
STATUTORY RULES OF NORTHERN IRELAND

2014 No. 204

The Pensions (2012 Act)
(Transitional, Consequential and Supplementary Provisions)
Regulations (Northern Ireland) 2014

PART 10

Payment of surplus funds to employer

Interpretation

35.—(1) In this Part—

“employer” has the meaning given by Article 121(1) of the 1995 Order (interpretation of Part 2);

“the Payments to Employer Regulations” means the Occupational Pension Schemes (Payments to Employer) Regulations (Northern Ireland) 2006⁽¹⁾.

(2) Where—

(a) a trust 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 meet the conditions specified in regulation 18(1)(b) of the Payments to Employer Regulations (schemes with more than one employer),

this Part applies as if each section of the scheme were a separate scheme.

Failure to comply with the requirements of Article 37 or 76 of the 1995 Order: periods before the appointed day

36.—(1) Where the conditions specified in paragraph (2) are met neither—

(a) Article 37⁽²⁾ of the 1995 Order (payment of surplus to employer), nor

(b) Article 76⁽³⁾ of that Order (excess assets on winding up),

(as the case may be) applies in respect of a payment from scheme funds made to the employer in relation to the scheme.

(2) The conditions specified in this paragraph are that—

(a) the trustees of a trust scheme have exercised a power under the scheme rules to make a payment to the employer out of funds held for the purposes of the scheme and that payment was made to the employer before the appointed day;

(1) [S.R. 2006 No. 161](#)

(2) Article 37 was substituted by Article 227 of the Pensions (Northern Ireland) Order 2005 and amended by section 105 of the Pensions (No.2) Act (Northern Ireland) 2008

(3) Article 76 was amended by paragraph 56 of Schedule 10 to the Pensions (Northern Ireland) Order 2005 and Article 11 of [S.I. 2006/745](#)

- (b) at the time that the payment was made to the employer the scheme included—
 - (i) cash balance benefits, or
 - (ii) pensions derived from money purchase or cash balance benefits;
- (c) no benefits other than those specified in sub-paragraph (b), money purchase benefits and death benefits secured by insurance policies or annuity contracts, and
- (d) the trustees of the scheme treated the scheme as if it were a money purchase scheme and for that reason did not comply with the requirements—
 - (i) for schemes not in winding-up, of Article 37 of the 1995 Order, or
 - (ii) for schemes in winding up, of Article 76 of that Order,
 before exercising the power to make a payment to the employer.

Non-money-purchase schemes providing cash balance benefits etc

- 37.**—(1) Where the circumstances specified in paragraph (2) apply—
- (a) the trustees of a trust scheme may not use an actuarial valuation made on the basis specified in paragraph (2)(c) for the purposes of fulfilling the conditions specified in Article 37(3) (a) of the 1995 Order or regulation 4(1) or (2) of the Payments to Employer Regulations (schemes that are subject to Part 4 of the 2005 Order – determination of assets and liabilities), and
 - (b) a valuation certificate prepared in relation to an actuarial valuation made on the basis specified in paragraph (2)(c) is not valid in relation to any period after the appointed day.
- (2) The circumstances specified in this paragraph are that—
- (a) the scheme is subject to Part 4 of the 2005 Order (scheme funding);
 - (b) the scheme provides any of the benefits specified in paragraph (3), and
 - (c) the trustees of the scheme propose to use an actuarial valuation made on the basis that benefits specified in paragraph (3) were money purchase benefits for the purpose of meeting the condition specified in Article 37(3)(a) of the 1995 Order.
- (3) The benefits specified in this paragraph are—
- (a) cash balance benefits;
 - (b) a defined benefit minimum (in relation to money purchase underpin benefits or cash balance underpin benefits);
 - (c) top-up benefits;
 - (d) pensions derived from money purchase benefits, and
 - (e) pensions derived from any of the benefits specified in sub-paragraphs (a) to (c).

Amendment of the Payments to Employer Regulations

38. In regulation 2 of the Payments to Employer Regulations (interpretation) for the definition of “money purchase benefits” substitute—

““money purchase benefits” has the meaning given by section 176(1)(4) of the Pension Schemes Act (general interpretation);”.

(4) The definition of “money purchase benefits” was amended by section 27 of the Pensions Act (Northern Ireland) 2012 and paragraph 19 of the Schedule to [S.R. 2005 No. 474](#)