) sub-paragraphs (2), (4), in so far as it relates to regulations 2(1) and 3(1) of the Occupational Pension Schemes (Modification) Regulations (Northern Ireland) 1990, and (5) of paragraph 23 of Schedule 2 to the Occupational and Personal Pension Schemes (Consequential Amendments) Regulations (Northern Ireland) 1994(7).

(2) The provisions referred to in paragraph (1) shall continue to have effect, as if these Regulations had not been made and sections 104 and 132 of the Pension Schemes Act(8) had not been repealed, in the case of—

- (a) any payment to the employer out of funds held for the purposes of the scheme where an application to modify the scheme rules for the purposes of making that payment has been made before 6th April 1997; or
- (b) any distribution of excess assets to the employer in relation to a scheme which begins to be wound up before 6th April 1997.

(3) For the purposes of paragraph (2), the date on which a scheme begins to be wound up shall be determined in the same manner as it is determined for the purposes of any regulations made under Article 73.

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

L.S.

24th February 1997.

John O'Neill
Assistant Secretary

(4) S.R. 1990 No. 306, amended by S.R. 1991 No. 15

(5) S.R. 1990 No. 379, amended by S.R. 1994 No. 300

(6) S.R. 1991 No. 15

(7) S.R. 1994 No. 300

(8) Sections 104 and 132 are repealed by respectively, paragraph 16 of Schedule 1 to, and Article 157 of, the Pensions (Northern Ireland) Order 1995

Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

EXPLANATORY NOTE

(This note is not part of the Regulations.)

These Regulations concern the requirements which must be satisfied before the employer may receive a payment or distribution of assets from an occupational pension scheme. The requirements are applicable only to exempt approved trust schemes.

Regulations 1 to 3 relate to citation, commencement, interpretation and application.

Regulations 4 to 6 relate to payments to the employer from surplus approved under Schedule 22 to the Income and Corporation Taxes Act 1988. Regulation 4 prescribes requirements for notifying members of any proposals to make such a payment. Regulation 5 prescribes the circumstances in which the Occupational Pensions Regulatory Authority (“the Authority”) must be satisfied that all the relevant requirements are met. In a case where the Authority have not confirmed that they are so satisfied, regulation 6 requires that confirmation be obtained from the Authority that the circumstances provided for in regulation 5 do not apply.

Regulations 7 to 10 make broadly similar provision in relation to proposals to exercise a power to distribute excess assets to the employer on the winding up of a scheme.

Regulation 10 relates to the requirement, in cases where the scheme prohibits distribution of excess assets to the employer, to increase benefits subject to prescribed limits before making such a distribution. The prescribed limits are the maximum benefits which may be provided by the scheme as an exempt approved scheme.

Regulation 11 makes provision for cases where the scheme rules require modification before a payment or distribution of assets to the employer may be made.

Regulations 12 and 13 provide for Articles 37, 76 and 77 of the Pensions (Northern Ireland) Order 1995 (“the Order”) to be modified in cases where a scheme has more than one employer.

Regulation 14 provides for exemptions from Articles 37 and 76 of the Order.

Regulation 15 provides for revocations and savings.

The Pensions (1995 Order) (Commencement No. 2) Order (Northern Ireland) 1996 ([S.R. 1996 No. 91 \(C. 4\)](#)) provides for the coming into operation of Articles 37, 69, 76 and 77 of the Order, for the purpose only of authorising the making of regulations, and Article 166 of the Order, in so far as it was not already in operation, on 6th April 1996. The Pensions (1995 Order) (Commencement No. 5) Order (Northern Ireland) 1996 ([S.R. 1996 No. 534 \(C. 25\)](#)) provides for the coming into operation of Article 122(2) to (4) of the Order, in so far as it was not already in operation, on 19th November 1996.

As these Regulations make in relation to Northern Ireland only provision corresponding to provision contained in regulations made by the Secretary of State for Social Security in relation to Great Britain, the requirement for consultation under Article 117(1) of the Order does not apply by virtue of paragraph (2)(e) of that Article.