

*Status: Point in time view as at 17/07/2015.*

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## STATUTORY INSTRUMENTS

# 2005 No. 255

## The Pensions (Northern Ireland) Order 2005

### PART IV

#### SCHEME FUNDING

##### **Modifications etc. (not altering text)**

**C1** Pt. IV applied (24.7.2014) by [The Pensions \(2012 Act\) \(Transitional, Consequential and Supplementary Provisions\) Regulations \(Northern Ireland\) 2014 \(S.R. 2014/204\)](#), regs. 1(1), **63(1)**

#### *Introductory*

##### **Pension schemes to which this Part applies**

**200.**—(1 <sup>F1</sup> The provisions of this Part apply to every occupational pension scheme other than—  
(a <sup>F1</sup> a money purchase scheme, or  
(b <sup>F1</sup> a prescribed scheme or a scheme of a prescribed description.

(2 <sup>F1</sup> Regulations under paragraph (1)(b) may provide for exemptions from all or any of the provisions of this Part.

**F1** mod. by SR 2005/570

#### *Scheme funding*

##### **The statutory funding objective**

**201.**—(1) Every scheme is subject to a requirement (“the statutory funding objective”) that it must have sufficient and appropriate assets to cover its technical provisions.

(2) A scheme's “technical provisions” means the amount required, on an actuarial calculation, to make provision for the scheme's liabilities.

(3) For the purposes of this Part—

- (a) the assets to be taken into account and their value shall be determined, calculated and verified in a prescribed manner, and
- (b) the liabilities to be taken into account shall be determined in a prescribed manner and the scheme's technical provisions shall be calculated in accordance with any prescribed methods and assumptions.

(4) Regulations may—

- (a) provide for alternative prescribed methods and assumptions,

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- (b) provide that it is for the trustees or managers to determine which methods and assumptions are to be used in calculating a scheme's technical provisions, and
  - (c) require the trustees or managers, in making their determination, to take into account prescribed matters and follow prescribed principles.
- (5) Any provision of the scheme rules that limits the amount of the scheme's liabilities by reference to the value of its assets shall be disregarded.

### Statement of funding principles

**202.**—(1) The trustees or managers must prepare, and from time to time review and if necessary revise, a written statement of—

- (a) their policy for securing that the statutory funding objective is met, and
- (b) such other matters as may be prescribed.

This is referred to in this Part as a “statement of funding principles”.

- (2) The statement must, in particular, record any decisions by the trustees or managers as to—
  - (a) the methods and assumptions to be used in calculating the scheme's technical provisions, and
  - (b) the period within which, and manner in which, any failure to meet the statutory funding objective is to be remedied.
- (3) Provision may be made by regulations—
  - (a) as to the period within which a statement of funding principles must be prepared, and
  - (b) requiring it to be reviewed, and if necessary revised, at such intervals, and on such occasions, as may be prescribed.

(4) Where any requirement of this Article is not complied with, Article 10 of the 1995 Order (civil penalties) applies to a trustee or manager who has failed to take all reasonable steps to secure compliance.

### Actuarial valuations and reports

**203.**—(1) The trustees or managers must obtain actuarial valuations—

- (a) <sup>F2</sup> <sup>F3</sup> at intervals of not more than one year or, if they obtain actuarial reports for the intervening years, at intervals of not more than three years, and
- (b) in such circumstances and on such other occasions as may be prescribed.

(2) In this Part—

- (a) <sup>F3</sup> an “actuarial valuation” means a written report, prepared and signed by the actuary, valuing the scheme's assets and calculating its technical provisions,
- (b) the effective date of an actuarial valuation is the date by reference to which the assets are valued and the technical provisions calculated,
- (c) <sup>F2</sup> <sup>F3</sup> an “actuarial report” means a written report, prepared and signed by the actuary, on developments affecting the scheme's technical provisions since the last actuarial valuation was prepared, and
- (d) <sup>F2</sup> <sup>F3</sup> the effective date of an actuarial report is the date by reference to which the information in the report is stated.

(3) <sup>F2</sup> The intervals referred to in paragraph (1)(a) are between effective dates of the valuations, and—

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- (a) <sup>F2</sup> <sup>F3</sup> the effective date of the first actuarial valuation must be not more than one year after the establishment of the scheme, and
- (b) <sup>F2</sup> <sup>F3</sup> the effective date of any actuarial report must be not more than one year after the effective date of the last actuarial valuation, or, if more recent, the last actuarial report.
- (4) <sup>F2</sup> <sup>F3</sup> The trustees or managers must ensure that a valuation or report obtained by them is received by them within the prescribed period after its effective date.
- (5) <sup>F2</sup> <sup>F3</sup> Nothing in this Article affects any power or duty of the trustees or managers to obtain actuarial valuations or reports at more frequent intervals or in other circumstances or on other occasions.
- (6) <sup>F2</sup> <sup>F3</sup> An actuarial valuation or report (whether obtained under this Article or in pursuance of any other power or duty) must be prepared in such a manner, give such information, contain such statements and satisfy such other requirements as may be prescribed.
- (7) <sup>F2</sup> <sup>F3</sup> The trustees or managers must secure that any actuarial valuation or report obtained by them (whether obtained under this Article or in pursuance of any other power or duty) is made available to the employer within seven days of their receiving it.
- (8) Where paragraph (1), (4) or (7) is not complied with, Article 10 of the 1995 Order (civil penalties) applies to a trustee or manager who has failed to take all reasonable steps to secure compliance.

<b>F2</b>	mod. by SR 2005/568
<b>F3</b>	mod. by SR 2005/570

### Certification of technical provisions

- 204.**—(1) When an actuarial valuation is carried out, the calculation of the technical provisions must be certified by the actuary.
- (2) The certificate must state that in the opinion of the actuary the calculation is made in accordance with regulations under Article 201.
- (3) If the actuary cannot give the certificate required by paragraph (2) he must report the matter in writing to the Regulator within a reasonable period after the end of the period within which the valuation must be received by the trustees or managers.
- (4) Article 10 of the 1995 Order (civil penalties) applies to the actuary if he fails without reasonable excuse to comply with paragraph (3).

### Recovery plan

- 205.**—(1) <sup>F4</sup> <sup>F5</sup> If having obtained an actuarial valuation it appears to the trustees or managers of a scheme that the statutory funding objective was not met on the effective date of the valuation, they must within the prescribed time—
- (a) <sup>F5</sup> if there is no existing recovery plan in force, prepare a recovery plan;
- (b) <sup>F5</sup> if there is an existing recovery plan in force, review and if necessary revise it.
- (2) <sup>F4</sup> <sup>F5</sup> A recovery plan must set out—
- (a) the steps to be taken to meet the statutory funding objective, and
- (b) the period within which that is to be achieved.
- (3) <sup>F4</sup> <sup>F5</sup> A recovery plan must comply with any prescribed requirements and must be appropriate having regard to the nature and circumstances of the scheme.

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(4) <sup>F4</sup> <sup>F5</sup> In preparing or revising a recovery plan the trustees or managers must take account of prescribed matters.

(5) <sup>F4</sup> <sup>F5</sup> Provision may be made by regulations as to other circumstances in which a recovery plan may or must be reviewed and if necessary revised.

(6) <sup>F4</sup> <sup>F5</sup> The trustees or managers must, except in prescribed circumstances, send a copy of any recovery plan to the Regulator within a reasonable period after it is prepared or, as the case may be, revised.

The copy of any recovery plan sent to the Regulator must be accompanied by the prescribed information.

(7) Where any requirement of this Article is not complied with, Article 10 of the 1995 Order (civil penalties) applies to a trustee or manager who has failed to take all reasonable steps to secure compliance.

**F4** mod. by SR 2005/568

**F5** mod. by SR 2005/570

### Schedule of contributions

**206.**—(1) The trustees or managers must prepare, and from time to time review and if necessary revise, a schedule of contributions.

(2) A “schedule of contributions” means a statement showing—

- (a) the rates of contributions payable towards the scheme by or on behalf of the employer and the active members of the scheme, and
- (b) the dates on or before which such contributions are to be paid.

(3) Provision may be made by regulations—

- (a) as to the period within which, after the establishment of a scheme, a schedule of contributions must be prepared,
- (b) requiring the schedule of contributions to be reviewed, and if necessary revised, at such intervals, and on such occasions, as may be prescribed, and
- (c) as to the period for which a schedule of contributions is to be in force.

(4) The schedule of contributions must satisfy prescribed requirements.

(5) The schedule of contributions must be certified by the actuary and—

- (a) the duty to prepare or revise the schedule is not fulfilled, and
- (b) the schedule shall not come into force,

until it has been so certified.

(6) The certificate must state that, in the opinion of the actuary—

- (a) the schedule of contributions is consistent with the statement of funding principles, and
- (b) the rates shown in the schedule are such that—
  - (i) <sup>F6</sup> <sup>F7</sup> where the statutory funding objective was not met on the effective date of the last actuarial valuation, the statutory funding objective can be expected to be met by the end of the period specified in the recovery plan, or
  - (ii) where the statutory funding objective was met on the effective date of the last actuarial valuation, the statutory funding objective can be expected to continue to be met for the period for which the schedule is to be in force.

(7) Where the statutory funding objective was not met on the effective date of the last actuarial valuation, the trustees or managers must send a copy of the schedule of contributions to the Regulator within a reasonable period after it is prepared or, as the case may be, revised.

(8) Where any requirement of the preceding provisions of this Article is not complied with, Article 10 of the 1995 Order (civil penalties) applies to a trustee or manager who has failed to take all reasonable steps to secure compliance.

(9) If the actuary is unable to give the certificate required by paragraph (6), he must report the matter in writing to the Regulator within a reasonable period after the end of the period within which the schedule is required to be prepared or, as the case may be, revised.

(10) Article 10 of the 1995 Order (civil penalties) applies to the actuary if he fails without reasonable excuse to comply with paragraph (9).

(11) The provisions of paragraphs (1), (3) and (5) to (10) do not apply in relation to a schedule of contributions imposed by the Regulator under Article 210 or, as the case may be, where such a schedule of contributions is in force.

F6 mod. by SR 2005/568

F7 mod. by SR 2005/570

### Failure to make payments

**207.**—(1) This Article applies where an amount payable in accordance with the schedule of contributions by or on behalf of the employer or an active member of a scheme is not paid on or before the due date.

(2) If the trustees or managers have reasonable cause to believe that the failure is likely to be of material significance in the exercise by the Regulator of any of its functions, they must, except in prescribed circumstances, give notice of the failure to the Regulator and to the members within a reasonable period.

(3) The amount unpaid (whether payable by the employer or not), if not a debt due from the employer to the trustees or managers apart from this paragraph, shall be treated as such a debt.

(4) Article 10 of the 1995 Order (civil penalties) applies—

- (a) where paragraph (2) is not complied with, to a trustee or manager who has failed to take all reasonable steps to secure compliance with that paragraph;
- (b) to the employer if he fails without reasonable excuse to make a payment required of him—
  - (i) in accordance with the schedule of contributions, or
  - (ii) by virtue of paragraph (3).

(5) This Article applies in relation to a schedule of contributions imposed by the Regulator under Article 210 as in relation to one agreed between the trustees or managers and the employer.

### Matters requiring agreement of the employer<sup>F8</sup>

**208.**—(1 <sup>F8</sup> The trustees or managers must obtain the agreement of the employer to—

- (a) any decision as to the methods and assumptions to be used in calculating the scheme's technical provisions (see Article 201(4));
- (b) any matter to be included in the statement of funding principles (see Article 202);
- (c) any provisions of a recovery plan (see Article 205);
- (d) any matter to be included in the schedule of contributions (see Article 206).

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(2) <sup>F8</sup> If it appears to the trustees or managers that it is not otherwise possible to obtain the employer's agreement within the prescribed time to any such matter, they may (if the employer agrees) by resolution modify the scheme as regards the future accrual of benefits.

(3) No modification may be made under paragraph (2) that on taking effect would or might adversely affect any subsisting right of—

- (a) any member of the scheme, or
- (b) any survivor of a member of the scheme.

For this purpose “subsisting right” and “survivor” have the meanings given by Article 67A of the 1995 Order.

(4) Any such modification must be—

- (a) recorded in writing by the trustees or managers, and
- (b) notified to the active members within one month of the modification taking effect.

(5) <sup>F8</sup> If the trustees or managers are unable to reach agreement with the employer within the prescribed time on any such matter as is mentioned in paragraph (1), they must report the failure in writing to the Regulator within a reasonable period.

(6) <sup>F8</sup> Where paragraph (1), (4) or (5) is not complied with, Article 10 of the 1995 Order (civil penalties) applies to a trustee or manager who has failed to take all reasonable steps to secure compliance.

**F8** mod. by SR 2005/568

### Matters on which advice of actuary must be obtained

**209.**—(1) The trustees or managers must obtain the advice of the actuary before doing any of the following—

- (a) making any decision as to the methods and assumptions to be used in calculating the scheme's technical provisions (see Article 201(4)),
- (b) preparing or revising the statement of funding principles (see Article 202),
- (c) preparing or revising a recovery plan (see Article 205),
- (d) preparing or revising the schedule of contributions (see Article 206),
- (e) modifying the scheme as regards the future accrual of benefits under Article 208(2).

(2) Regulations may require the actuary to comply with any prescribed requirements when advising the trustees or managers of a scheme on any such matter.

(3) The regulations may require the actuary to have regard to prescribed guidance. “Prescribed guidance” means guidance that is prepared and from time to time revised by a prescribed body <sup>F9</sup>. . . .

(4) Where paragraph (1) is not complied with, Article 10 of the 1995 Order (civil penalties) applies to a trustee or manager who has failed to take all reasonable steps to secure compliance.

**F9** Art. 209(3): words in the definition of "Prescribed guidance" repealed (29.2.2008) by [Pensions Act \(Northern Ireland\) 2008 \(c. 1\)](#), ss. 15, 19(2), 21(1)(c), Sch. 5 para. 7, **Sch. 6 Pt. 8**; S.R. 2008/65, **art. 2**

### Powers of the Regulator

**210.**—(1) The powers conferred by this Article are exercisable where it appears to the Regulator with respect to a scheme (as a result of a report made to it or otherwise)—

- [<sup>F10</sup>(za) that the trustees or managers, when determining the methods and assumptions to be used in calculating the scheme's technical provisions, have failed to comply with a requirement imposed under Article 201(4)(c);]
- (a) that the trustees or managers have failed to comply with the requirements of Article 202 with respect to the preparation or revision of a statement of funding principles;
  - (b) that the trustees or managers have failed to obtain an actuarial valuation as required by Article 203(1);
  - (c) that the actuary is unable, on an actuarial valuation required by Article 203(1), to certify the calculation of the scheme's technical provisions;
  - (d) [<sup>F11</sup> <sup>F12</sup>that the trustees or managers have failed to comply with the requirements of Article 205 with respect to the preparation or revision of a recovery plan;
  - (e) that the trustees or managers have failed to comply with the requirements of Article 206 with respect to the preparation or revision of a schedule of contributions;
  - (f) that the actuary is unable to certify a schedule of contributions (see Article 206(6));
  - (g) that the employer has failed to make payments in accordance with the schedule of contributions, or that are required of him by virtue of Article 207(3), and the failure is of material significance;
  - (h) that the trustees or managers have been unable to reach agreement with the employer within the prescribed time as to a matter in relation to which such agreement is required (see Article 208(5)).
- (2) In any of those circumstances the Regulator may by order exercise all or any of the following powers—
- (a) it may modify the scheme as regards the future accrual of benefits;
  - (b) it may give directions as to—
    - (i) the manner in which the scheme's technical provisions are to be calculated, including the methods and assumptions to be used in calculating the scheme's technical provisions, or
    - (ii) the period within which, and manner in which, any failure to meet the statutory funding objective is to be remedied;
  - (c) it may impose a schedule of contributions specifying—
    - (i) the rates of contributions payable towards the scheme by or on behalf of the employer and the active members of the scheme, and
    - (ii) the dates on or before which such contributions are to be paid.
- (3) No modification may be made under paragraph (2)(a) that on taking effect would or might adversely affect any subsisting right of—
- (a) any member of the scheme, or
  - (b) any survivor of a member of the scheme.
- For this purpose “subsisting right” and “survivor” have the meanings given by Article 67A of the 1995 Order.
- (4) In exercising any of the powers conferred by this Article the Regulator must comply with any prescribed requirements.
- (5) The powers conferred by this Article are in addition to any other powers exercisable by the Regulator under this Order or the 1995 Order.

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- F10** Art. 210(1)(za) inserted (26.1.2009) by [Pensions \(No. 2\) Act \(Northern Ireland\) 2008 \(c. 13\)](#), **ss. 107, 118(1)**; [S.R. 2009/22](#), **art. 2(1)(d)**
- F11** mod. by [SR 2005/568](#)
- F12** mod. by [SR 2005/570](#)

### [<sup>F13</sup>Requirements for winding up procedure

**210A.**—(1) Where an occupational pension scheme in respect of which a recovery plan has been prepared under Article 205 begins to wind up during the recovery period, the trustees or managers of the scheme must as soon as reasonably practicable prepare a winding up procedure.

(2) A winding up procedure must—

- (a) set out the action to be taken to establish the liabilities to, or in respect of, the members of the scheme, in respect of pensions and other benefits, and to recover any assets of the scheme;
- (b) give an estimate of the amount of time it will take to establish those liabilities and to recover any such assets;
- (c) give an indication of which of the accrued rights or benefits (if any), to which a person is entitled under the scheme, are likely to be affected by a reduction in actuarial value;
- (d) specify which one or more of the ways mentioned in Article 74(3)(a) to (e) of the 1995 Order will be used to discharge the liabilities to, or in respect of, the members of the scheme in respect of pensions or other benefits;
- (e) give an estimate of the amount of time it will take to discharge those liabilities.

(3) The requirement imposed by paragraph (2)(c) applies only to the extent that the trustees or managers have sufficient information to give such an indication.

(4) A winding up procedure must be appropriate having regard to the nature and circumstances of the scheme.

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

(6) The trustees or managers must send a copy of any winding up procedure to the Regulator as soon as reasonably practicable after it has been prepared or, as the case may be, revised.

(7) Where any requirement of this Article is not complied with, Article 10 of the 1995 Order (civil penalties) applies to a trustee or manager who has failed to take all reasonable steps to secure compliance.

(8) In this Article “recovery period”, in relation to an occupational pension scheme, means the period specified in the scheme's recovery plan in accordance with Article 205(2)(b). ]

- F13** Art. 210A inserted (24.7.2006) by [Occupational Pension Schemes \(Winding up Procedure Requirement\) Regulations \(Northern Ireland\) 2006 \(S.R. 2006/297\)](#), **reg. 2**

### *Supplementary provisions*

#### **Power to modify provisions of this Part**

**211.** Regulations may modify the provisions of this Part as they apply in prescribed circumstances.



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### **Construction as one with the 1995 Order**

**212.** This Part shall be construed as one with Part II of the 1995 Order.

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