

## 1994 No. 107

## PENSIONS

**The Occupational Pension Schemes (Deficiency on Winding Up, etc.) Regulations (Northern Ireland) 1994**

*Made* . . . . . 25th March 1994

*Coming into operation* . . . . . 19th April 1994

The Department of Health and Social Services for Northern Ireland, in exercise of the powers conferred on it by sections 140(5), 149(5)(a) and (b) and 178(3) of the Pension Schemes (Northern Ireland) Act 1993(a) and of all other powers enabling it in that behalf, hereby makes the following regulations:

*Citation, commencement and interpretation*

1.—(1) These regulations may be cited as the Occupational Pension Schemes (Deficiency on Winding Up, etc.) Regulations (Northern Ireland) 1994 and shall come into operation on 19th April 1994.

(2) These regulations apply to every occupational pension scheme which is not a money purchase scheme.

(3) In these regulations—

“the Act” means the Pension Schemes (Northern Ireland) Act 1993;

“actuary” means—

(a) a Fellow of the Institute of Actuaries,

(b) a Fellow of the Faculty of Actuaries, or

(c) a person with other actuarial qualifications who is approved by the Department as being a proper person to act for the purposes of section 140 of the Act (deficiencies in the assets of a scheme on winding up).

(4) The Interpretation Act (Northern Ireland) 1954(b) shall apply to these regulations as it applies to a Measure of the Northern Ireland Assembly.

*Calculation of the value of scheme liabilities and assets*

2.—(1) For the purposes of section 140(1) of the Act, the value of a scheme’s liabilities and assets are, subject to paragraphs (2) and (3), to be determined by being calculated and verified in accordance with the Guidance Note “Retirement Benefits Schemes — Deficiency on Winding Up (GN19)”(c).

(a) 1993 c. 49

(b) 1954 c. 33 (N.I.)

(c) Guidance Note GN 19 was jointly published on 1st April 1993, and revised with effect from 1st October 1993, by the Institute of Actuaries and the Faculty of Actuaries; copies may be obtained from the Institute of Actuaries, Staple Inn Hall, High Holborn, London WC1V 7QJ or from the Faculty of Actuaries, 23 St. Andrew Square, Edinburgh EH2 1AQ

(2) In calculating the value of the scheme's liabilities, any provision of the scheme which limits the amount of its liabilities by reference to the amount of its assets shall be disregarded.

(3) A determination under paragraph (1) must be certified by an actuary appointed by the trustees of the scheme in question as being in accordance with the guidance referred to in that paragraph.

*Scheme which applies to more than one employer*

3. In the application of section 140 of the Act to a scheme which applies to earners in employments under different employers and in respect of which there are members in pensionable service under the scheme—

(a) that section shall be modified by inserting after subsection (1), the following subsections—

“(1A) The amount of the debt due from each employer shall be such amount as, in the opinion of the actuary referred to in regulation 2(3) of the Occupational Pension Schemes (Deficiency on Winding Up, etc.) Regulations (Northern Ireland) 1994, bears the same proportion to the deficiency under the scheme as the amount of the scheme's liabilities attributable to employment with that employer (including liabilities in respect of any transfer credits allowed under the scheme in connection with employment with that employer) bears to the total amount of the scheme's liabilities.

(1B) Where a scheme which applies to earners in employments under different employers is divided into two or more sections and the provisions of the scheme are such that—

- (a) different sections of the scheme apply to different employers;
- (b) contributions payable to the scheme by an employer, or by an earner in employment under that employer, are allocated to that employer's section; 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 such section,

each section of the scheme shall be treated as a separate scheme for the purposes of this section.”; and

(b) section 140(3) shall be modified—

(i) by substituting the following definition for the definition of “the applicable time”—

“ “the applicable time” means—

- (a) in relation to a scheme which is being wound up, any time—
  - (i) after the commencement of the winding up, or, where on 1st July 1992 a scheme was being wound up on or after that date, and
  - (ii) before a relevant insolvency event occurs in relation to all of the employers to whom the scheme relates; and

- (b) in relation to a scheme which is not being wound up, each of the times on or after 1st July 1992 at which a relevant insolvency event occurs in relation to any of the employers to whom the scheme relates;” and
- (ii) by substituting the following definition for the definition of “the employer”—
- “ “the employer” means every employer of persons in the description or category of employment to which the scheme relates and includes any person who was an employer of such persons immediately before the scheme—
- (a) commenced winding up, or
- (b) if earlier, ceased to admit new members.”.

*Scheme in respect of which there are no members in pensionable service*

4. In the application of section 140 of the Act to a scheme in respect of which there are no members who are in pensionable service under the scheme—

- (a) that section shall be modified in the manner provided by regulation 3(b)(ii);
- (b) that section shall be further modified by inserting at the beginning of subsection (1) the words “Subject to the following provisions of this section,” and by adding after the subsections (1A) and (1B) inserted by regulation 3(a), the following subsections—

“(1C) Where by virtue of subsection (1) a debt (“the debt”) is due from the employer to the trustees of a scheme (“the original scheme”) and—

- (a) arrangements have been made by the employer and the trustees of the original scheme under which the employer will make contributions to another occupational pension scheme so as to enable that other scheme to pay benefits (“the replacement benefits”) to persons who have accrued rights under the original scheme in place of the benefits that would be payable under the original scheme;
- (b) contributions are made by the employer in accordance with those arrangements; and
- (c) the replacement benefits are broadly equivalent to the benefits payable under the original scheme which they replace,

then the debt shall not be recoverable.

(1D) Where the arrangements referred to in subsection (1C) relate to part of the deficiency under the scheme then a corresponding part of the debt (“the relevant part”) shall not be recoverable.

(1E) If the employer fails or ceases, in whole or in part, duly to make contributions in accordance with the arrangements referred to in subsection (1C), or a relevant insolvency event occurs in relation to

that employer, the debt or, as the case may be, the relevant part of it, shall again be recoverable.

(1F) Any amounts paid by the employer under arrangements to fund the provision of replacement benefits in accordance with subsection (1C) shall be offset against the debt or, as the case may be, the relevant part of the debt.

(1G) Where arrangements have been made to which subsection (1C) relates, the trustees of the original scheme may assign all such rights and powers as they possess in relation to the debt, or, as the case may be, the relevant part of the debt, to the trustees or managers of the scheme providing the replacement benefits.”; and

- (c) where there is more than one employer within the meaning of that term as modified by paragraph (a), that section shall be further modified in the manner provided by regulation 3(a) and (b)(i).

### *Revocation*

5. The Occupational Pension Schemes (Deficiency on Winding Up etc.) Regulations (Northern Ireland) 1992(a) are hereby revoked.

Sealed with the Official Seal of the Department of Health and Social Services for Northern Ireland on 25th March 1994.

(L.S.)

*W. G. Purdy*

Assistant Secretary

## EXPLANATORY NOTE

*(This note is not part of the Regulations.)*

These regulations, which modify section 140 of the Pension Schemes (Northern Ireland) Act 1993 (deficiencies in the assets of a scheme on winding up), consolidate, with amendments, provisions contained in the Occupational Pension Schemes (Deficiency on Winding Up etc.) Regulations (Northern Ireland) 1992 (the "1992 Regulations"). The amendments are contained in:

- regulation 2 which amends the method of calculating a scheme's assets and liabilities and provides that such calculations shall be made in accordance with the valuation method set out in Guidance Note GN 19 published by the Institute of Actuaries and the Faculty of Actuaries;
- regulation 3 which amends the provision in relation to schemes which apply to more than one employer so that in certain circumstances each section of such a scheme is to be treated as a separate scheme;
- regulation 4 which amends the provision in relation to schemes in respect of which there are no members in pensionable service so that alternative arrangements for the payment of benefits exist in certain circumstances.

The regulations revoke the 1992 regulations.