
STATUTORY RULES OF NORTHERN IRELAND

2005 No. 171

The Occupational Pension Schemes (Winding up, etc.) Regulations (Northern Ireland) 2005

Citation, commencement and application

1.—(1) These Regulations may be cited as the Occupational Pension Schemes (Winding up, etc.) Regulations (Northern Ireland) 2005.

(2) These Regulations shall come into operation on 6th April 2005 except for paragraph 4 of the Schedule which shall come into operation on 6th April 2006.

(3) Regulations 3 to 13 do not apply in the case of any scheme which –

- (a) was regarded by virtue of regulation 2 of the Winding Up Regulations as having begun to be wound up before 6th April 2005 for the purposes of those Regulations; or
- (b) in accordance with Article 121(4) to (8) of the 1995 Order began to wind up before that date.

Interpretation

2.—(1) In these Regulations –

“the 1995 Order” means the Pensions (Northern Ireland) Order 1995;

“the 1999 Order” means the Welfare Reform and Pensions (Northern Ireland) Order 1999;

“the 2005 Order” means the Pensions (Northern Ireland) Order 2005(1);

“assessment period” has the meaning given by Article 116 of the 2005 Order (assessment periods);

“the tax condition”, in relation to a scheme, means –

- (a) that the scheme has been approved by the Commissioners of Inland Revenue for the purposes of section 590(2) or 591(3) of the Taxes Act 1988 (conditions for approval of retirement benefit schemes or discretionary approval) at any time before 6th April 2006; or
- (b) that the scheme is registered under section 153 of the Finance Act 2004(4) (registration of pension schemes);

“the Winding Up Regulations” means the Occupational Pension Schemes (Winding Up) Regulations (Northern Ireland) 1996(5).

(1) S.I. 2005/255 (N.I. 1)

(2) Section 590 was amended by paragraph 18 of Schedule 3 to the Finance Act 1988 (c. 39), paragraph 3 of Schedule 6 to the Finance Act 1989 (c. 26); (see also paragraph 18(2) and (3) of that Schedule), sections 34 and 36(2) and (3) of the Finance Act 1991 (c. 31) and paragraph 2 of Schedule 10 to the Finance Act 1999 (c. 16)

(3) Section 591 was amended by paragraph 6 of Schedule 13 to the Finance Act 1988; (see also paragraph 1 of that Schedule), section 107 of the Finance Act 1994 (c. 9), section 59(2) of the Finance Act 1995 (c. 4); (see also section 60(1) of that Act) and paragraph 3 of Schedule 10 to the Finance Act 1999; (see also paragraph 18(1) and (3) of that Schedule)

(4) 2004 c. 12; at the time of coming into operation of these regulations section 153 has not yet been brought into force

(5) S.R. 1996 No. 621; relevant amending regulations are S.R. 1997 No. 160, S.R. 1999 No. 486, S.R. 2002 No. 64, S.R. 2004 No. 187 and S.R. 2005 No. 20

(2) In these Regulations “scheme” must be read in appropriate cases in accordance with the modifications of Articles 73 to 74 of the 1995 Order made by regulation 13 (multi-employer sectionalised schemes, schemes with partial government guarantee and partly foreign schemes) and “employer” and “member” must be read accordingly.

(3) Subject to paragraphs (1) and (2) and regulation 12 (commencement of winding up), expressions used in these Regulations have the same meaning as in Article 121 of the 1995 Order.

(4) The Interpretation Act (Northern Ireland) 1954⁽⁶⁾ shall apply to these Regulations as it applies to an Act of the Assembly.

Winding up

Schemes to which Article 73 of the 1995 Order does not apply

3.—(1) Article 73 of the 1995 Order (preferential liabilities on winding up) does not apply to any scheme which is –

- (a) a public service pension scheme 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);
- (b) a scheme which is made under Article 9 of the Superannuation (Northern Ireland) Order 1972⁽⁷⁾ (superannuation of persons employed in local government service, etc.) which provides pensions to persons mentioned in paragraph (1)(a) of that Article;
- (c) a scheme which is established under section 48 of the Northern Ireland Act 1998⁽⁸⁾ (pensions of members), or which was established under Part II of the Ministerial Salaries and Members' Pensions Act (Northern Ireland) 1965⁽⁹⁾ or Article 3 of the Assembly Pensions (Northern Ireland) Order 1976⁽¹⁰⁾;
- (d) a scheme in respect of which a relevant public authority, as defined in Article 280(4) of the 2005 Order, has given a guarantee or made any other arrangements for the purposes of securing that the assets of the scheme are sufficient to meet its liabilities;
- (e) a scheme which does not meet the tax condition;
- (f) a scheme which –
 - (i) has been categorised by the Commissioners of Inland Revenue for the purposes of its approval as a centralised scheme for non-associated employers,
 - (ii) which is not contracted-out, and
 - (iii) under the provisions of which the only benefits that may be provided on or after retirement (other than money purchase benefits derived from the payment of voluntary contributions by any person) are lump sum benefits which are not calculated by reference to a member’s salary;
- (g) 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);

⁽⁶⁾ 1954 c. 33 (N.I.)

⁽⁷⁾ S.I. 1972/1073 (N.I. 10)

⁽⁸⁾ 1998 c. 47

⁽⁹⁾ 1965 c. 18 (N.I.)

⁽¹⁰⁾ S.I. 1976/1779

- (h) a scheme with such a superannuation fund as is mentioned in section 615(6) of the Taxes Act 1988⁽¹¹⁾ (exemption from tax in respect of certain pensions);
- (i) a scheme with fewer than two members;
- (j) a scheme with fewer than twelve members where all the members are trustees of the scheme and either –
 - (i) the rules of the scheme provide that all decisions are made only by the trustees who are members of the scheme by unanimous agreement, or
 - (ii) the scheme has a trustee who is independent in relation to the scheme for the purposes of Article 23 of the 1995 Order⁽¹²⁾ (power to appoint independent trustees) (see paragraph (3) of that Article) and is registered in the register maintained by the Authority in accordance with regulations under paragraph (4) of that Article;
- (k) a scheme with fewer than twelve members where all the members are directors of a company which is the sole trustee of the scheme and either –
 - (i) the rules of the scheme provide that all decisions are made only by the members of the scheme by unanimous agreement, or
 - (ii) one of the directors of the company is independent in relation to the scheme for the purposes of Article 23 of the 1995 Order and is registered in the register maintained by the Authority in accordance with regulations made under paragraph (4) of that Article;
- (l) the scheme established by the Salvation Army Act 1963⁽¹³⁾.

(2) Before 6th April 2006 sub-paragraph (e) of paragraph (1) applies as if at the end there were added “and is not a relevant statutory scheme providing relevant benefits”; and for the purposes of that sub-paragraph “relevant statutory scheme” and “relevant benefits”⁽¹⁴⁾ have the same meaning as in Chapter 1 of Part 14 of the Taxes Act 1988 (see sections 611A and 612(1) of that Act⁽¹⁵⁾).

Corresponding PPF liability: modifications of the pension compensation provisions, etc.

4.—(1) For the purposes of Article 73 of the 1995 Order, when determining the corresponding PPF liability in relation to any liability of a scheme to or in respect of a member for pensions or other benefits, the pension compensation provisions apply as if –

- (a) those provisions applied to all schemes to which Article 73 of the 1995 Order applies and any reference in the pension compensation provisions to members, employers or any other expression the construction of which is dependent on the meaning of “scheme” were to be read accordingly (but subject to the following provisions of this regulation);
- (b) Articles 124 to 126, 148 and 152(2)(a) and (c) to (f) of the 2005 Order were omitted;
- (c) Schedule 6 to that Order (pension compensation provisions) applied –
 - (i) with the substitution for the references in paragraphs 5(4A), 15(5A) and 19(5A)⁽¹⁶⁾ to the Board of references to the trustees or managers of the scheme,

⁽¹¹⁾ Section 615(6) was amended by paragraph 11 of Schedule 10 to the Finance Act 1999 and has effect in relation to trust-based occupational pension schemes established in respect of persons wholly employed in a trade or undertaking outside of the United Kingdom

⁽¹²⁾ Article 23 is substituted by Article 32(3) of the Pensions (Northern Ireland) Order 2005

⁽¹³⁾ 1963 c. xxxii

⁽¹⁴⁾ The definition of “relevant benefits” was amended by paragraph 10(1) of Schedule 10 to the Finance Act 1999

⁽¹⁵⁾ Section 611A was inserted by paragraph 15 of Schedule 6 to the Finance Act 1989 and amended by paragraph 5 of Schedule 5 to the Finance Act 1999

⁽¹⁶⁾ Paragraphs 5(4A), 15(5A) and 19(5A) are inserted by regulation 23(2) of S.R. 2005 No. 149

- (ii) with the substitution for the references in paragraphs 20(1)(a) and 32(1)(a) to the commencement of the assessment period of references to the commencement of the winding up period,
 - (iii) with the substitution for the reference in paragraph 35(4) to the time immediately before the assessment period which begins on the assessment date of a reference to the time immediately before the winding up period begins,
 - (iv) with the addition at the end of paragraph 35(5) of and in this sub-paragraph as it applies for the purposes of Article 73(4)(b) of the 1995 Order, “the employer” includes both any person included by virtue of regulation 4(1)(a) of the Occupational Pension Schemes (Winding up, etc.) Regulations (Northern Ireland) 2005 and any person who is the employer apart from by virtue of that regulation”,
 - (v) with the substitution for other references to the assessment date of references to the winding up date, and
 - (vi) with the omissions specified in paragraph (2);
- (d) no determination might be made under paragraph 29 of Schedule 6 (Board’s powers to alter rates of revaluation and indexation) after the time as at which the corresponding PPF liability is determined for the purposes of Article 73 of the 1995 Order;
 - (e) no order might be made under paragraph 30 of that Schedule (Department’s powers to vary percentage paid as compensation) after that time;
 - (f) the Pension Protection Fund (Compensation) Regulations (Northern Ireland) 2005⁽¹⁷⁾ applied with the modifications specified in paragraph (3); and
 - (g) (so far as they are included in the pension compensation provisions) the Pension Protection Fund (Hybrid Schemes) (Modification) Regulations (Northern Ireland) 2005⁽¹⁸⁾ applied with the substitution for the reference in regulation 3(2) of those Regulations to the assessment date of a reference to the winding up date.
- (2) The omissions are –
- (a) paragraphs 2, 20(4), 23A⁽¹⁹⁾, 24, 25, 27 and 31A⁽²⁰⁾ and all references to those paragraphs;
 - (b) in paragraph 26 –
 - (i) in sub-paragraphs (2)(b)(i), (6B)(a)⁽²¹⁾ and (9)(a) and (b) the words “or a connected occupational pension scheme”,
 - (ii) in sub-paragraph (6B)(b) the words “or a relevant connected occupational pension scheme”, and
 - (iii) the words following sub-paragraph (6B)(b).
- (3) The modifications are –
- (a) in regulation 4 (compensation for surviving dependants) –
 - (i) in paragraph (2) the words following “otherwise” shall be omitted, and
 - (ii) for paragraph (3) there shall be substituted the following paragraph –
 - “(3) In the case of a surviving dependant the circumstances are where the admissible rules of the scheme provide for the payment of pension or other benefits to that person.”;

⁽¹⁷⁾ S.R. 2005 No. 149

⁽¹⁸⁾ S.R. 2005 No. 84

⁽¹⁹⁾ Paragraph 23A is inserted by regulation 3 of S.R. 2005 No. 137

⁽²⁰⁾ Paragraph 31A is inserted by regulation 3(4) of S.R. 2005 No. 84

⁽²¹⁾ Sub-paragraph (6B) is inserted by regulation 20(3) of S.R. 2005 No. 149

- (b) for references in regulations 5, 6, 9, 10(1), 11(1), 12(1) and 13 to the assessment date, wherever they occur, there shall be substituted references to the winding up date; and
 - (c) regulation 14 (modification of admissible rules) shall be omitted.
- (4) In this regulation –
- “corresponding PPF liability” has the meaning given in Article 73(5) of the 1995 Order;
 - “the pension compensation provisions” has the same meaning as in Part III of the 2005 Order (see Article 146 of that Order);
 - “the winding up date” means the date on which the winding up period began or, if the crystallisation date for the scheme for the purposes of regulation 4 of the Winding Up Regulations (calculation of amounts of liabilities) is an earlier date, that date.
- (5) In the case of any scheme in relation to which there is no assessment period during the winding up period, Article 73(4)(b) of the 1995 Order applies as if the words from “to the extent” to “the corresponding PPF liability” were omitted.

Early leaver’s rights: deemed election for contribution refund

5. Where, on the commencement of the winding up period, a member becomes a person to whom Chapter 5 of Part IV of the Pension Schemes Act(22) (early leavers: cash transfer sums and contribution refunds) applies, that Chapter applies as if –
- (a) he had elected on the day on which that period begins for a contribution refund;
 - (b) had accordingly acquired a right to such a refund (and not a right to a cash transfer sum) under section 97AB of that Act; and
 - (c) all steps required to be taken under that Chapter preliminary to that election had been taken.

Adjustments to discretionary awards

- 6.—(1) For the purposes of Article 73A of the 1995 Order(23) (operation of scheme during winding up period) and this regulation, “discretionary award”, in relation to an occupational pension scheme, means an award of a pension or other benefit under the scheme where either –
- (a) entitlement to the award arises as a result of the exercise of a discretion conferred by the scheme rules that may be exercised in circumstances specified in those rules; or
 - (b) the amount awarded depends on the exercise of such a discretion.
- (2) Where Article 73A of the 1995 Order applies, the circumstances in which trustees or managers of the scheme are required to adjust any such entitlement as is referred to in Article 73A(7)(a) are where –
- (a) the entitlement to a pension or other benefit is –
 - (i) the entitlement of a member, or
 - (ii) the entitlement to a pension or other benefit in respect of a member other than a member who dies during the winding up period; and
 - (b) it appears to the trustees or managers that as a result of –
 - (i) the discretionary award in question,
 - (ii) that award and any other awards under the scheme rules to which Article 73A(7)(a) applies, or

(22) Chapter 5 is inserted by Article 241 of the Pensions (Northern Ireland) Order 2005

(23) Article 73A is inserted by Article 247(1) of the Pensions (Northern Ireland) Order 2005

(iii) all the awards under the scheme rules to which that Article applies and any entitlements in respect of the member to which Article 73A(7)(b) applies (“survivor entitlements”),

the total amount of the liability for pensions and other benefits in respect of the member is greater than it was immediately before the commencement of the winding up period.

(3) In those circumstances, the trustees or managers are required to adjust the entitlement –

- (a) to the discretionary award,
- (b) to that award and the other awards mentioned in paragraph (2)(b)(ii); or
- (c) to the awards and entitlements mentioned in paragraph (2)(b)(iii),

in such manner as they think fit so that the total amount of that liability does not exceed its amount immediately before the commencement of the winding up period.

(4) If –

- (a) the commencement of the winding up of the scheme is backdated (whether in accordance with Article 138 of 2005 Order or otherwise); and
- (b) the requirement under paragraph (3) to adjust any entitlement arises as a result of that backdating,

the adjustment must be made with effect from the time the award takes effect.

(5) Where a discretionary award takes effect during a period that is a winding up period or an assessment period in relation to a scheme, the trustees or managers of the scheme must give the person to whom the award is made notice in writing not later than one month after the date on which the award is made –

- (a) that the award may be adjusted by virtue of this regulation; or
- (b) where the award takes effect before the scheme has begun to be wound up, that it may be so adjusted if the scheme begins to be wound up and the commencement of the winding up is backdated.

(6) Such a notice may be given by post and, if the person to whom it is given is not in employment to which the scheme relates, is to be treated as having been given if it is sent to him by post to his last address known to the trustees or managers.

Adjustments to survivors' benefits

7.—(1) Where Article 73A of the 1995 Order applies, the circumstances in which trustees or managers of the scheme are required to adjust any such entitlement as is referred to in Article 73A(7)(b) are where –

- (a) it appears to the trustees or managers that as a result of –
 - (i) the entitlement in question having arisen, or
 - (ii) that entitlement and any other entitlements under the scheme rules to which Article 73A(7)(b) applies having arisen,

the amount of the total liability for pensions and other benefits in respect of the member is greater than it was immediately before the commencement of the winding up period; or

- (b) regulation 6(3) requires the trustees or managers to adjust the entitlement.

(2) In the circumstances mentioned in paragraph (1)(a), the trustees or managers are required to adjust the entitlement or entitlements in such manner as they think fit so that the total amount of the liability for pensions and other benefits in respect of the member does not exceed its amount immediately before the commencement of the winding up period.

(3) See regulation 6(3) for the manner in which the trustees or managers are required to adjust the entitlement or entitlements where that regulation applies.

(4) If –

- (a) the commencement of the winding up of the scheme is backdated (whether in accordance with Article 138 of the 2005 Order or otherwise); and
- (b) the requirement under paragraph (2) to adjust any entitlement arises as a result of that backdating,

the adjustment must be made with effect from the time the award takes effect.

(5) Where any such entitlement of a person as is referred to in Article 73A(7)(b) of the 1995 Order arises during a period that is a winding up period or an assessment period in relation to a scheme, the trustees or managers of the scheme must give the person notice in writing not later than one month after the date on which it arises –

- (a) that it may be adjusted by virtue of this regulation; or
- (b) where the entitlement arises before the scheme has begun to be wound up, that it may be so adjusted if the scheme begins to be wound up and the commencement of the winding up is backdated.

(6) Such a notice may be given by post and is to be treated as having been given to the person if it is sent to him by post to his last address known to the trustees or managers.

Entitlement to death benefits treated as arising before commencement of winding up period

8.—(1) This regulation applies where –

- (a) an occupational pension scheme to which Article 73 of the 1995 Order applies is being wound up;
- (b) a member of the scheme died before the winding up began;
- (c) during the winding up period a person (“the beneficiary”) becomes entitled under the scheme rules to one or more benefits within paragraph (2) in respect of the member; and
- (d) the beneficiary could have become so entitled before the winding up period began had the trustees or managers of the scheme taken any action earlier.

(2) The benefits are –

- (a) a pension of a kind permitted by the pension death benefit rules set out in section 167 of the Finance Act 2004; and
- (b) a lump sum of a kind permitted by the lump sum death benefit rule set out in section 168 of that Act.

(3) For the purposes of Article 73B(6)(a) of the 1995 Order⁽²⁴⁾ (liabilities to which the winding up provisions do not apply) –

- (a) the beneficiary’s entitlement to payment of so much of the pension (if any) as is attributable to the period between the member’s death and the commencement of the winding up period; and
- (b) the beneficiary’s entitlement to payment of the lump sum,

are to be treated as having arisen immediately before the commencement of the winding up period.

(4) In the case of a scheme which begins to be wound up before 6th April 2006, this regulation has effect as if the benefits referred to in paragraph (2) were –

- (a) a pension payable to the deceased member’s former spouse or dependant; and

⁽²⁴⁾ Article 73B is inserted by Article 247(1) of the Pensions (Northern Ireland) Order 2005

- (b) a lump sum calculated by reference to the member’s remuneration.

Calculation of the value or amount of scheme assets and liabilities

9. For regulation 4 of the Winding Up Regulations⁽²⁵⁾ (calculation of amounts of liabilities) there shall be substituted the following regulation –

“Calculation of the value or amount of scheme assets and liabilities

4.—(1) The liabilities of a scheme to which Article 73 applies and their amount or value must be determined, calculated and verified by the actuary of the scheme –

- (a) on the assumption that any questions relating to any person’s entitlement to a pension or other benefit are to be determined as at the crystallisation date;
- (b) on the assumption that liabilities in respect of pensions or other benefits will be discharged by the purchase of annuities of the kind described in Article 74(3)(c)⁽²⁶⁾ (discharge of liabilities: annuity purchase) and include the expenses involved in discharging them;
- (c) subject to sub-paragraph (b) and paragraph (4), on the general assumptions specified in regulations 7(2), (3) and (7) to (10) and 8(2) of the MFR Regulations⁽²⁷⁾ (determination and valuation of liabilities and further provisions as to valuation: methodology, assumptions, etc.) so far as they relate to the calculation and verification of liabilities; and
- (d) otherwise in accordance with the guidance given in GN 19⁽²⁸⁾, so far as that guidance applies for the purposes of these Regulations.

(2) For the purpose of paragraph (1)(b) the actuary must estimate the cost of purchasing the annuities.

(3) A calculation of the value or amount of the liabilities of a scheme for the purposes of Article 73 must be accompanied by a statement that it is in accordance with the guidance mentioned in paragraph (1)(d).

(4) For the purposes of this regulation, regulations 7 and 8 of the MFR Regulations shall be modified as follows –

- (a) references in regulations 7(3), (7) and (8) and 8(2) of the MFR Regulations to the relevant date shall be to be taken as references to the date as at which the calculation is made (being a date not earlier than the crystallisation date or the commencement of winding up, if later);
- (b) in regulation 7(3) the words “subject to paragraphs (4) and (5)” shall be omitted; and
- (c) in regulation 8(2)(a) head (i) shall be omitted.

(5) Paragraph (6) applies if, when the assets of the scheme are applied in accordance with Article 73(3) towards satisfying any liability of the scheme mentioned in Article 73(4), that liability, as calculated in accordance with the rules of the scheme (without any reduction by reason of its falling within a class of liability which is to be satisfied after another class),

⁽²⁵⁾ Regulation 4 was amended by regulation 4(2) of S.R. 2002 No. 64 and regulation 2(2) of S.R. 2005 No. 20

⁽²⁶⁾ Article 74(3)(c) was amended by S.I. 2002/1555

⁽²⁷⁾ S.R. 1996 No. 570; regulation 7 was amended by paragraph 7(3) of the Schedule to S.R. 1997 No. 160, regulation 3(4) of S.R. 2000 No. 335 and regulation 2(3) of S.R. 2002 No. 64 and regulation 8(2) was amended by regulation 3(5) of S.R. 2000 No. 335

⁽²⁸⁾ The publication GN 19 may be obtained from the Institute of Actuaries, Staple Inn Hall, High Holborn, London WC1V 7QJ and from the Faculty of Actuaries, Maclaurin House, 18 Dublin Street, Edinburgh EH1 3PP

is in the opinion of the actuary fully satisfied by applying assets of a value less than the amount of that liability calculated in accordance with paragraph (1).

(6) If this paragraph applies the amount to be taken as the amount of that liability for the purposes of Article 73(3) is to be reduced accordingly.

(7) Paragraph (8) applies if, when the assets of the scheme are so applied, the liabilities mentioned in Article 73(3), as calculated in accordance with the rules of the scheme (without any reduction by reason of their falling within a class of liability which is to be satisfied after another class), cannot in the opinion of the actuary be fully satisfied by applying assets of a value equal to the amount of those liabilities calculated in accordance with paragraph (1).

(8) If this paragraph applies the amount to be taken as the amount of those liabilities for the purposes of Article 73(3) is to be increased accordingly.

(9) If Article 73 does not apply to any liability by virtue of –

(a) Article 73B(6)(d) (which provides that the winding up provisions do not apply to liabilities the discharge of which is validated under Article 120 of the Pensions (Northern Ireland) Order 2005); or

(b) regulation 10(2) of the Occupational Pension Schemes (Winding up, etc.) Regulations (Northern Ireland) 2005 (which makes similar provision as respects liabilities discharged by virtue of regulations under Article 119(4) of that Order),

the value of any corresponding assets is to be deducted from the value of the assets of the scheme for the purposes of Article 73.

(10) For the purposes of paragraph (9), “the value of any corresponding assets” means –

(a) in a case where assets of the scheme at the crystallisation date are transferred from the scheme in consideration for the discharge, the value of those assets at that date, and

(b) in a case where assets that are not assets of the scheme at that date are so transferred, the value of those assets at the date of the discharge.

(11) Subject to paragraph (12), in this regulation “the crystallisation date” means –

(a) in the case of a scheme where –

(i) the trustees or managers determined (whether in pursuance of Article 38(29) (power to defer winding up) or otherwise) that the scheme was not for the time being to be wound up, despite rules otherwise requiring it to be so,

(ii) the time when the sub-paragraph of Article 73(4) into which the liability in respect of any person falls is determined is fixed under the provisions of the scheme, and

(iii) that time falls on or after the date of the determination mentioned in head (i) and before the date on which the scheme begins to be wound up,

the date when that time occurs; and

(b) otherwise, the date on which the scheme begins to be wound up.

(12) Where the trustees or managers of a scheme –

(a) determined before 6th April 1997 that the scheme was not for the time being to be wound up, despite rules otherwise requiring it to be so; and

(b) before that date determined a time (being a time before 6th April 1997) when the amounts or descriptions of liabilities of the scheme were to be determined for the purposes of any rule of the scheme requiring the assets of the scheme to be applied

on winding up in satisfying the amounts of certain liabilities to or in respect of members before other such liabilities,
the date when that time occurs is the crystallisation date.”.

Discharge of liabilities during assessment period

10.—(1) This regulation applies in any case where any liability of a scheme in respect of a member has been discharged by virtue of regulations under Article 119(4) of the 2005 Order (power to make regulations permitting discharge of scheme’s liabilities during an assessment period).

(2) Articles 73 to 73B of the 1995 Order (except Article 73B(4)(b)(iii)) apply as if references to liabilities did not include the discharged liability.

(3) Article 74(2) and (4) of the 1995 Order(**30**) applies as if the trustees or managers of the scheme had –

- (a) in accordance with arrangements prescribed under Article 74(2) of that Order, provided for the discharge of the discharged liability in one or more of the ways mentioned in Article 74(3) of that Order; and
- (b) applied any amount available to them in accordance with Article 73 of that Order in one or more of those ways.

Requirements to be met where liabilities discharged on winding up

11. In regulation 8 of the Winding Up Regulations (requirements to be satisfied by transferee schemes, annuities, etc.) after paragraph (5) there shall be added –

“(6) For the purposes of Article 74(3)(e)(**31**) (liabilities treated as discharged where the trustees have provided for them to be discharged by the payment of a cash sum in circumstances where prescribed requirements are met), the prescribed circumstances are –

- (a) where the payment is a contribution refund under Chapter 5 of Part IV of the Act (early leavers: cash transfer sums and contribution refunds); or
- (b) where the payment –
 - (i) is made to a member who has a right under the scheme rules to the payment of a lump sum that is a trivial commutation lump sum or a winding up lump sum for the purposes of Part 1 of Schedule 29 to the Finance Act 2004 (see paragraphs 7 to 10 of that Schedule (registered pension schemes: authorised lump sums: trivial commutation lump sum and winding up lump sum)), and
 - (ii) does not contravene any trivial commutation restriction that applies in the circumstances in question.

(7) In this regulation “trivial commutation restriction” means a restriction imposed by –

- (a) regulation 19, 20 or 60 of the Occupational Pension Schemes (Contracting-out) Regulations (Northern Ireland) 1996(**32**) (lump sum benefits and salary related contracted-out schemes, trivial commutation of benefits derived from section 5(2B) rights and trivial commutation of guaranteed minimum pensions);

(30) Article 74(2) and (4) is amended by Article 247(2)(b) of, and Schedule 11 to, the Pensions (Northern Ireland) Order 2005

(31) Sub-paragraph (e) is inserted by Article 247(2)(c) of the Pensions (Northern Ireland) Order 2005

(32) [S.R. 1996 No. 493](#); regulation 19 was substituted by regulation 2(7) of [S.R. 2002 No. 109](#), regulation 20 was amended by regulation 2(3) of [S.R. 2000 No. 336](#) and regulation 2(8) of [S.R. 2002 No. 109](#) and regulation 60 was amended by paragraph 5(12) of the Schedule to [S.R. 1997 No. 160](#) and regulation 2(12) of [S.R. 2002 No. 109](#)

- (b) regulation 2 of the Occupational Pension Schemes (Assignment, Forfeiture, Bankruptcy etc.) Regulations (Northern Ireland) 1997⁽³³⁾ (commutation of a pension under an occupational pension scheme); or
 - (c) regulation 3(2)(b) of the Pension Sharing (Pension Credit Benefit) Regulations (Northern Ireland) 2000⁽³⁴⁾ (commutation of the whole of pension credit benefit).
- (8) Before 6th April 2006 this regulation applies with the modification in paragraph (9).
- (9) For paragraph (6)(b)(i) substitute –
- “(i) extinguishes the whole or part of the person’s entitlement to benefits under the scheme;
 - (ia) does not contravene Revenue restrictions; and”.
- (10) For the purposes of this regulation a payment does not contravene Revenue restrictions if –
- (a) in the case of a scheme that is an approved scheme for the purposes of Chapter 1 of Part 14 of the Taxes Act 1988 (see section 612(1) of that Act), it is permitted under the scheme rules in accordance with its approval for those purposes; and
 - (b) in the case of a scheme that is a relevant statutory scheme for those purposes (see section 611A of that Act), it is permitted under the regulations or rules governing the scheme as such a scheme.”.

Commencement of winding up

12.—(1) Regulation 11 of the Occupational Pension Schemes (Winding Up Notices and Reports etc.) Regulations (Northern Ireland) 2002⁽³⁵⁾ (time when winding up taken to begin) does not apply in any case where in accordance with Article 121(4) to (8) of the 1995 Order a scheme begins to wind up on or after 6th April 2005.

(2) Accordingly, in such a case –

- (a) that Article applies for the purpose of determining the time when that scheme winds up for the purposes of –
 - (i) Articles 73 to 74 of the 1995 Order,
 - (ii) these Regulations, and
 - (iii) the Winding Up Regulations; and
- (b) regulation 2 of those Regulations does not apply.

(3) If immediately before 6th April 2005 a scheme was regarded as having begun to be wound up for any purpose by virtue of regulation 2 of the Winding Up Regulations (commencement of winding up), paragraphs (1) and (2) do not affect the time when it is to be taken as having begun to be wound up for that purpose.

Multi-employer sectionalised schemes, schemes with partial government guarantee and partly foreign schemes

13. In any case where, by virtue of regulation 12, 12A or 12B of the Winding Up Regulations⁽³⁶⁾ (winding up of sectionalised schemes, schemes with partial government guarantee and partly foreign

⁽³³⁾ [S.R. 1997 No. 153](#); regulation 2 was amended by regulation 8 of [S.R. 2002 No. 109](#)

⁽³⁴⁾ [S.R. 2000 No. 146](#)

⁽³⁵⁾ [S.R. 2002 No. 74](#)

⁽³⁶⁾ Regulation 12 is amended and regulations 12A and 12B are inserted respectively by paragraphs 6 and 7 of the Schedule to these regulations

schemes), Articles 73 to 74 of the 1995 Order apply to a scheme as if different parts of the scheme were separate schemes, these Regulations (apart from this regulation) also so apply.

Consequential amendments

14. The Winding Up Regulations have effect with the amendments specified in Part 1 of the Schedule, and the Regulations specified in Part 2 of the Schedule have effect with the amendments specified in that Part.

Transfer values

Amendment of the Occupational Pension Schemes (Transfer Values) Regulations

15.—(1) The Occupational Pension Schemes (Transfer Values) Regulations (Northern Ireland) 1996⁽³⁷⁾ shall be amended in accordance with paragraphs (2) to (8).

(2) In regulation 7(3)(b)(iv)⁽³⁸⁾ (manner of calculation and verification of cash equivalents) for the words from “the liabilities” to “winding-up)” there shall be substituted “the liabilities for the benefits in respect of which the cash equivalents are being calculated”.

(3) In regulation 8 (further provisions as to calculation of cash equivalents and increases and reductions of cash equivalents (other than guaranteed cash equivalents)) for paragraphs (4) to (4B)⁽³⁹⁾ there shall be substituted the following paragraphs –

“(4) In the case of a scheme to which Article 56 (minimum funding requirement) applies, the cash equivalent in respect of a member may be reduced by the trustees of the scheme if the GN 11 insufficiency conditions are met.

(4A) The GN 11 insufficiency conditions are that the actuary’s last relevant GN 11 report (see paragraph (4J)) shows that at the effective date of the report –

- (a) the scheme had assets that were insufficient to pay the full amount of the cash equivalent in respect of all the members; and
- (b) the assets were insufficient to pay in full any category of liabilities that is a category of liabilities for benefits in respect of which the member’s cash equivalent is being calculated.

(4B) If the GN 11 insufficiency conditions are met then, subject to paragraph (4D), the trustees may reduce any part of the member’s cash equivalent that is payable in respect of such a category of liabilities as are mentioned in paragraph (4A)(b) by a percentage not exceeding the GN 11 deficiency percentage.

(4C) The GN 11 deficiency percentage for any such part of a member’s cash equivalent is the percentage by which the actuary’s last relevant GN 11 report shows that the assets were insufficient to pay that category of liabilities.

(4D) The total reduction made in a member’s cash equivalent under paragraph (4) must not reduce the member’s cash equivalent below the MFR basis minimum for the member.

(4E) Subject to paragraph (4F), for the purposes of this regulation, the MFR basis minimum for the member is the minimum amount required in accordance with regulation 7(3)(b)(iv) to pay in full the liabilities for the benefits in respect of which the member’s cash equivalent is being calculated.

⁽³⁷⁾ S.R. 1996 No. 619; relevant amending regulations are S.R. 2003 No. 337

⁽³⁸⁾ Regulation 7(3)(b) was amended by paragraph 11(4) of the Schedule to S.R. 1997 No. 160

⁽³⁹⁾ Paragraphs (4) to (4B) were substituted for paragraph (4) by regulation 2(3) of S.R. 2003 No. 337

(4F) If the GN 11 insufficiency conditions and the MFR insufficiency conditions are both met, the MFR basis minimum for the member for the purposes of paragraph (4D) may be reduced by the trustees of the scheme in accordance with paragraph (4H).

(4G) The MFR insufficiency conditions are that the last relevant MFR valuation statement (see paragraph (4K)) shows that at the effective date of the valuation –

- (a) the scheme had assets that were insufficient to pay in full the liabilities of the scheme in respect of pensions and other benefits towards which the assets would be required by Article 73 to be applied in the order determined under that Article; and
- (b) the assets were insufficient to pay in full any category of liabilities to which that order applies that are liabilities for benefits in respect of which the member’s cash equivalent is being calculated.

(4H) The reduction that may be made under paragraph (4F) is that any part of the MFR basis minimum for the member that relates to that category of liabilities may be reduced by a percentage not exceeding the MFR deficiency percentage.

(4I) The MFR deficiency percentage for any such part of the MFR basis minimum for the member is the percentage by which the last relevant MFR valuation statement shows that the assets were insufficient to pay that category of liabilities.

(4J) The references in this regulation to the actuary’s last relevant GN 11 report are to his last report before the guarantee date in accordance with “Retirement Benefit Schemes – Transfer Values (GN 11)”⁽⁴⁰⁾ published by the Faculty of Actuaries and the Institute of Actuaries and current at the guarantee date.

(4K) The references in this regulation to the last relevant MFR valuation statement are to the statement made by the actuary in accordance with Schedule 1 to the Occupational Pension Schemes (Minimum Funding Requirement and Actuarial Valuations) Regulations (Northern Ireland) 1996⁽⁴¹⁾ (minimum funding valuation statements) and contained in the last actuarial valuation under Article 57 (valuation and certification of assets and liabilities) before the guarantee date.

(4L) If the last relevant MFR valuation statement refers to an order for applying assets determined under Article 73 that is an order modified by regulations made under that Article, then the reduction under paragraph (4F) is to be made by reference to the order as so modified.”

(4) In regulation 8(5) for “paragraph (4)”, “the reference” and “a reference” there shall be substituted “paragraphs (4), (4A) and (4G)”, “the references” and “references” respectively.

(5) In regulation 8(12) for “Article 73 and regulations made under that Article” there shall be substituted “the winding up provisions (as defined in Article 73B(10)(a)) and regulations made under those provisions”.

(6) In regulation 8(13) for “under Article 73, that Article applies” there shall be substituted “under Article 73B(4)(b)(i) by virtue of Article 73B(5), the winding up provisions (as so defined) apply”.

(7) In regulation 9(3) (increases and reductions of guaranteed cash equivalents) for “Article 73 and regulations made under that Article” there shall be substituted “the winding up provisions (as defined in Article 73B(10)(a)) and regulations made under those provisions”.

(8) In regulation 9(4) for “under Article 73, that Article applies” there shall be substituted “under Article 73B(4)(b)(i) by virtue of Article 73B(5), the winding up provisions (as so defined) apply”.

⁽⁴⁰⁾ The publication “Retirement Benefit Schemes – Transfer Values (GN 11)” may be obtained from the Institute of Actuaries, Staple Inn Hall, High Holborn, London WC1V 7QJ and from the Faculty of Actuaries, Maclaurin House, 18 Dublin Street, Edinburgh EH1 3PP

⁽⁴¹⁾ S.R. 1996 No. 570; Schedule 1 was amended by regulation 2(3) of S.R. 2004 No. 481

(9) Paragraphs (2) to (4) only apply to the calculation of cash equivalents where the guarantee date is on or after 6th April 2005 and the scheme has not begun to be wound up before that date.

(10) In paragraph (9) “the guarantee date” has the meaning given by section 89A(2) of the Pension Schemes Act(42) (salary-related schemes: right to statement of entitlement).

(11) Paragraphs (5) to (8) only apply where the scheme begins to be wound up on or after 6th April 2005.

Pension sharing

Amendment of the Pension Sharing (Valuation) Regulations

16.—(1) The Pension Sharing (Valuation) Regulations (Northern Ireland) 2000(43) shall be amended in accordance with paragraphs (2) to (7).

(2) In regulation 4(3)(b)(iii) (occupational pension schemes: manner of calculation and verification of cash equivalents) for the words from “the liabilities” to “up” there shall be substituted “liabilities for the benefits in respect of which the cash equivalent is being calculated”.

(3) In regulation 5 (occupational pension schemes: further provisions as to the calculation of cash equivalents and increases and reductions of cash equivalents) for paragraphs (3) to (3B)(44) there shall be substituted the following paragraphs –

“(3) In the case of a scheme to which Article 56 (minimum funding requirement) applies, the cash equivalent may be reduced by the trustees or managers if the GN 11 insufficiency conditions are met.

(3A) The GN 11 insufficiency conditions are that the actuary’s last relevant GN 11 report (see paragraph (3J)) shows that at the effective date of the report –

- (a) the scheme had assets that were insufficient to pay the full amount of the cash equivalent in respect of all the members; and
- (b) the assets were insufficient to pay in full any category of liabilities that is a category of liabilities for the benefits in respect of which the cash equivalent is being calculated.

(3B) If the GN 11 insufficiency conditions are met then, subject to paragraph (3D), the trustees or managers may reduce any part of the cash equivalent that relates to such a category of liabilities as are mentioned in paragraph (3A)(b) by a percentage not exceeding the GN 11 deficiency percentage.

(3C) The GN 11 deficiency percentage for any such part of the cash equivalent is the percentage by which the actuary’s last relevant GN 11 report shows that the assets were insufficient to pay that category of liabilities.

(3D) The total reduction made in the cash equivalent under paragraph (3) must not reduce the cash equivalent below the MFR basis minimum for the transferor.

(3E) Subject to paragraph (3F), for the purposes of this regulation, the MFR basis minimum for the transferor is the minimum amount required in accordance with regulation 4(3)(b)(iii) to pay in full the liabilities for the benefits in respect of which the cash equivalent is being calculated.

(42) Section 89A was inserted by Article 149 of the Pensions (Northern Ireland) Order 1995 and amended by paragraph 23 of Schedule 9 to the Welfare Reform and Pensions (Northern Ireland) Order 1999

(43) S.R. 2000 No. 144; relevant amending regulations are S.R. 2000 No. 335 and S.R. 2003 No. 337

(44) Paragraphs (3) to (3B) were substituted for paragraph (3) by regulation 4(3) of S.R. 2003 No. 337

(3F) If the GN 11 insufficiency conditions and the MFR insufficiency conditions are both met, the MFR basis minimum for the transferor for the purposes of paragraph (3D) may be reduced by the trustees or managers in accordance with paragraph (3H).

(3G) The MFR insufficiency conditions are that the last relevant MFR valuation statement (see paragraph (3K)) shows that at the effective date of the valuation –

- (a) the scheme had assets that were insufficient to pay in full the liabilities of the scheme in respect of pensions and other benefits towards which the assets would be required by Article 73 to be applied in the order determined under that Article; and
- (b) the assets were insufficient to pay in full any category of liabilities to which that order applies that are liabilities for benefits in respect of which the cash equivalent is being calculated.

(3H) The reduction that may be made under paragraph (3F) is that any part of the MFR basis minimum for the transferor that relates to that category of liabilities may be reduced by a percentage not exceeding the MFR deficiency percentage.

(3I) The MFR deficiency percentage for any such part of the MFR basis minimum for the transferor is the percentage by which the last relevant MFR valuation statement shows that the assets were insufficient to pay that category of liabilities.

(3J) The references in this regulation to the actuary's last relevant GN 11 report are to his last report before the valuation day in accordance with "Retirement Benefit Schemes – Transfer Values (GN 11)" published by the Faculty of Actuaries and the Institute of Actuaries and current at the valuation day.

(3K) The references in this regulation to the last relevant MFR valuation statement are to the statement made by the actuary in accordance with Schedule 1 to the Minimum Funding Requirement Regulations (minimum funding valuation statements) and contained in the last actuarial valuation under Article 57 (valuation and certification of assets and liabilities) before the valuation day.

(3L) If the last relevant MFR valuation statement refers to an order for applying assets determined under Article 73 that is an order modified by regulations made under that Article, then the reduction under paragraph (3F) is to be made by reference to the order as so modified."

(4) In regulation 5(4) for "paragraph (3)", "the reference" and "a reference" there shall be substituted "paragraphs (3), (3A) and (3G)", "the references" and "references" respectively.

(5) In regulation 5(5)(45) for "paragraph (3)" there shall be substituted "paragraphs (3) and (3F)".

(6) In regulation 5(6) for the words from "Articles 73" to the end there shall be substituted "the winding up provisions (as defined in Article 73B(10)(a)) and regulations made under those provisions".

(7) In regulation 5(7) for "the Winding Up Regulations, Article 73 applies" there shall be substituted "regulations made under Article 73B(4)(b)(i) by virtue of Article 73B(5), the winding up provisions (as so defined) apply".

(8) Paragraphs (2) to (5) only apply if the relevant proceedings commenced on or after 6th April 2005 and the scheme has not begun to be wound up before that date.

(9) In paragraph (8) "the relevant proceedings" means the proceedings for the dissolution or annulment of marriage in connection with which the relevant order or provision was made and in this paragraph "the relevant order or provision" means the order or provision mentioned in Article 25(1) of the 1999 Order (activation of pension sharing) for the purposes of which the valuation is made.

(45) Paragraph (5) was substituted by regulation 10(4) of [S.R. 2000 No. 335](#)

(10) Paragraphs (6) and (7) only apply where the scheme begins to be wound up on or after 6th April 2005.

Amendment of the Pension Sharing (Implementation and Discharge of Liability) Regulations

17.—(1) The Pension Sharing (Implementation and Discharge of Liability) Regulations (Northern Ireland) 2000⁽⁴⁶⁾ shall be amended in accordance with paragraphs (2) and (3).

(2) In regulation 16 (adjustments to amount of pension credit: occupational pension schemes which are underfunded on the valuation day) for paragraphs (2) to (2B)⁽⁴⁷⁾ there shall be substituted the following paragraphs –

“(2) In the case of a scheme to which Article 56 of the 1995 Order (minimum funding requirement) applies, the lesser amount referred to in paragraph 8(1) of Schedule 5 (adjustments to amount of pension credit) may be determined for the purposes of that paragraph by reducing the pension credit if the GN 11 insufficiency conditions are met.

(2A) The GN 11 insufficiency conditions are that the actuary’s last relevant GN 11 report (see paragraph (2J)) shows that at the effective date of the report –

- (a) the scheme had assets that were insufficient to pay the full amount of the cash equivalent in respect of all the members; and
- (b) the assets were insufficient to pay in full any category of liabilities for benefits to which the pension credit relates.

(2B) If the GN 11 insufficiency conditions are met then, subject to paragraph (2D), the trustees or managers may reduce any part of the pension credit that relates to benefits the liabilities for which fall within such a category as is mentioned in paragraph (2A)(b) by a percentage not exceeding the GN 11 deficiency percentage.

(2C) The GN 11 deficiency percentage for any such part of the pension credit is the percentage by which the actuary’s last relevant GN 11 report shows that the assets were insufficient to pay the category of liabilities into which the liabilities for those benefits falls.

(2D) The total reduction made in a pension credit under paragraph (2) must not reduce the cash equivalent in respect of the pension credit below the MFR basis minimum for the person entitled to the credit.

(2E) Subject to paragraph (2F), for the purposes of this regulation, the MFR basis minimum for such a person is the minimum amount required in accordance with regulation 4(3)(b)(iii) of the Pension Sharing (Valuation) Regulations (Northern Ireland) 2000 to pay in full the liabilities for the benefits in respect of which the cash equivalent is being calculated.

(2F) If the GN 11 insufficiency conditions and the MFR insufficiency conditions are both met, the MFR basis minimum for the person for the purposes of paragraph (2D) may be reduced in accordance with paragraph (2H).

(2G) The MFR insufficiency conditions are that the last relevant MFR valuation statement (see paragraph (2K)) shows that at the effective date of the valuation –

- (a) the scheme had assets that were insufficient to pay in full the liabilities of the scheme in respect of pensions and other benefits towards which the assets would be required by Article 73 of the 1995 Order to be applied in the order determined under that Article; and

⁽⁴⁶⁾ S.R. 2000 No. 145; relevant amending regulations are S.R. 2003 No. 337

⁽⁴⁷⁾ Paragraphs (2) to (2B) were substituted for paragraph (2) by regulation 5(3) of S.R. 2003 No. 337

(b) the assets were insufficient to pay in full any category of liabilities to which that order applies that are liabilities for benefits to which the pension credit relates.

(2H) The reduction that may be made under paragraph (2F) is that any part of the MFR basis minimum for the person that relates to that category of liabilities may be reduced by a percentage not exceeding the MFR deficiency percentage.

(2I) The MFR deficiency percentage for any such part of the MFR basis minimum for the person is the percentage by which the last relevant MFR valuation statement shows that the assets were insufficient to pay that category of liabilities.

(2J) The references in this regulation to the actuary's last relevant GN 11 report are to his last report before the valuation day in accordance with "Retirement Benefit Schemes – Transfer Values (GN 11)" published by the Faculty of Actuaries and the Institute of Actuaries and current at the valuation day.

(2K) The references in this regulation to the last relevant MFR valuation statement are to the statement made by the actuary in accordance with Schedule 1 to the Occupational Pension Schemes (Minimum Funding Requirement and Actuarial Valuations) Regulations (Northern Ireland) 1996 (minimum funding valuation statements) and contained in the last actuarial valuation under Article 57 of the 1995 Order (valuation and certification of assets and liabilities) before the valuation day.

(2L) If the last relevant MFR valuation statement refers to an order for applying assets determined under Article 73 of the 1995 Order that is an order modified by regulations made under that Article, then the reduction under paragraph (2F) is to be made by reference to the order as so modified."

(3) In regulation 16(3) for "paragraph (2)", "the reference" and "a reference" there shall be substituted "paragraphs (2), (2A) and (2G)", "the references" and "references" respectively.

(4) This regulation only applies if the relevant proceedings commenced on or after 6th April 2005 and the scheme has not begun to be wound up before that date.

(5) In paragraph (4) "the relevant proceedings" means the proceedings for the dissolution or annulment of marriage in connection with which the order or provision mentioned in Article 25(1) of the 1999 Order that resulted in entitlement to the pension credit in question was made.

Amendment of the Pension Sharing (Pension Credit Benefit) Regulations

18.—(1) The Pension Sharing (Pension Credit Benefit) Regulations (Northern Ireland) 2000(48) shall be amended in accordance with paragraphs (2) to (11).

(2) In regulation 1(2) for the definition of "the Minimum Funding Requirement Regulations" there shall be substituted the following definition –

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

(3) In regulation 15(4) (further conditions on which liability may be discharged) for sub-paragraph (b) there shall be substituted the following sub-paragraph –

“(b) the winding up provisions (as defined in Article 73B(10)(a)) and regulations made under those provisions do not apply;”.

(4) In regulation 24(3)(b)(iv) (manner of calculation and verification of cash equivalents) for "the liabilities mentioned in Article 73(3)(a), (c)(i) and (d)" there shall be substituted "liabilities for the benefits in respect of which the cash equivalent is being calculated".

(5) In regulation 27 (increases and reductions of cash equivalents before a statement of entitlement has been sent to the eligible member) for paragraphs (4) to (4B)(49) there shall be substituted the following paragraphs –

“(4) In the case of a scheme to which Article 56 (minimum funding requirement) applies, the cash equivalent in respect of an eligible member may be reduced by the trustees or managers of the scheme if the GN 11 insufficiency conditions are met.

(4A) The GN 11 insufficiency conditions are that the actuary’s last relevant GN 11 report (see paragraph (4J)) shows that at the effective date of the report –

- (a) the scheme had assets that were insufficient to pay the full amount of the cash equivalent in respect of all the members; and
- (b) the assets were insufficient to pay in full any category of liabilities that is a category of liabilities for benefits in respect of which the eligible member’s cash equivalent is being calculated.

(4B) If the GN 11 insufficiency conditions are met then, subject to paragraph (4D), the trustees or managers may reduce any part of the eligible member’s cash equivalent that is payable in respect of such a category of liabilities as are mentioned in paragraph (4A)(b) by a percentage not exceeding the GN 11 deficiency percentage.

(4C) The GN 11 deficiency percentage for any such part of an eligible member’s cash equivalent is the percentage by which the actuary’s last relevant GN 11 report shows that the assets were insufficient to pay that category of liabilities.

(4D) The total reduction made in an eligible member’s cash equivalent under paragraph (4) must not reduce the member’s cash equivalent below the MFR basis minimum for the member.

(4E) Subject to paragraph (4F), for the purposes of this regulation, the MFR basis minimum for the eligible member is the minimum amount required in accordance with regulation 24(3)(b)(iv) to pay in full the liabilities for the benefits in respect of which the member’s cash equivalent is being calculated.

(4F) If the GN 11 insufficiency conditions and the MFR insufficiency conditions are both met, the MFR basis minimum for the eligible member for the purposes of paragraph (4D) may be reduced by the trustees or managers in accordance with paragraph (4H).

(4G) The MFR insufficiency conditions are that the last relevant MFR valuation statement (see paragraph (4K)) shows that at the effective date of the valuation –

- (a) the scheme had assets that were insufficient to pay in full the liabilities of the scheme in respect of pensions and other benefits towards which the assets would be required by Article 73 to be applied in the order determined under that Article; and
- (b) the assets were insufficient to pay in full any category of liabilities to which that order applies that are liabilities for benefits in respect of which the eligible member’s cash equivalent is being calculated.

(4H) The reduction that may be made under paragraph (4F) is that any part of the MFR basis minimum for the eligible member that relates to that category of liabilities may be reduced by a percentage not exceeding the MFR deficiency percentage.

(4I) The MFR deficiency percentage for any such part of the MFR basis minimum for the eligible member is the percentage by which the last relevant MFR valuation statement shows that the assets were insufficient to pay that category of liabilities.

(4J) The references in this regulation to the actuary’s last relevant GN 11 report are to his last report before the reference date in accordance with “Retirement Benefit Schemes – Transfer Values (GN 11)” published by the Faculty of Actuaries and the Institute of Actuaries and current at the reference date.

(4K) The references in this regulation to the last relevant MFR valuation statement are to the statement made by the actuary in accordance with Schedule 1 to the Minimum Funding Requirement Regulations (minimum funding valuation statements) and contained in the last actuarial valuation under Article 57 (valuation and certification of assets and liabilities) before the reference date.

(4L) If the last relevant MFR valuation statement refers to an order for applying assets determined under Article 73 that is an order modified by regulations made under that Article, then the reduction under paragraph (4F) is to be made by reference to the order as so modified.

(4M) In paragraphs (4J) and (4K) “the reference date” means the date by reference to which the cash equivalent is determined.”.

(6) In regulation 27(5) for “paragraph (4)”, “the reference” and “a reference” there shall be substituted “paragraphs (4), (4A) and (4G)”, “the references” and “references” respectively.

(7) In regulation 27(9) for “Article 73 and the Winding Up Regulations” there shall be substituted “the winding up provisions and regulations made under those provisions”.

(8) In regulation 27(10) for “under the Winding Up Regulations, Article 73 applies” there shall be substituted “regulations made under Article 73B(4)(b)(i) by virtue of Article 73B(5), the winding up provisions apply”.

(9) For regulation 27(13) there shall be substituted the following paragraph –

“(13) In this regulation –

“actuary” has the meaning given by regulation 24;

“the winding up provisions” means Articles 73 to 74.”.

(10) In regulation 28(3) (increases and reductions of cash equivalents once the statement of entitlement has been sent to the eligible member) for “Articles 73 and 74 and the Winding Up Regulations” there shall be substituted “the winding up provisions (as defined in regulation 27(13)) and regulations made under those provisions”.

(11) In regulation 28(4) for “the Winding Up Regulations, Article 73 applies” there shall be substituted “regulations made under Article 73B(4)(b)(i) by virtue of Article 73B(5), the winding up provisions (as so defined) apply”.

(12) This regulation only applies if the relevant proceedings commenced on or after 6th April 2005 and the scheme has not begun to be wound up before that date.

(13) In paragraph (12) “the relevant proceedings” means the proceedings for the dissolution or annulment of marriage in connection with which the order or provision mentioned in Article 25(1) of the 1999 Order that resulted in entitlement to the pension credit in question was made.

Sealed with the Official Seal of the Department for Social Development on 25th March 2005.

L.S.

John O'Neill
A senior officer of the
Department for Social Development

Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.
