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STATUTORY RULES OF NORTHERN IRELAND

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**1996 No. 585**

**The Occupational Pension Schemes (Deficiency on Winding Up, etc.) Regulations (Northern Ireland) 1996**

*Preliminary*

**Citation and commencement**

1.—(1) These Regulations may be cited as the Occupational Pension Schemes (Deficiency on Winding Up, etc.) Regulations (Northern Ireland) 1996.

(2) This regulation shall come into operation on 19th December 1996.

(3) Subject to paragraphs (2) and (4) to (6) and regulation 6(1) (in so far as it relates to the period there mentioned), these Regulations shall come into operation on 6th April 1997.

(4) Regulations 3 to 6 shall not apply where the applicable time falls before 6th April 1997.

(5) Regulations 3 to 6 shall not apply to any scheme which began to be wound up earlier than 19th December 1996.

(6) Regulations 7 to 9 shall only apply where the act or omission to which the reduction in value is attributable occurred after 5th April 1997.

**Interpretation**

2.—(1) For the purposes of these Regulations, the time when a scheme begins to be wound up shall be determined in accordance with paragraphs (7) to (10).

(2) In these Regulations—

“the applicable time” has the same meaning as in Article 75 (but see the modifications in regulations 4(3), 6(3) and 7(2));

“employer” has the same meaning as in Article 75 (but see paragraph (4) and regulations 5, 6 and 9);

“the MFR Regulations” means the Occupational Pension Schemes (Minimum Funding Requirement and Actuarial Valuations) Regulations (Northern Ireland) 1996(1);

“money purchase scheme” has the same meaning as in Article 75 (but see paragraph 4 of Schedule 2).

(3) In these Regulations references to a relevant insolvency event occurring in relation to an employer have the same meaning as in Article 75.

(4) In these Regulations “scheme” shall be construed in appropriate cases in accordance with Article 75(1B) and (1C) (as inserted by regulation 4(2) or, as the case may be, regulation 8) and Schedule 2 (and “employer” and “member” shall be construed accordingly).

(5) In these Regulations references to the guidance in GN 19 are to the guidelines on winding up and scheme asset deficiency (GN 19), prepared and published by the Institute of Actuaries and

the Faculty of Actuaries<sup>(2)</sup> and approved for the purposes of these Regulations by the Department, with such revisions as have been so approved at the applicable time.

(6) In these Regulations references to the guidance in GN 27 are to the guidelines on minimum funding requirement (GN 27), prepared and published by the Institute of Actuaries and the Faculty of Actuaries<sup>(2)</sup> and approved for the purposes of the MFR Regulations by the Department, with such revisions as have been so approved at the applicable time.

(7) Subject to paragraphs (8) and (10), where the rules of the scheme require or permit the scheme to be wound up and the scheme is wound up under those rules, the scheme begins to be wound up—

(a) either—

(i) at such time as the rules provide that it does so; or

(ii) if the rules make no provision as to that time, at such time as the trustees determine that the scheme shall begin to be wound up; or

(b) as soon as there are no members who are in pensionable service under the scheme;

whichever is the later.

(8) Where the rules of the scheme require or permit the scheme to be wound up, but the trustees determine in pursuance of Article 38 or otherwise that the scheme is not for the time being to be wound up, then for the purposes of paragraph (7), in so far as any provision made by the rules of the scheme as to the time when it begins to be wound up is inconsistent with the trustees' determination, that provision shall be disregarded.

(9) Where under the rules of the scheme any person other than the trustees may determine that the scheme is to be wound up, or is not to be wound up for the time being, then the references in paragraphs (7)(a)(ii) and (8) to the trustees' determination shall be taken, in a case where the winding up begins or is deferred by virtue of that other person's determination, as a reference to his determination; and this paragraph applies where such a power is vested in the trustees jointly with another person, or in some but not all of the trustees, as it applies where such a power is vested only in a person other than the trustees.

(10) Where—

(a) a scheme is wound up in pursuance—

(i) of an order of the Authority under Article 11; or

(ii) of an order of a court; and

(b) the order makes provision as to the time at which the scheme is to begin to be wound up; the scheme begins to be wound up at the time specified in the order or, if none is so specified, the date on which the order takes effect.

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

(12) For the purposes of these Regulations and notwithstanding section 39(2) of the Interpretation Act (Northern Ireland) 1954<sup>(3)</sup>, 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.

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(2) Copies of GN 19 and GN 27 may be obtained from the Faculty of Actuaries, 17 Thistle Street, Edinburgh EH2 1DF

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(3) 1954 c. 33 (N.I.)

*Schemes which are not money purchase schemes*

**Calculation of the value of scheme liabilities and assets**

**3.—(1)** The liabilities and assets of a scheme which are to be taken into account for the purposes of Article 75(1) and their amount or value shall be determined, calculated and verified by the actuary—

- (a) on the general assumptions specified in regulation 3(2) and (3) of the MFR Regulations;
- (b) subject to paragraphs (3) and (4), in accordance with regulations 4 to 8 of the MFR Regulations;
- (c) subject to sub-paragraph (d), in so far as the guidance given in GN 27 applies as respects regulations 3(2) and (3) and 4 to 8 of the MFR Regulations, in accordance with that guidance; and
- (d) in accordance with the guidance given in GN 19 in so far as that guidance applies for the purposes of these Regulations;

and where in these Regulations (or in the MFR Regulations as applied by this paragraph) 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 provision in the guidance given in GN 27 or, as the case may be, GN 19 in making that calculation or verification.

(2) The value of the assets and the amount of the liabilities of a scheme which are to be taken into account for the purposes of Article 75(1) must be certified by the actuary in the form set out in Schedule 1, but if the scheme is being wound up on the date as at which the valuation is made, the actuary shall modify the note at the end of the certificate by omitting the words from “if the scheme” onwards.

(3) For the purposes of this regulation—

- (a) references in regulations 3(2), 4, 5, 7 and 8 of the MFR Regulations to the relevant date shall be taken as references to the applicable time;
- (b) regulations 4(1), 7(1) and 8(2) of the MFR Regulations shall have effect with the substitution for “the minimum funding requirement is met” of “the value of the assets of the scheme is less than the amount of the liabilities of the scheme”;
- (c) regulation 6(1)(b) of the MFR Regulations shall have effect with the addition, at the end, of “(and any amount treated as a debt due to the trustees or managers of the scheme under Article 75(1) by virtue of the valuation in question)”.

(4) In its application for the purposes of this regulation in a case where the applicable time falls after the scheme has begun to be wound up, regulation 6(1) of the MFR Regulations has effect with the addition, after sub-paragraph (c) of the words—

“and for the purposes of sub-paragraph (a), regulation 5(1)(a) of the Occupational Pension Schemes (Investment) Regulations (Northern Ireland) 1996(4) (exclusion of employer-related investments over 5 per cent. of current market value) shall be disregarded.”.

**Multi-employer schemes**

**4.—(1)** In its application to a scheme in relation to which there is more than one employer, Article 75 has effect with the following modifications.

(2) After paragraph (1) there shall be inserted the following paragraphs—

“(1A) In the case of a scheme in relation to which there is more than one employer, the amount of the debt due from each employer shall, unless the scheme provides for the

total amount of the debt due under paragraph (1) to be otherwise apportioned amongst the employers, be such proportion of that total amount as, in the opinion of the actuary after consultation with the trustees or managers, the amount of the scheme's liabilities attributable to employment with that employer bears to the total amount of the scheme's liabilities attributable to employment with any of the employers.

(1B) Where a scheme in relation to which there is more than one employer 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 or groups of employers (whether or not more than one section applies to any particular employer or groups including any particular employer),
- (b) contributions payable to the scheme by an employer, or by a member in employment under that employer, are allocated to that employer's section (or, if more than one section applies to the employer, to the section which is appropriate in respect of the employment in question), and
- (c) a specified part or proportion of the assets of the scheme is attributable to each section and cannot be used for the purposes of any other such section,

each section of the scheme shall be treated as a separate scheme for the purposes of this Article.

(1C) Where—

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

the section in relation to which those conditions have ceased to be satisfied shall be treated as a separate scheme for the purposes of this Article.”.

(3) For paragraph (3) there shall be substituted—

“(3) In this Article, “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, and
  - (ii) before a relevant insolvency event has occurred in relation to each of the employers to whom the scheme relates, and
- (b) in relation to a scheme which is not being wound up—
  - (i) in relation only to any employer who ceases to be a person employing persons in the description or category of employment to which the scheme relates at a time when at least one other person continues to employ such persons, immediately before he so ceases, and
  - (ii) in relation only to any employer in relation to whom a relevant insolvency event occurs, immediately before that event occurs.”.

(4) Where (apart from this paragraph) paragraph (1) does not apply to a scheme by reason of its not being a scheme in relation to which there is more than one employer but, if it did so, paragraph (1C)

of Article 75 (as inserted by paragraph (2)) would apply to the scheme, that Article shall have effect with the modifications made by paragraphs (2) and (3).

(5) For the purposes of Article 75(1A) (as inserted by paragraph (2))—

- (a) the total amount of the scheme's liabilities which are attributable to employment with any of the employers; and
- (b) the amount of the liabilities attributable to employment with any one employer,

shall be such amount as is determined, calculated and verified by the actuary in accordance with the guidance given in GN 19; and a determination under this paragraph must be certified by the actuary as being in accordance with that guidance.

### **Former employers**

5.—(1) In the application of Article 75 and these Regulations to a scheme which has no active members, “the employer” includes every person who employed persons in the description or category of employment to which the scheme relates immediately before the occurrence of the event after which the scheme ceased to have any active members.

(2) In the application of Article 75 and these Regulations to a scheme, “the employer” includes any person who has ceased on or after 6th April 1997 and before the applicable time to be a person employing persons in the description or category of employment to which the scheme relates, unless—

- (a) when he so ceased the scheme was not being wound up and continued to have active members; and
- (b) one of the conditions in paragraph (3) is met.

(3) Those conditions are—

- (a) that no debt was treated as becoming due from him under Article 75(1) by virtue of his so ceasing;
- (b) that such a debt was treated as becoming due from him and has been paid before the applicable time;
- (c) that such a debt was treated as becoming due from him but at the applicable time it is excluded from the value of the assets of the scheme by virtue of regulation 6(1)(b) of the MFR Regulations (exclusion of debts unlikely to be recovered).

### **Ceasing to participate: transitional provision**

6.—(1) This regulation applies to a scheme if a person ceased to be a person employing persons in the description or category of employment to which the scheme relates during the period beginning on 19th December 1996 and ending with 5th April 1997 and at a time when the scheme was not being wound up and continued to have active members; and in this regulation “former participator” means a person who so ceased.

(2) In the application of Article 75 and these Regulations to a scheme to which this regulation applies, “employer” includes a former participator, unless before the applicable time a time which was the applicable time in relation to the former participator by virtue of paragraph (3) of this regulation has occurred and—

- (a) no debt was then treated as due from him under Article 75(1);
- (b) such a debt was then treated as becoming due from him and has been paid before the applicable time; or

- (c) such a debt was then treated as becoming due from him but at the applicable time it is excluded from the value of the assets of the scheme by virtue of regulation 6(1)(b) of the MFR Regulations (exclusion of debts unlikely to be recovered).
- (3) In the application of Article 75 and these Regulations to a scheme to which this regulation applies which is not being wound up, “the applicable time”, in relation to a former participator only, includes—
- (a) the date by reference to which the earliest valuation required by Article 57(1)(a) for the scheme is made; or
- (b) the earliest time when a debt is treated under Article 75(1) as becoming due from another person by virtue of Article 75(3)(b)(i) or (ii) (as substituted by regulation 4(3)), whichever is the earlier.

### *Money purchase schemes*

#### **Money purchase schemes: deficiency in assets owing to fraud, etc.**

7.—(1) Subject to regulation 10, Article 75 shall apply to money purchase schemes with the following modifications.

(2) For paragraphs (1) and (2) there shall be substituted—

“(1) If, in the case of an occupational pension scheme which is a money purchase scheme, the value at the applicable time of the unallocated assets of the scheme is less than the amount of any criminal reduction in the aggregate value of the allocated assets of the scheme, then an amount equal to the difference shall be treated as a debt due from the employer to the trustees or managers of the scheme.

(2) In this Article—

“allocated assets”, in relation to a scheme, means assets which have been specifically allocated for the provision of benefits to, or in respect of, members (whether generally or individually) or for the payment of the scheme’s expenses (and “unallocated” shall be construed accordingly);

“the applicable time” means the time immediately after the act or omission to which the criminal reduction is attributable occurs or, if that time cannot be determined, the earliest time when the auditor of the scheme knows that the reduction has occurred;

“criminal reduction” means a reduction which is attributable to an act or omission which constitutes 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 occurred in Northern Ireland).”.

(3) Article 75(3), (4) and (6) shall be omitted.

(4) For the purpose of Article 75(1) (as substituted by paragraph (2)), paragraphs (5) to (9) apply instead of regulation 3.

(5) In the case of a scheme other than an ear-marked scheme—

- (a) the value at the applicable time of the unallocated assets of the scheme shall be taken to be the value of those assets as certified in a statement by the scheme’s auditor; and
- (b) the amount of the criminal reduction in the aggregate value of the allocated assets of the scheme is to be calculated by subtracting the actual aggregate value of those assets at the applicable time from the notional aggregate value of those assets.

(6) The notional aggregate value mentioned in paragraph (5)(b) shall be taken to be the sum of the values of the assets—

(a) as stated in the audited accounts which most immediately precede the relevant act or omission; or

(b) if there are no such accounts, as certified in a statement by the scheme's auditor,

adjusted appropriately to take account of any alteration in their values (other than any alteration attributable to that act or omission) between the date as at which those accounts are prepared or, as the case may be, as at which that statement is given and the applicable time.

(7) The actual aggregate value mentioned in paragraph (5)(b) shall be calculated in the same manner as it was calculated for the purposes of the accounts mentioned in paragraph (6)(a) or, as the case may be, the statement mentioned in paragraph (6)(b).

(8) In the case of an ear-marked scheme, the value at the applicable time of the unallocated assets of the scheme and the amount of the criminal reduction in the aggregate value of the allocated assets of the scheme are the amounts certified in a statement by the relevant insurer.

(9) In this regulation—

“ear-marked scheme” means a scheme under which all the benefits are secured by one or more policies of insurance or annuity contracts, being policies or contracts specifically allocated to the provision of benefits for individual members or any other person who has a right to benefits under the scheme; and

“the relevant insurer”, in relation to such a scheme, is the insurer with whom the insurance contract or annuity contract is made.

### **Multi-employer money purchase schemes**

8.—(1) Regulation 4(1) and (3) to (5) does not apply to a money purchase scheme, but in its application to such a scheme in relation to which there is more than one employer, Article 75 (as modified by regulation 7) applies with the insertion after paragraph (1) of the same paragraphs as are inserted by regulation 4(2), omitting from paragraph (1A) the words “, in the opinion of the actuary after consultation with the trustees or managers,”.

(2) Where (apart from this paragraph) Article 75 does not apply to a money purchase scheme with the modification made by paragraph (1) but, if it did so, paragraph (1C) of that Article would apply to the scheme, that Article shall have effect with the modification made by paragraph (1).

### **Money purchase schemes: former employers**

9. Regulations 5 and 6 shall not apply to a money purchase scheme, but in the application of Article 75 and these Regulations to such a scheme which has no active members at the applicable time, “the employer” includes every person who employed persons in the description or category of employment to which the scheme relates immediately before the occurrence of the event after which the scheme ceased to have any active members.

### *General and supplementary*

### **Disapplication of Article 75**

10.—(1) Article 75 does not apply to—

(a) 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 (superannuation of persons employed in local government service, etc.)(5) or which is established under Part II of the Ministerial Salaries and Members' Pensions Act (Northern Ireland) 1965(6) or Article 3 of the Assembly Pensions (Northern Ireland) Order 1976(7);
  - (b) any occupational pension scheme in respect of which any Minister of the Crown or government department has given a guarantee or made any other arrangements for the purpose of securing that the assets of the scheme are sufficient to meet its liabilities;
  - (c) an occupational pension scheme which provides relevant benefits, but is neither an approved scheme nor a relevant statutory scheme;
  - (d) a section 615(6) scheme;
  - (e) a scheme with less than 2 members;
  - (f) a scheme—
    - (i) the only benefits provided by which are death benefits; and
    - (ii) under the provisions of which no member has accrued rights;
  - (g) a relevant lump sum retirement benefits scheme; or
  - (h) the scheme established by the Salvation Army Act 1963(8).
- (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 which 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;
- “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(9);
- “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) For the purposes of paragraph (1)(e), “scheme” shall be construed as if paragraphs (1B) and (1C) of Article 75 (as inserted by regulation 4(2) or, as the case may be, regulation 8) were omitted.

### Minor modifications

11. Schedule 2 shall have effect for the purpose of modifying Article 75 and these Regulations.

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(5) S.I. 1972/1073 (N.I. 10)

(6) 1965 c. 18 (N.I.)

(7) S.I. 1976/1779

(8) 1963 c. xxxii

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



### **Modification of schemes: apportionment of Article 75 debts**

**12.** In the case of a trust scheme (whether or not a money purchase scheme) which apart from this regulation could not be modified for the purpose of making provision for the total amount of a debt due under Article 75(1) to be apportioned amongst the employers in different proportions from those which would otherwise apply by virtue of Article 75(1A) (as inserted by regulation 4(2) or, as the case may be, regulation 8), for the purposes of Article 68(2)(e), such a modification of the scheme is a modification for a prescribed purpose.

### **Revocations and savings**

**13.—**(1) The Occupational Pension Schemes (Deficiency on Winding Up, etc.) Regulations (Northern Ireland) 1994<sup>(10)</sup> (“the 1994 Regulations”) are hereby revoked, except in their application in any case in which section 140 of the Pension Schemes Act continues to apply (schemes which began winding up before 19th December 1996 and debts treated as due by virtue of valuations as at applicable times falling before 6th April 1997).

(2) Where before 6th April 1997 such arrangements have been made as are mentioned in subsection (1C) of section 140 of the Pension Schemes Act (as inserted by regulation 4(b) of the 1994 Regulations), then—

- (a) the revocation of the 1994 Regulations shall not affect—
  - (i) the recoverability of any debt or part of a debt, the recoverability of which is affected by subsections (1C) to (1G) of that section (as inserted by regulation 4(b) of the 1994 Regulations) immediately before 6th April 1997; or
  - (ii) the power of assignment conferred by subsection (1G) (as inserted by regulation 4(b) of the 1994 Regulations) of that section; and
- (b) the making of, or failure to make, contributions in accordance with the arrangements, and any relevant insolvency event occurring on or after that date shall have the same effect as they would have had before that date.

(3) Paragraph (2) is without prejudice to the generality of paragraph (1).

Sealed with the Official Seal of the Department of Health and Social Services on 13th December 1996.

L.S.

*John O'Neill*  
Assistant Secretary