STATUTORY RULES OF NORTHERN IRELAND

1996 No. 570

The Occupational Pension Schemes (Minimum Funding Requirement and Actuarial Valuations) Regulations (Northern Ireland) 1996

Preliminary

Citation and commencement

1. These Regulations may be cited as the Occupational Pension Schemes (Minimum Funding Requirement and Actuarial Valuations) Regulations (Northern Ireland) 1996 and shall come into operation on 6th April 1997.

Interpretation

2.—(1) In these Regulations—

"commencement date" means 6th April 1997;

"disclosure valuation" means an actuarial valuation required by regulation 8 of the Occupational Pension Schemes (Disclosure of Information) Regulations (Northern Ireland) 1986(**1**);

"effective date"—

(a) in relation to a minimum funding valuation, has the meaning given in Article 56(5);

(b) in relation to a valuation obtained under regulation 30, means the date as at which the assets and liabilities are valued;

(c) in relation to a disclosure valuation, means the date as at which the valuation was made;

"equities" means investments falling within paragraph 1, 2, 4 or 5 of Schedule 1 to the Financial Services Act 1986(**2**);

"gilt-edged securities" means investments falling within paragraph 3 or 10 of Schedule 1 to the Financial Services Act 1986(**3**);

"minimum funding valuation" means an actuarial valuation required by Article 57(1)(*a*) or (2);

"relevant date" means—

(a) in relation to a minimum funding valuation, the effective date, and

(b) in relation to a certificate under Article 57(1)(*b*) or a certificate under Article 58 of the rates of contributions shown in a schedule of contributions, the date the certificate is signed;

(**1**) S.R. 1986 No. 225; regulation 8 was amended by regulation 2(5) and (6) of S.R. 1986 No. 319, regulation 4 of S.R. 1987 No. 283, regulation 8(6) of S.R. 1988 No. 109, regulation 11 of S.R. 1992 No. 304 and paragraph 6(6) of Schedule 2 to S.R. 1994 No. 300

(**2**) 1986 c. 60; the Note to paragraph 1 was amended by article 2 of S.I.1991/1104

(**3**) Note (3) to paragraph 3 was added by article 2(1) of S.I. 1990/349 "schedule period" has the meaning given in regulation 16(3);

"scheme" in the cases mentioned in paragraphs 1 and 4 to 6 of Schedule 5 (sectionalised and partly approved or guaranteed schemes) shall be construed in accordance with those paragraphs (and "employer" and "member" shall be construed accordingly);

"serious shortfall valuation", in relation to a scheme, means a minimum funding valuation for the scheme as a result of which Article 60 (serious underprovision) applies;

"transitional period" means the period of 5 years beginning with the commencement date.

(2) In these Regulations any reference to an Article shall be construed as a reference to an Article of the Pensions (Northern Ireland) Order 1995.

(3) References in these Regulations to the guidance in GN 27 are to the mandatory guidelines on minimum funding requirement (GN 27), prepared and published by the Institute of Actuaries and the Faculty of Actuaries(**4**) and approved for the purposes of these Regulations by the Department, with such revisions as have been so approved—

(a) in the case of guidance applicable in relation to a minimum funding valuation, as at the date of signing of the valuation, and

(b) in the case of guidance applicable to a certificate under Article 57(1)(*b*) or a certificate under Article 58 of the rates of contributions shown in a schedule of contributions, as at the relevant date.

(4) References in these Regulations to a relevant insolvency event occurring in relation to the employer have the same meaning as in Article 75 (but see paragraph 1(2) of Schedule 4).

(5) In regulations 3 to 28 and in Schedules 1 to 4, the expression "these Regulations" does not include regulation 30.

(6) For the purposes of these Regulations and notwithstanding section 39(2) of the Interpretation Act (Northern Ireland) 1954(**5**), 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.

Valuation of assets and liabilities

Determination, valuation and verification of assets and liabilities: general

3.—(1) The liabilities and assets of a scheme which are to be taken into account for the purposes of Articles 56 to 61 (minimum funding requirement) and their amount and value shall be determined, calculated and verified by the actuary—

(a) in the manner specified in regulations 4 to 9;

(b) in the case of any valuation for the purpose of forming an opinion as to whether the minimum funding requirement is met on a relevant date, on the general assumptions specified in paragraphs (2) and (3), and

(c) in accordance with the guidance given in GN 27,

and where in these Regulations there is a reference to the value of any asset or the amount of any liability being calculated or verified in accordance with the opinion of the actuary or as he thinks appropriate, he shall comply with any relevant provisions in that guidance in making that calculation or verification.

(2) The assumptions mentioned in paragraph (1)(*b*) are—

(**4**) Copies of GN 27 may be obtained from the Faculty of Actuaries, 17 Thistle Street, Edinburgh EH2 1DF

(**5**) 1954 c. 33 (N.I.)

(a) that no contributions will become due to the scheme from the employer or the members on or after the relevant date;

(b) that all pensionable service under the scheme ceased immediately before that date;

(c) that liabilities in respect of members will be so secured that—

(i) the benefits of pensioner members will be equal in value to those under the scheme, and

(ii) the benefits of active members and deferred members will be reasonably likely to be equal in value to those payable in respect of their accrued rights under the scheme, and

(d) that liabilities in respect of members will include such amounts in respect of the expenses involved in meeting them as are indicated by the guidance given in GN 27.

(3) Where arrangements are being made by the scheme for the transfer to or from it of accrued 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—

(i) are assets of the scheme making the transfer and not of the receiving scheme, and

(ii) have such a value as is determined in accordance with the guidance given in GN 27.

Determination and valuation of assets

4.—(1) Subject to paragraphs (2) to (7) and to regulations 3(3), 5, 6 and 9, in determining the value of the assets of a scheme for the purpose of forming an opinion as to whether the minimum funding requirement is met on a relevant date, the actuary shall adopt the value given to the assets of the scheme in the relevant accounts (less the amount of the external liabilities), and that value shall be taken to be the value of those assets on the relevant date.

(2) In this regulation "external liabilities", in relation to a scheme, means such liabilities of the scheme (other than liabilities within regulation 7(1)(*a*) or (*b*)) 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.

(3) In this regulation "relevant accounts", in relation to a scheme, means audited accounts for the scheme—

(a) which comply with the requirements imposed under Article 41, and

(b) which are prepared in respect of a period ending with the relevant date or, if none are so prepared—

(i) are the latest such accounts which are available at the relevant date, or

(ii) if in the opinion of the actuary it is practicable for them to be used, the latest such accounts which are available on the date of signing of the valuation.

(4) If—

(a) the actuary has been given notice that the value of any asset or the amount of external liabilities at the relevant date was substantially different from the value or amount determined in accordance with paragraph (1) or, as the case may be, paragraph (2), or

(b) the relevant accounts are such accounts as are mentioned in paragraph (3)(*b*)(i) or (ii) and in the opinion of the actuary the valuation of any asset or external liabilities in the accounts was substantially out of date by the relevant date, then he shall make such adjustment to the value of that asset or, as the case may be, the amount of that external liability as appears to him appropriate to secure that the value or the amount he adopts is the market value of the asset or, as the case may be, the current amount of the liability.

(5) For the purposes of paragraph (4)—

(a) "market value" means the price which the asset might reasonably be expected to fetch on a sale in the open market, on the assumption that there were available to any prospective purchaser of the asset all the information which a prudent purchaser of it might reasonably require if he were proposing to purchase it from a willing vendor by private treaty and at arm's length, and

(b) the question whether the value of any asset or the amount of any liability is substantially different or out of date shall be determined by comparing the amount of adjustment likely to be required with the value of the asset or, as the case may be, the amount of the liability, that will otherwise be adopted.

(6) No adjustment may be made under paragraph (4) of the value given to any real property or any interest in real property in the relevant accounts, unless the adjustment reflects a more recent valuation given by a chartered surveyor in accordance with any relevant Practice Statements and Guidance Notes issued by the Royal Institution of Chartered Surveyors(**6**) and current on the date of signing of the valuation.

(7) For the purposes of paragraph (3), accounts are to be taken to comply with the requirements imposed under Article 41—

(a) in a case where they relate to a shorter period than that as to which accounts are required to be obtained under that Article, if they comply with those requirements apart from any relating to the length of the period covered, and

(b) in a case where they relate to a period ending before those requirements applied, if they comply with any requirements as to the form and content of accounts imposed under section 110 of the Pension Schemes (Northern Ireland) Act 1993(**7**).

Rights under insurance contracts

5.—(1) Nothing in regulation 4 applies for the purposes of determining the value of any rights under a contract of insurance and that value shall be determined as follows.

(2) Subject to paragraphs (3) and (4), the value of a contract of insurance is to be taken to be the amount (if any) payable on its surrender.

(3) Where, if a contract of insurance were surrendered to the insurer on the relevant date, the amount of the alternative liabilities which the insurer would secure in return for the surrender would be substantially greater than the amount payable on its surrender, then its value is to be taken to be that greater amount.

(4) Where it appears to the actuary that the circumstances are such that, in accordance with the guidance given in GN 27, it is appropriate for him to do so, then he may—

(a) disregard the value of the rights under a contract of insurance and the amount of the liabilities secured by the contract, or

(b) adopt a value for those rights which is equal to the amount of those liabilit ies.

Excluded assets

6.—(1) There shall be excluded from the value of the scheme assets—

(**6**) Copies are available from the Royal Institution of Chartered Surveyors, 12 Great George Street, Parliament Square, London SW1P 3AD

(**7**) 1993 c. 49; section 110 is repealed by paragraph 18 of Schedule 1 to the Pensions (Northern Ireland) Order 1995

(a) any resources invested (or treated as invested by or under Article 40) in contravention of Article 40(1) (restriction on employer-related investments);

(b) any amounts treated as a debt due to the trustees or managers under Article 59(2), 60(5) or 75(1) which are unlikely to be recovered without disproportionate cost or within a reasonable time;

(c) any increase in scheme assets attributable to an increase in the value of the scheme's assets being secured by a method specified in Schedule 4 following a serious shortfall valuation.

(2) At any time after the transitional period, there shall also be excluded the excess of the value mentioned in paragraph (3) over the amount mentioned in paragraph (4).

(3) The value referred to in paragraph (2) is the aggregate value of employer-related invest ments, as defined in Article 40(2), the holding of which—

(a) contravenes Article 40(1), or

(b) would do so apart from any provision enabling them to be held only until a specified time or by virtue of their having fallen within regulation 5(2)(*d*) of the Occupa tional Pension Schemes (Investment of Scheme's Resources) Regulations (Northern Ireland) 1992(**8**).

(4) The amount referred to in paragraph (2) is 5 per cent. of the aggregate value of the scheme's assets (excluding anything falling within paragraph (1) or (3)(*b*)).

Determination and valuation of liabilities

7.—(1) Subject to the provisions of these Regulations, the liabilities of a scheme which shall be taken into account for the purpose of forming an opinion as to whether the minimum funding requirement is met on a relevant date are—

(a) the liabilities in respect of pensions and benefits mentioned in Article 73(3) (which lists the liabilities of schemes in the order in which they are to be met on a winding up), and

(b) in the case of a scheme with members whose employment is contracted-out by reference to the scheme, liability in respect of contributions equivalent premiums for all such members in respect of whom an election to pay such premiums could be made (on the assumption that the scheme were wound up on the relevant date).

(2) The amount of the liabilities of the scheme in respect of pensions and benefits shall be calculated on the assumption that it is equal to the amount required to be invested in investments of an appropriate description in order to meet those liabilities, and that calculation shall be made by reference to the yield on such investments (as indicated in such indices as are specified in the guidance given in GN 27).

(3) For the purpose of making that calculation, it shall be assumed, subject to paragraphs (4) and (5), that all liabilities in respect of the pensions payable to or in respect of members who are pensioner members on the relevant date are met from investments in gilt-edged securities.

(4) If the amount of the liabilities in respect of pensions payable to or in respect of members, who are pensioner members on the relevant date, in the period of 12 years beginning with that date ("12 year liabilities") exceeds £100 million, then it shall be assumed—

(a) that those 12 year liabilities are met from investments in gilt-edged securities, and

(b) except in the case of a scheme with a gilts-matching policy for liabilities in respect of pensioner members, that all the liabilities of the scheme in respect of pensions payable to such members after the expiry of the period of 12 years ("long term liabilities") are met from investments in equities.

(5) Where paragraph (4) does not apply, it shall be assumed—

(**8**) S.R. 1992 No. 47

(a) that the 12 year liabilit ies, and so much of the long term liabilities as when aggregated with the 12 year liabilities equals at least £100 million, are met from investments in gilt-edged securities, and

(b) except in the case of a scheme with a gilts-matching policy for liabilities in respect of pensioner members, that the remainder of the long term liabilities are met from investments in equities,

and, for the purposes of sub-paragraph (*a*), long term liabilities shall only be included if they are due in the shortest possible period of whole years, beginning 12 years after the relevant date, which requires to be taken into account for that paragraph to be satisfied.

(6) For the purposes of paragraphs (4) and (5), in calculating the amount of liabilit ies for the purpose of determin ing whether the amount exceeds £100 million, the liabilities shall be calculated on the basis that they are met from investments in gilt-edged securities.

(7) For the purpose of calculating the liabilities in respect of the members who are not pensioner members on the relevant date, it shall be assumed, subject to paragraph (8), that they are met—

(a) to the extent that they relate to any time before the switch-over period, from investments in equities;

(b) to the extent that they relate to the switch-over period, from investments in both gilt-edged securities and equities, in such respective proportions as are indicated by the guidance in GN 27, and

(c) to the extent that they relate to any time after the switch-over period, from investments in gilt-edged securities.

(8) If the scheme has a gilts-matching policy for liabilities in respect of deferred members, it shall be assumed that liabilities in respect of members who are deferred members on the relevant date are met from investments in gilt-edged securities.

(9) For the purposes of this regulation, a scheme is only to be taken to have a gilts-matching policy for liabilities in respect of pensioner members or deferred members at any time if the last statement in respect of the scheme under Article 35 before that time states that the trustees' policy is to meet all liabilities in respect of pensioner members or, as the case may be, deferred members from investments in gilt-edged securities.

(10) In this regulation "the switch-over period", in relation to a member, means the period of 10 years ending with the age at which the member will first become entitled under the provisions of the scheme to receive a full pension on retirement of an amount determined without a reduction to take account of its payment before a later age (but disregarding any entitlement to pension on retirement in the event of illness, incapacity or redundancy).

Further provisions as to valuation: methodology, assumptions, etc.

8.—(1) The assets and liabilities of the scheme shall be valued by reference to the same date.

(2) In calculating the amount of any liability by reference to any date for the purpose of forming an opinion as to whether the minimum funding requirement is met on a relevant date, the actuary shall, in such manner as is indicated in the guidance given in GN 27—

(a) in the case of any scheme where—

(i) in accordance with regulation 7(4) and (5), any liabilities in respect of the pensions payable to or in respect of members who are pensioner members on that date may be assumed to be met from investments in equities, and

(ii) in accordance with that guidance it is appropriate to do so,

apply such demographic assumptions as are specified by that guidance for the scheme by reference to the members of the scheme, and

(b) in the case of any other scheme, apply such demographic assumptions as are specified for the scheme in question by reference to such tables as are specified by that guidance for the scheme.

Valuations by reference to future dates and periods

9.—(1) In calculating the value of any asset or the amount of any liability as at any future time, in order to form an opinion as to the adequacy of rates of contributions to a scheme for the purpose of securing that the minimum funding requirement—

(a) will continue to be met by the scheme throughout any period, or

(b) will be met by the scheme by the end of any period,

the actuary shall take into account (in addition to the matters mentioned in regulations 3 to 8 so far as they are relevant) such assumptions as are specified by the guidance given in GN 27 as appropriate for the purposes of such a calculation.

(2) In forming an opinion as to the adequacy of rates of contributions shown in a schedule of contributions for a scheme for the purpose of securing that the minimum funding requirement will continue to be met throughout or, as the case may be, will be met by the end of the schedule period, the actuary may make such adjustments to the value of the assets of the scheme and the amount of the liabilities of the scheme, as shown in the last minimum funding valuation for the scheme, as are in his opinion, in accordance with the guidance given in GN 27, appropriate to reflect changes in the assets and liabilities of the scheme after the relevant date of that valuation.

Minimum funding valuations

Time limits for minimum funding valuations

10.—(1) In the case of a scheme—

(a) which commences on or after the commencement date;

(b) in relation to which there was no disclosure valuation before that date, or

(c) to which Article 56 (minimum funding requirement) first applies after that date,

the first minimum funding valuation to be obtained in relation to the scheme under Article 57(1)(*a*)—

(i) shall be by reference to an effective date no later than the first anniversary of the date on which the scheme commences or, as the case may be, Article 56 first applies to it, and

(ii) shall be obtained by the trustees or managers before the end of the period of one year beginning with its effective date.

(2) In the case of any other scheme the first minimum funding valuation to be obtained in relation to the scheme under Article 57(1)(*a*)—

(a) shall be by reference to an effective date no later than the third anniversary of the effective date of the last disclosure valuation in relation to the scheme before the commencement date, and

(b) shall be obtained by the trustees or managers before the end of the period of one year beginning with its effective date.

(3) Any subsequent minimum funding valuation in relation to the scheme under Article 57(1)(*a*) shall be obtained by the trustees or managers—

(a) in a case where the effective date of the valuation is not later than the third anniversary of the effective date of the last minimum funding valuation, before the end of the period of 4 years beginning with the date on which the last minimum funding valuation was signed;

(b) otherwise, before the end of the period of 3 years beginning with the date on which the last minimum funding valuation was signed.

(4) A minimum funding valuation shall be signed before the end of the period of one year beginning with its effective date.

Duty to obtain minimum funding valuations following events with significant effects on funding

11.—(1) If during any schedule period it appears to the trustees or managers of a scheme, having consulted the actuary and obtained his opinion, that, by reason of any event which has had a significant effect on the value of the scheme's assets or the amount of its liabilities, or of a series of events which together have had such an effect, there is a serious risk—

(a) that the minimum funding requirement will not continue to be met throughout the schedule period, or

(b) in a case where the last minimum funding valuation for the scheme showed that on the effective date of that valuation that requirement was not met, that it will not be met by the end of that period,

then, subject to paragraph (2), they shall obtain a minimum funding valuation before the end of the period of 6 months beginning with the date on which the actuary gives his opinion.

(2) Paragraph (1) does not apply—

(a) if before the end of that period of 6 months the schedule of contributions has been revised under Article 58(3)(*b*) and the revision certified under that Article by the actuary, or

(b) in the case of an opinion given by an actuary during the transitional period.

Duty to obtain minimum funding valuations where new serious underfunding suspected

12.—(1) If, when the actuary is giving a certificate under Article 57(1)(*b*) (occasional and periodic certification of adequacy of contributions) in relation to a scheme, in a case where the latest certificate under Article 58 of the rates of contributions shown in the scheme's schedule of contributions—

(a) was given in the case mentioned in Article 58(6)(*a*) (certificate given when minimum funding requirement appears to be met), or

(b) was given in the case mentioned in Article 58(6)(*b*) (certificate given when minimum funding requirement appears not to be met), but in respect of rates calculated to secure that the scheme would meet the minimum funding requirement on or before the relevant date of the certificate under Article 57(1)(*b*),

the actuary is of the opinion that a minimum funding valuation for the scheme, as at the date he is giving the certificate, would be a serious shortfall valuation, then he shall include a statement of that opinion (as set out in paragraph 5 of Schedule 3) in the certificate.

(2) If the actuary does state in such a certificate that he is of that opinion, the trustees or managers shall obtain a minimum funding valuation before the end of the period of 6 months beginning with the relevant date of the certificate.

(3) This regulation does not apply where the relevant date of the certificate falls in the transitional period.

Duty to obtain minimum funding valuations: Article 75 debts in multi-employer schemes

13.—(1) If, in the case of a scheme in relation to which there is more than one employer, an event occurs in relation to one or more, but not all, of the employers, by virtue of which a debt may be treated as having arisen under Article 75(1) (deficiencies in the assets) from that employer, or those employers, to the trustees or managers of the scheme, and—

(a) the last minimum funding valuation for the scheme before the applicable time showed that on the effective date of that valuation the minimum funding requirement was not met;

(b) the last certificate under Article 58 before the applicable time of the rates of contributions shown in the scheme's schedule of contributions was given in the case mentioned in Article 58(6)(*b*) (certificate given when minimum funding requirement appears not to be met) in respect of rates which were not calculated to secure that the scheme would meet the minimum funding requirement on or before that time, or

(c) the last certificate under Article 57(1)(*b*) before the applicable time was such a certificate as is mentioned in Article 57(2)(*a*) (inadequate contributions),

the trustees or managers shall obtain a minimum funding valuation.

(2) Such a valuation shall be obtained—

(a) in a case where the effective date of the valuation coincides with the applicable time, before the end of the period of 6 months beginning with that time, and

(b) otherwise, before the end of the period of 3 months beginning with that time.

(3) In this regulation "the applicable time" has the same meaning as in Article 75(3).

Minimum funding valuation statements

14. Schedule 1 shall have effect for the purpose of making provision about minimum funding valuation statements.

Schedules of contributions and certification

Time limits for preparing and revising schedules of contributions

15.—(1) A schedule of contributions for a scheme shall be prepared before the end of the period of 12 weeks beginning with the signing of the first minimum funding valuation for the scheme.

(2) The schedule of contributions shall be revised before the end of the period of 12 weeks beginning with the signing of each subsequent minimum funding valuation for the scheme.

(3) An agreement for the purposes of Article 58(4)(*a*) as to the matters to be shown in the schedule of contributions shall be made before the end of the period of 8 weeks beginning with the signing of the last preceding minimum funding valuation for the scheme.

Periods covered by schedules of contributions

16.—(1) Subject to paragraph (2), a schedule of contributions for a scheme which is prepared under Article 58(3)(*a*) or revised under Article 58(3)(*c*) shall show the rates of contributions payable towards the scheme during the period of 5 years beginning with the date on which the rates of contributions shown in the schedule are certified; and that is the period by reference to which the actuary shall be of the opinion that the rates are adequate as mentioned in Article 58(6)(*a*) or (*b*), if he is to certify them.

(2) Where at any time during the transitional period a minimum funding valuation for a scheme shows that on the effective date the minimum funding requirement is not met, then the period referred to in paragraph (1) which applies for the schedule which shall be prepared, or revised, following that valuation by virtue of Article 58(3)(*a*) or (*c*) is extended so as to end with the expiry of the period of 10 years beginning with the commencement date.

(3) The period which is applicable to the schedule of contributions for a scheme by virtue of paragraphs (1) and (2) (subject to any alteration under regulation 25) is in these Regulations referred to as the "schedule period".

(4) A schedule of contributions which is revised under Article 58(3)(*b*) shall show the rates of contributions payable towards the scheme during the remainder of the schedule period which is current on the date on which the revised rates are certified; and that is the period by reference to which the actuary shall be of the opinion that the rates are adequate as mentioned in Article 58(6)(*a*) or (*b*), if he is to certify them.

(5) Where Article 58(4)(*b*) applies (matters to be shown in the schedule of contributions where agreement is not reached about those matters), the period mentioned in Article 58(4)(*b*)(i) (the period during or at the end of which the minimum funding requirement must be met) is—

(a) in the cases mentioned in paragraph (1), the schedule period, and

(b) in the case mentioned in paragraph (4), the remainder of the current period there mentioned.

Content and certification of schedules of contributions

17.—(1) The schedule of contributions shall show separately—

(a) the rates and due dates of all contributions (other than voluntary 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 each person who is an employer in relation to the scheme, and

(c) if separate contributions to cover expenses which are likely to fall due for payment by the trustees or managers in the schedule period are made to the scheme, the rates and due dates of those contributions.

(2) In any case where—

(a) Article 58(6)(*b*) applies, and

(b) the last minimum funding valuation for the scheme was not a serious shortfall valuation but showed that on the effective date of the valuation the value of the scheme assets was less than 98 per cent. of the amount of the scheme liabilities,

Article 58(6)(*b*) shall have effect with the addition at the end of

"and are such that the amount by which the value of the scheme assets falls short of the amount of the scheme liabilities will be reduced either—

(i) by additional contributions of equal or decreasing amounts made at not more than yearly intervals throughout that period, or

(ii) by increasing some or all of the contribution rates by a percentage which either remains the same throughout or decreases during that period".

(3) In any case where—

(a) Article 58(6)(*b*) applies, and

(b) the last minimum funding valuation for the scheme was a serious shortfall valuation,

Article 58(6)(*b*) shall have effect with the addition at the end of "and are such that they meet the uniform funding requirement specified in regulation 17 of the Occupational Pension Schemes (Minimum Funding Requirement and Actuarial Valuations) Regulations (Northern Ireland) 1996".

(4) For the purposes of Article 58(6)(*b*) as it has effect by virtue of paragraph (3) of this regulation, the uniform funding requirement is that, subject to paragraph (5) of this regulation—

(a) during the schedule period there shall be made at intervals of not more than one year contribu tions of equal or decreasing amounts totalling in aggregate such amount as in the opinion of the actuary is necessary for the purpose of securing that the minimum funding requirement will be met by the end of that period, or

(b) during that period some or all of the contribution rates shall be increased by a percentage which either remains the same throughout or decreases during that period, so as to secure payments totalling in aggregate such an amount as is mentioned in sub-paragraph (*a*).

(5) In a case where the increase required to be secured by Article 60(2) is to be secured by making an appropriate payment under Article 60(2)(*a*), additional payments and contributions of amounts totalling in aggregate an amount equal to that increase, shall be made before the expiry of the period of one year mentioned in regulation 20(1)(*a*) (extended as mentioned in regulation 20(3) where that regulation applies).

(6) Schedule 2 makes further provision about schedules of contributions and their certification under Article 58.

Occasional and periodic certification of adequacy of contributions

18.—(1) The trustees or managers of a scheme to which Article 56 applies shall, not earlier than 21 days before and not later than 21 days after each anniversary of the relevant date of the last certificate under Article 58 of the rates of contributions shown in the schedule of contributions for the scheme, obtain a certificate prepared by the actuary of the scheme—

(a) stating whether or not in his opinion the contributions payable towards the scheme are adequate for the purpose of securing—

(i) in a case where it appears to him that the minimum funding requirement is met, that it will continue to be met throughout the remainder of the schedule period which is current on the relevant date of the certificate, or

(ii) otherwise, that it will be met by the end of that period, and

(b) indicating any relevant changes since that valuation was prepared.

(2) Schedule 3 makes further provision about certificates under this regulation.

Records

19.—(1) The trustees or managers of a scheme to which Article 56 applies shall 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 deduction 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) Such trustees or managers shall also keep a separate record of all contributions and payments made to secure any increase required to be secured by Article 60(2).

(3) Such trustees or managers shall 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;

(b) the amount of any debt which has arisen under Article 60(5) (employer's failure to secure the increase required as a result of a serious shortfall valuation within the prescribed period), and

(c) the amount of any debt which has arisen under Article 75(1) (deficit on insolvency etc.).

Inadequate contributions

Minimum funding valuations showing serious underprovision

20.—(1) Where there has been a serious shortfall valuation for a scheme, the period before the end of which the employer must secure the increase in the value of the scheme assets mentioned in Article 60(2) is—

(a) subject to paragraph (3), in so far as the increase is secured as mentioned in Article 60(2)(*a*) (payments to trustees or managers), the period of one year beginning with the appropriate date, and

(b) in so far as the increase is secured as mentioned in Article 60(2)(*b*) (by a method specified in Schedule 4), the period of 12 weeks beginning with the date on which that valuation was signed,

and, for the purposes of Article 60(4), (5) and (7), the period applicable under Article 60(3) shall be taken to be the period mentioned in sub-paragraph (*a*) of this regulation.

(2) In paragraph (1)(*a*) "the appropriate date" means—

(a) if the serious shortfall valuation was obtained under Article 57(2), the date with which the period within which the valuation was required to be obtained began (being the period specified by or under Article 57(4)), and

(b) otherwise, the date on which that valuation was signed.

(3) If a minimum funding valuation shows that on its effective date, being a date falling in the transitional period, there was such a difference between the value of the scheme assets and the amount of its liabilities as is mentioned in Article 60(1) (serious underprovision), the period of one year mentioned in paragraph (1)(*a*) is extended so as to end with the expiry of the period of 6 years beginning with the commencement date (and Article 60(4), (5) and (7) shall apply accordingly).

(4) Where the increase in the value of the scheme assets required to be secured by Article 60(2) is secured as mentioned in Article 60(2)(*b*) within the period mentioned in paragraph (1)(*b*), nothing in paragraph (1)(*a*) is to be taken as preventing the employer from making a payment to the trustees or managers at any time to secure the whole or part of the required increase.

(5) Article 60(4) (which requires the trustees or managers to give notice to the Authority of the employer's failure to secure the required increase within the prescribed period) does not apply in any case where a subsequent minimum funding valuation shows that on the effective date of that valuation there is no longer such a difference between the value of the scheme assets and the amount of its liabilities as is mentioned in Article 60(1); and in those circumstances Article 60(5) (unpaid shortfall treated as debt from employer to trustees or managers) shall have effect with the addition at the end of "until the effective date of a subsequent actuarial valuation which does not show such a difference as is mentioned in paragraph (1)".

Failure reports

21.—(1) If it appears to the trustees or managers of a scheme that the minimum funding requirement is not met—

(a) at the end of any period—

(i) beginning with their receiving a minimum funding valuation in relation to the scheme which shows that on the effective date the minimum funding requirement is met, and

(ii) ending with their receiving the next subsequent such valuation ("the second valuation"), being a valuation which shows that on the effective date the minimum funding require ment is not met, or

(b) at the end of any period—

(i) beginning with their receiving a minimum funding valuation in relation to the scheme ("the first valuation") which shows that on the effective date the minimum funding requirement is not met, and

(ii) ending with their receiving the next subsequent such valuation ("the second valuation"), being a valuation which shows that on the effective date—

(I) the minimum funding requirement is not met, and

(II) the amount by which the value of the scheme assets falls short of the amount of the scheme liabilities is a greater percentage of the liabilities than was shown in the first valuation,

they shall prepare a report stating the reasons for the failure to meet that requirement on the effective date of the second valuation and for the deterioration in the funding of the scheme.

(2) If the trustees or managers receive a request in writing from any such person as is mentioned in Article 41(4) (which lists the persons to whom copies of documents are to be made available) for a copy of a report prepared by them under paragraph (1), they shall make a copy of the report available to him before the expiry of the period of one month beginning with the date on which they receive the request.

Methods of securing shortfall in cases of serious underprovision

22. Schedule 4 shall have effect as respects the methods by which the employer may secure the increase in the value of the scheme assets required by Article 60(2) (instead of or in addition to making an appropriate payment to the trustees or managers).

Failure to pay contributions due under schedule of contributions

23.—(1) A notice under Article 59(1) that any amount payable in accordance with a schedule of contributions has not been paid on or before the due date—

(a) shall be given to the Authority before the end of the period of 30 days beginning with that date, and

(b) subject to paragraph (2), shall be given to the members before the end of the period of 90 days beginning with that date.

(2) No notice need be given under paragraph (1)(*b*) if payment has been made before the end of the period of 60 days beginning with the due date.

(3) Where a schedule of contributions provides for payments to be made by any date or within a period after that date, for the purposes of paragraphs (1) and (2) the due date shall be taken to be that date or the last day of that period.

Modification of shared cost schemes

24.—(1) The trustees of a shared cost scheme to which Article 56 applies may by resolution modify the scheme with a view to making such provision that, if there is a serious shortfall valuation for the scheme, then the cost of any payments which the employer is obliged to make under Article 60 as a result of that valuation is borne by the employer and the members in the appropriate proportions (in the case of the members, either by provision for them to make payments or for their rights to benefits under the scheme to be modified or both), unless the employer and the trustees or managers agree—

(a) that the cost of the payments resulting from that valuation is to be borne by the employer alone, or

(b) that he should bear a greater proportion of it than would otherwise fall to be borne 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 the liabilities of the scheme, the rates of contributions payable by both the active members and the employer may be increased in those specified proportions,

and in this regulation "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.

Authority's powers to extend periods for making payments

Extension of contribution period

25.—(1) The Authority may extend (or further extend) the schedule period which would otherwise apply by virtue of regulation 16 if, on an application duly made to the Authority in that behalf by the trustees or managers of a scheme or the employer, the Authority are satisfied that—

(a) one of the conditions mentioned in paragraph (2), and

(b) all the conditions mentioned in paragraph (3),

are met.

(2) The conditions referred to in paragraph (1)(*a*) are—

(a) that there has been a substantial decrease in the value of the scheme assets which is attributable to any act or omission constituting an offence prescribed for the purposes of Article 79(1)(*c*) (or, in the case of an act or omission which occurred outside Northern Ireland, would constitute such an offence if it had occurred in Northern Ireland);

(b) that—

(i) by reason of exceptional general economic or financial circumstances there has been such a substantial decrease in the value of the scheme assets, or

(ii) there has been such a decrease in the value of a substantial proportion of the scheme assets in comparison with the relevant index assets,

that, if the period in question were not extended, the level of contributions required to be made by or on behalf of the employer would be such that—

(I) in the case of a scheme which relates to employment in a business, the profitability of the business would be seriously affected, or

(II) in any other case, the financial position of the employer would be so affected;

(c) that the employer proposes to make a contribution to the scheme in cash, to be obtained by him by the sale of assets, and completion of the formalities connected with the sale has been delayed;

(d) that there has been a substantial increase in the amount of the liabilities of the scheme.

(3) The conditions referred to in paragraph (1)(*b*) are—

(a) that the application has not been made as a result of an increase in the liabilities of the scheme since the beginning of the schedule period, arising—

(i) from the inclusion of, or of an increased amount in respect of, a liability the whole or part of which was not taken into account at the beginning of that period, by virtue of an act or omission which constituted a breach of a requirement imposed under Article 47(9) (disclosure), or

(ii) from a change in circumstances which, in the opinion of the Authority, was within the control of the employer;

(b) that—

(i) the employer has made proposals for securing that the minimum funding requirement will be met before the time when the proposed extended period will expire, and

(ii) except in a case where those proposals include his making a lump sum payment to the trustees or managers, pending the determination of the application contributions are being paid to the scheme by or on behalf of the employer at or above the rate certified by the actuary as the rate which would be required for securing that that requirement will be met before that time;

(c) in the case of a scheme which relates to employment in a business, that the business is likely to continue to operate, and

(d) that the trustees or managers and employer have agreed to provide the Authority during the extended period with all information requested by them for monitoring the factors relevant to the exercise of their powers under this regulation.

(4) An application under paragraph (1) shall be made in writing and be accom panied by—

(a) a statement by the applicant specifying—

(i) the general circumstances of the scheme;

(ii) his proposals for securing that the minimum funding requirement will be met within a specified period, and

(iii) his reasons for making those proposals;

(b) a statement as to the financial position of the employer, including—

(i) his ability to make adequate contributions to the scheme;

(ii) the effect on his financial position if the contributions payable by him or on his behalf were reduced to the rates proposed in the application, and

(iii) the likelihood of his financial position being seriously affected if the application were not granted;

(c) the last actuarial valuation for the scheme;

(d) the last statement in respect of the scheme under Article 35 (investment principles);

(e) a statement by the actuary as to the rates of contributions that are in his opinion required for securing that the minimum funding requirement will be met by the end of the period which would be applicable if the application were not granted;

(f) in the case of an application made by the employer, a statement by the trustees or managers setting out their views as to the application, and

(g) such other information and evidence as the Authority may require in support of the application.

(5) Where the employer is a company, the statement required under paragraph (4)(*b*)(i) shall—

(a) be made by its directors, and

(b) be accompanied by a statement by the auditor of the company that in his opinion the directors' statement has been made with due care.

(6) Where the Authority exercise their power under paragraph (1), the schedule period applicable to the scheme in accordance with regulation 16 shall be altered accordingly.

(7) In paragraph (2)(*b*)(ii) "the relevant index assets" means the assets the average yield from investment in which is, in accordance with regulation 7(2), used in the valuation of the liabilities of the scheme.

Extension of period for meeting serious shortfalls

26.—(1) The Authority may extend (or further extend) the period which by virtue of regulation 20 would otherwise be the period within which the increase required to be secured under Article 60(2) must be secured, if it is to be secured as mentioned in Article 60(2)(*a*), if, on an application duly made to the Authority in that behalf by the trustees or managers of a scheme or the employer, they are satisfied, subject to paragraph (2), that—

(a) one of the conditions mentioned in regulation 25(2), and

(b) all the conditions mentioned in regulation 25(3),

are met.

(2) For the purposes of this regulation, paragraphs (2) to (5) of regulation 25 apply to an application under paragraph (1) of this regulation as they apply to an application under that regulation, but subject to the following modifications—

(a) in paragraph (2)(*b*) for the reference to the level of contributions required to be made by or on behalf of the employer there shall be substituted a reference to the amount of the appropriate payment required to be made by the employer under Article 60(2)(*a*);

(b) in paragraphs (3)(*b*) and (4)(*a*)(ii) for the references to securing that the minimum funding requirement will be met there shall be substituted references to securing that the required increase in value is secured;

(c) in a case where it is proposed to make a single payment under Article 60(2)(*a*), paragraph (4)(*b*)(ii) and (*e*) shall be omitted;

(d) in a case where it is proposed to make 2 or more payments under Article 60(2)(*a*), paragraph (4)(*b*)(ii) shall have effect with the substitution for the reference to contributions of a reference to those payments and paragraph (4)(*e*) shall be omitted.

General extensions in exceptional circumstances

27.—(1) Where, by reason of exceptional general economic or financial circumstances, it is likely that a large number of applications will be made—

(a) under regulation 25, or

(b) under regulation 26,

the Authority may exercise the powers of extension mentioned in paragraph (1) of that regulation in the case of all schemes in respect of which an application is made to them under that regulation, by extending (or further extending) the period to which the application relates, unconditionally or subject to any conditions.

(2) Extensions given generally under paragraph (1) may extend the applicable period for schemes of different descriptions by different periods.

(3) Regulation 25(6) applies to an extension given by virtue of paragraph (1)(*a*) as it applies in the case of an extension by virtue of regulation 25(1).

(4) Extensions under paragraph (1) may apply to applications made under regulation 25 or, as the case may be, 26, notwithstanding that they are not accompanied by the documents, information and evidence required in their case by regulation 25(4).

Exemptions

Exemptions

28.—(1) Article 56 (minimum funding requirement) does not apply—

(a) to a public service pension scheme—

(i) under the provisions of which there is no requirement for assets related to the intended rate or amount of benefit under the scheme to be set aside in advance (disregarding requirements relating to voluntary contributions), or

(ii) which is made under Article 9 of the Superannuation (Northern Ireland) Order 1972(**9**) (superannuation of persons employed in local government service, etc.) or which is established under Part II of the Ministerial Salaries and Members' Pensions Act (Northern Ireland) 1965(**10**) or Article 3 of the Assembly Pensions (Northern Ireland) Order 1976(**11**);

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

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

(d) to a section 615(6) scheme;

(e) to a scheme with less than 2 members;

(f) to a scheme—

(i) the only benefits provided by which (other than money purchase benefits) are death benefits, and

(ii) under the provisions of which no member has accrued rights (other than rights to money purchase benefits);

(g) to a relevant lump sum retirement benefits scheme, or

(h) to the scheme established by the Salvation Army Act 1963(**12**).

(2) In this regulation—

"approved scheme" means a scheme which is approved or was formerly approved under section 590 or 591 of the Taxes Act 1988 or in respect of which an application for such approval has been duly made but has not been determined;

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

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

(**9**) S.I. 1972/1073 (N.I. 10)
(**10**) 1965 c. 18 (N.I.)
(**11**) S.I. 1976/1779
(**12**) 1963 c. xxxii

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

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

(b) which is not contracted-out, and

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

"relevant statutory scheme" has the meaning given in section 611A of the Taxes Act 1988(**13**);

"section 615(6) scheme" means a scheme with such a superannuation fund as is mentioned in section 615(6) of the Taxes Act 1988.

(3) Where a debt under Article 75 arises at an applicable time (as defined in Article 75(3)) immediately before an insolvency event occurs in relation—

(a) to a person who is at that time the sole employer in relation to the scheme, or

(b) to persons who are at that time the only employers in relation to the scheme,

and (apart from this paragraph) Article 56 would apply to the scheme then, except as provided in paragraph (5), that Article shall not apply to the scheme.

(4) Where a scheme to which Article 56 applies is being wound up, Articles 57(1)(*b*) and (2) to (4) and 58 to 60 do not apply to it.

(5) Nothing in paragraph (3) or (4) shall affect any rights or obligations arising under Articles 56 to 61 before the time mentioned in paragraph (3) or, as the case may be, the time when the scheme begins to be wound up, and—

(a) if Article 60(2) has applied in relation to the scheme, and

(b) the employer has secured the increase required by that Article by a method specified in Schedule 4,

those paragraphs do not affect the operation of that Schedule or anything done under it.

Modifications for special cases

Modifications

29. Schedule 5 has effect for the purpose of modifying Articles 56 to 60 and these Regulations as they apply in the circumstances there specified, including—

(a) schemes with members in employments under different employers;

(b) schemes without active members;

(c) schemes with foreign elements;

(d) schemes which are partially guaranteed by a Minister of the Crown or government department.

(**13**) Section 611A was inserted by paragraph 15 of Schedule 6 to the Finance Act 1989 (c. 26)

Ongoing actuarial valuations

Ongoing actuarial valuations and statements

30.—(1) Subject to paragraphs (2) to (8), the trustees or managers of any scheme to which Article 56 applies shall obtain a valuation prepared and signed by the actuary of the assets and liabilities of the scheme as at the effective date specified in the valuation.

(2) Such a valuation shall—

(a) be so expressed as to enable the expected future course of the scheme's contribution rates and funding level to be understood;

(b) state whether it has been prepared in accordance with the guidelines "Retirement Benefit Schemes — Actuarial Reports (GN 9)" published by the Institute of Actuaries and the Faculty of Actuaries(**14**) and current on the date of signature of the valuation, and

(c) if it has not been so prepared, indicate where there are any material departures from those guidelines.

(3) In the case of a scheme—

(a) which commences on or after the commencement date;

(b) in relation to which there was no disclosure valuation before that date, or

(c) to which Article 56 first applies after that date,

the first such valuation to be obtained in relation to the scheme under this regulation—

(i) shall be by reference to an effective date no later than the first anniversary of the date on which the scheme commences or, as the case may be, Article 56 first applies to it, and

(ii) shall be obtained by the trustees or managers before the end of the period of one year beginning with its effective date.

(4) In the case of any other scheme the first such valuation to be obtained in relation to the scheme under this regulation—

(a) shall be by reference to an effective date no later than the third anniversary of the effective date of the last disclosure valuation in relation to the scheme before the commencement date, and

(b) shall be obtained by the trustees or managers before the end of the period of one year beginning with its effective date.

(5) Any subsequent valuation under this regulation shall be obtained by the trustees or managers —

(a) in a case where the effective date of the valuation is not later than the third anniversary of the effective date of the last such valuation, before the end of the period of 4 years beginning with the date on which the last valuation was signed, and

(b) otherwise, before the end of the period of 3 years beginning with the date on which the last such valuation was signed.

(6) A valuation under this regulation shall be signed before the end of the period of one year beginning with its effective date.

(7) Each such valuation shall be accompanied by a statement made by the actuary, and he may issue a revised statement at any time before the next such valuation is made.

(8) Any such statement or revised statement shall be in the form set out in Schedule 6, except that—

(**14**) Copies of GN 9 may be obtained from the Faculty of Actuaries, 17 Thistle Street, Edinburgh EH2 1DF

(a) if paragraph 1 of the statement does not correctly set out the actuary's opinion, he shall substitute a negative or qualified opinion, giving reasons, and

(b) in the case of a revised statement, the line which begins with "Effective date of valuation" may be omitted.

Sealed with the Official Seal of the Department of Health and Social Services on 10th December 1996.

John O'Neill
Assistant Secretary