

2005 No. 421

PENSIONS

The Occupational Pension Schemes (Administration and Audited Accounts) (Amendment) Regulations (Northern Ireland) 2005

Made - - - - *9th September 2005*

Coming into operation in accordance with regulation 1

The Department for Social Development, in exercise of the powers conferred by sections 107A(4)(b) to (7), 109(1)(d) and 177(2) and (4) of the Pension Schemes (Northern Ireland) Act 1993(a) and Articles 41(1) and (6), 47(5) and (6), 49(2), (4) and (9)(b), 85(1), 86(1) and 166(1) to (3) of the Pensions (Northern Ireland) Order 1995(b), and now vested in it(c), 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 (Administration and Audited Accounts) (Amendment) Regulations (Northern Ireland) 2005 and shall come into operation as follows—

- (a) in the case of an occupational pension scheme established before 22nd September 2005, this regulation and regulations 2(1) to (4) and 3, on the first day of the first scheme year that starts on or after 22nd September 2005;
- (b) in the case of an occupational pension scheme established on or after 22nd September 2005, this regulation and regulations 2(1) to (4) and 3, on 22nd September 2005, and
- (c) for all other purposes, on 6th April 2006.

(2) In these Regulations—

“the Scheme Administration Regulations” means the Occupational Pension Schemes (Scheme Administration) Regulations (Northern Ireland) 1997(d);

“scheme year” means—

- (a) either—
 - (i) a year specified for the purposes of the scheme rules in any document which contains those scheme rules, or
 - (ii) if no such year is specified, a period of 12 months commencing on 1st April or on such date as the trustees or managers select, or

(a) 1993 c. 49

(b) S.I. 1995/3213 (N.I. 22); Article 49(9) was inserted by Article 11(1) of the Welfare Reform and Pensions (Northern Ireland) Order 1999 (S.I. 1999/3147 (N.I. 11)) and amended by Article 246(1) of the Pensions (Northern Ireland) Order 2005 (S.I. 2005/255 (N.I. 1)) and Article 86(1) was substituted by Article 246(2) of that Order

(c) See Article 8(b) of S.R. 1999 No. 481

(d) S.R. 1997 No. 94; relevant amending regulations are S.R. 1997 No. 160, S.R. 1999 No. 486 and S.R. 2000 No. 69

- (b) such other period (if any) exceeding 6 months but not exceeding 18 months as is selected by the trustees or managers in connection with—
 - (i) the commencement or termination of the scheme, or
 - (ii) a variation of the date on which the year or period referred to in paragraph (a) is to commence.

(3) Subject to paragraph (4), the Interpretation Act (Northern Ireland) 1954(a) shall apply to these Regulations as it applies to an Act of the Assembly.

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

Amendment of the Occupational Pension Schemes (Requirement to obtain Audited Accounts and a Statement from the Auditor) Regulations

2.—(1) The Occupational Pension Schemes (Requirement to obtain Audited Accounts and a Statement from the Auditor) Regulations (Northern Ireland) 1997(b) shall be amended in accordance with paragraphs (2) to (5).

(2) In regulation 1(2) (interpretation) after the definition of “ear-marked scheme” there shall be inserted the following definition—

““group of companies” has the meaning given by section 71 of the Finance Act 2005(c);”.

(3) In regulation 2 (requirement of trustees or managers to obtain documents)—

(a) in paragraph (1) for “Subject to paragraph (2)” there shall be substituted “Subject to paragraphs (2), (2A) and (2B)”;

(b) for paragraph (2) there shall be substituted the following paragraph—

“(2) In the case of an ear-marked scheme, the requirements contained in paragraph (1)(a) shall not apply and the trustees or managers of such a scheme shall—

(a) upon receiving a written request from a person specified in Article 41(4) of the Order—

(i) make available a copy of the most recent accounts published in relation to the insurance companies (whether as part of a group of companies or otherwise) with which they hold ear-marked policies of insurance or annuity contracts in relation to that person; and

(ii) make that information available to the person who requested it within a reasonable time of receiving the request; and

(b) provide each scheme member within 12 months of the end of each scheme year with a statement detailing the amount of contributions credited to him during that scheme year.”;

(c) after paragraph (2A)(d) there shall be inserted the following paragraph—

“(2B) In relation to a scheme to which Article 47(1)(a) of the Order does not apply, the requirement to obtain accounts in accordance with paragraph (1)(a) or an auditor’s statement in accordance with paragraph (1)(b) shall apply to such a scheme—

(a) which falls within regulation 3(1)(c) or (i) of the Occupational Pension Schemes (Scheme Administration) Regulations (Northern Ireland) 1997; and

(b) which has 100 or more members.”, and

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

(b) S.R. 1997 No. 40; relevant amending regulations are S.R. 1997 No. 160 and S.R. 2000 Nos. 107 and 382

(c) 2005 c. 7

(d) Paragraph (2A) was inserted by regulation 8 of S.R. 2000 No. 382

(d) paragraph (4)(a) shall be omitted.

(4) In regulation 4(1)(b) (form and content of the auditor's statement) for sub-paragraph (a) there shall be substituted the following sub-paragraph—

“(a) a statement as to whether or not in his opinion contributions have in all material respects been paid at least in accordance with the schedule of contributions or payment schedule; and”.

(5) In paragraph 2(3)(a)(c) of the Schedule (contents of accounts audited by the auditor of the scheme) the words “to which section 107 of the Pension Schemes Act applies” shall be omitted.

Amendment of the Scheme Administration Regulations

3.—(1) The Scheme Administration Regulations shall be amended in accordance with paragraphs (2) to (8).

(2) In regulation 1(2) (interpretation) for the definition of “wholly insured scheme” there shall be substituted the following definition—

““wholly insured scheme” means a trust scheme, other than a stakeholder pension scheme within the meaning of Article 3 of the Welfare Reform and Pensions (Northern Ireland) Order 1999, which has no investments other than specified insurance policies with specified insurers and for these purposes “investments” shall not include—

- (a) cash held on deposit by the trustees or managers pending payment to the insurer or to members of the scheme;
- (b) cash held on deposit by the trustees or managers to meet accrued liabilities or administrative expenses; or
- (c) investments arising from voluntary contributions; and

in relation to a trust scheme which has policies of insurance with more than one insurer, a reference in this regulation to an insurer shall be to any of the insurers with which a policy of insurance is taken out.”.

(3) In regulation 3 (professional advisers' requirements: exceptions)—

(a) in paragraph (1)—

(i) for sub-paragraph (a) there shall be substituted the following sub-paragraph—

“(a) a scheme which is—

- (i) provided for, by or under a statutory provision; and
- (ii) guaranteed by a Minister of the Crown, government department or other public authority;”;

(ii) in sub-paragraph (h)(d) after head (ii) there shall be added—

“and

(iii) there are fewer than 12 members;”;

(iii) in sub-paragraph (hh) at the end there shall be added “with fewer than 12 members”, and

(iv) sub-paragraphs (b), (d), (g) and (j) shall be omitted;

(b) in paragraph (2) for sub-paragraphs (b) and (c) there shall be substituted the following sub-paragraph—

“(b) schemes mentioned in—

- (i) paragraph (1)(a), (e) and (f); or

(a) Paragraph (4) was substituted by regulation 2 of S.R. 2000 No. 107

(b) Regulation 4 was amended by paragraph 14(3) of the Schedule to S.R. 1997 No. 160

(c) Sub-paragraph (3) was added by paragraph 14(4) of the Schedule to S.R. 1997 No. 160

(d) Sub-paragraph (h) was amended and sub-paragraph (hh) was inserted by paragraph 16(3) of the Schedule to S.R. 1997 No. 160

(ii) paragraph (1)(c) or (i) where these schemes have fewer than 100 members.”,
and

(c) in paragraphs (3)(c) and (4) for “paragraph (1)(a) to (g), (i) and (j)” there shall be substituted “paragraph (1)(a) to (f) and (i)”.

(4) In regulations 5(11) (manner and terms of appointment and removal of professional advisers) and 6(4) (duty to disclose information) for “regulation 3(1)(b) to (g) and (i)” there shall be substituted “regulation 3(1)(c) to (f) and (i)”.

(5) In regulation 12 (requirement for trustees to keep books and records) after paragraph (2) there shall be added the following paragraph—

“(3) This regulation shall not apply in the case of a trust scheme which falls within the description referred to in—

- (a) regulation 3(1)(f);
- (b) regulation 3(1)(c) or (i) where any such scheme has fewer than 100 members; or
- (c) to a scheme which is a Republic of Ireland scheme within the meaning of the Occupational Pension Schemes (Republic of Ireland Schemes Exemption) Regulations (Northern Ireland) 2000(a).”.

(6) In regulation 13 (records of trustees’ meetings) for paragraph (2) there shall be substituted the following paragraph—

“(2) This regulation shall not apply in the case of a trust scheme which falls within the description referred to in—

- (a) regulation 3(1)(f); or
- (b) regulation 3(1)(c) or (i) where any such scheme has fewer than 100 members.”.

(7) In regulation 16A(2)(b)(b) (time limits for giving notice to the Authority and to the member and circumstances in which such notice need not be given) head (ii) and the word “or” preceding it shall be omitted.

(8) For regulation 17(c) (requirement to secure a payment schedule: exception) there shall be substituted the following regulation—

“Requirement to secure a payment schedule: exception

17. For the purposes of Article 85(1) (requirement for occupational pension schemes which are money purchase schemes to secure and maintain a payment schedule unless the scheme falls within a prescribed class or description) the prescribed class or description is a money purchase scheme which falls within the description referred to in—

- (a) regulation 3(1)(a), (f), (h) or (hh); or
- (b) regulation 3(1)(c) or (i) where any such scheme has fewer than 100 members.”.

Further amendment of the Scheme Administration Regulations

4.—(1) The Scheme Administration Regulations shall be amended in accordance with paragraphs (2) to (8).

(2) In regulation 1(2) (interpretation)—

- (a) the definitions of—
 - (i) “approved scheme”,
 - (ii) “pensioneer trustee”,

(a) S.R. 2000 No. 382, to which there are amendments not relevant to these regulations
(b) Regulation 16A was inserted by regulation 2(3) of S.R. 2000 No. 69
(c) Regulation 17 was amended by paragraph 16(5) of the Schedule to S.R. 1997 No. 160

- (iii) “relevant ear-marked scheme”(a),
 - (iv) “relevant statutory scheme”, and
 - (v) “small self-administered scheme”,
- shall be omitted;
- (b) before the definition of “relevant benefits” there shall be inserted the following definition—
 - ““registered scheme” means a scheme which, on or after 6th April 2006, is registered in accordance with section 153 of the Finance Act 2004(b);”;
 - (c) for the definition of “relevant benefits” there shall be substituted the following definition—
 - ““relevant benefits” has the meaning given in section 393B of the Income Tax (Earnings and Pensions) Act 2003(c);”.
- (3) In regulation 3 (professional advisers’ requirements: exceptions)—
- (a) in paragraph (1)—
 - (i) for sub-paragraph (c) there shall be substituted the following sub-paragraph—
 - “(c) an occupational pension scheme which provides relevant benefits and which, on or after 6th April 2006, is not a registered scheme;”;
 - (ii) for sub-paragraph (h) there shall be substituted the following sub-paragraph—
 - “(h) a scheme—
 - (i) with fewer than 12 members where all the members are trustees of the scheme and either—
 - (aa) the provisions of the scheme provide that all decisions which fall to be made by the trustees are made by unanimous agreement by the trustees who are members of the scheme;
 - (bb) the scheme has a trustee who is independent in relation to the scheme for the purposes of Article 23(d) (power to appoint independent trustees), and is registered in the register maintained by the Authority in accordance with regulations made under paragraph (4) of that Article; or
 - (ii) with fewer than 12 members where all the members are directors of a company which is the sole trustee of the scheme and either—
 - (aa) the provisions of the scheme provide that any decisions made by the company in its capacity as trustee are made by the unanimous agreement of all the directors who are members of the scheme; or
 - (bb) one of the directors of the company is independent in relation to the scheme for the purposes of Article 23, and is registered in the register maintained by the Authority in accordance with regulations made under paragraph (4) of that Article;”, and
 - (iii) sub-paragraph (hh) shall be omitted, and
 - (b) in paragraph (2)(b)(i) for “and (f)” there shall be substituted “, (f) and (h)”.
- (4) In regulation 8 (meaning of trustee of a trust scheme) for “any pensioner trustee” there shall be substituted “a trustee who is a trustee in relation to a scheme to which regulation 3(1)(h)(i)(bb) or (ii)(bb) applies (professional advisers’ requirements: exceptions)”.

(a) The definition of “relevant ear-marked scheme” was inserted by paragraph 16(2)(b) of the Schedule to S.R. No. 1997 No. 160

(b) 2004 c. 12; section 153 was amended by paragraphs 2 and 3 of Schedule 10 to the Finance Act 2005

(c) 2003 c. 1; section 393B was substituted by section 249(3) of the Finance Act 2004

(d) Article 23 was substituted by Article 32(3) of the Pensions (Northern Ireland) Order 2005

(5) For regulation 16A (time limits for giving notice to the Authority and to the member and circumstances in which such notice need not be given) there shall be substituted the following regulation—

“Requirement to notify the Authority or the member of a late contribution payment: exceptions

16A. Where—

- (a) an amount corresponding to any contribution payable on behalf of an active member of an occupational pension scheme is deducted from that member’s earnings in respect of any employment; and
- (b) is not paid to the trustees or managers of the scheme within the period of 19 days beginning on the first day of the month after which the deduction is made,

the trustees or managers do not need to give notice of that failure to the Authority or member where—

- (c) the scheme is exempt from the requirement to secure the preparation, maintenance and revision of a payment schedule for the purposes of Article 85(1) (schedules of payments to money purchase schemes) by virtue of regulation 17; or
- (d) the scheme is exempt from the requirement to secure the preparation, maintenance and revision of a schedule of contributions for the purposes of Article 58(1) (schedules of contributions) by virtue of any of sub-paragraphs (a) to (e), (g) or (h) of regulation 28(1) of the Occupational Pension Schemes (Minimum Funding Requirement and Actuarial Valuations) Regulations (Northern Ireland) 1996(a).”.

(6) In regulation 17(a) (requirement to secure a payment schedule: exception) for “, (h) or (hh)” there shall be substituted “or (h)”.

(7) Regulation 20 (period within which notice must be given) shall be omitted.

(8) In regulation 21 (circumstances where notice of non-payment of any amount payable to a scheme need not be given)—

- (a) paragraphs (1) and (3)(b) shall be omitted, and
- (b) in paragraph (4)(c) for “within a prescribed period” there shall be substituted “within a reasonable period”.

Revocations

5. The regulations specified in column (1) of the Schedule are revoked to the extent specified in column (3).

Sealed with the Official Seal of the Department for Social Development on 9th September 2005.



John O'Neill

A senior officer of the Department for Social Development

(a) S.R. 1996 No. 570
(b) Paragraph (3) was inserted by regulation 11(5) of S.R. 1999 No. 486
(c) Paragraph (4) was added by regulation 2(4) of S.R. 2000 No. 69

SCHEDULE

Regulation 5

Regulations revoked

Column (1) <i>Citation</i>	Column (2) <i>Reference</i>	Column (3) <i>Extent of Revocation</i>
The Personal and Occupational Pension Schemes (Miscellaneous Amendments) Regulations (Northern Ireland) 1997	S.R. 1997 No. 160	In the Schedule, paragraph 16(2)(b), (3) and (5)
The Personal and Occupational Pension Schemes (Miscellaneous Amendments) Regulations (Northern Ireland) 1999	S.R. 1999 No. 486	Regulation 11(5)
The Occupational Pension Schemes (Miscellaneous Amendments) Regulations (Northern Ireland) 2000	S.R. 2000 No. 69	Regulation 2(3)
The Personal Pension Schemes (Payments by Employers) Regulations (Northern Ireland) 2000	S.R. 2000 No. 349	Regulations 2 to 4 and 6

EXPLANATORY NOTE

(This note is not part of the Regulations.)

These Regulations amend the Occupational Pension Schemes (Requirement to obtain Audited Accounts and a Statement from the Auditor) Regulations (Northern Ireland) 1997 (“the Audited Accounts Regulations”) and the Occupational Pension Schemes (Scheme Administration) Regulations (Northern Ireland) 1997 (“the Scheme Administration Regulations”) in order to implement the European Directive on the activities and supervision of Institutions for Occupational Retirement Provision (Directive 2003/41/EC) (“the Directive”) and are consequential on the coming into operation of the Finance Act 2004 and the Pensions (Northern Ireland) Order 2005 (“the Order”).

Regulation 2 amends the Audited Accounts Regulations. In particular, it amends the exemptions contained in those Regulations from the requirement to maintain audited accounts and introduces a “materiality” requirement in relation to the occasions where the auditor of a scheme is required to qualify a scheme’s accounts. It also omits an obsolete reference.

Regulation 3 amends the Scheme Administration Regulations. In particular, it adds a number of new definitions, amends the exemptions of schemes that are not required to appoint an auditor, and makes consequential amendments.

Regulation 4 further amends the Scheme Administration Regulations. In particular, it makes amendments to the list of schemes which are exempt from the requirement to appoint professional advisors, omits an obsolete regulation and makes further amendments to the requirements to notify the Authority of the late payment of a contribution.

Regulation 5 makes consequential and other revocations.

These Regulations transpose the Directive. Article 10 of the Directive requires that every relevant institution in a member state must provide annual accounts and annual reports in respect of every pension scheme it operates giving a true and fair view of the institution's assets, liabilities and financial position. It also provides that the accounts shall be approved by an authorised person. Article 5 of the Directive permits an exemption from these requirements in relation to small pension schemes (those which have fewer than 100 members) and in relation to certain statutory schemes. Regulations 2(1) to (4) and 3 of these Regulations amend the Audited Accounts Regulations and Scheme Administration Regulations to omit exemptions which are not within the scope of Article 5 of the Directive.

The transposition of Article 10 of the Directive is detailed in the Transposition Note, a copy of which has been laid in the Business Office and the Library of the Northern Ireland Assembly. Copies of the Note are available from the Department for Social Development, Social Security Policy and Legislation Division, Level 1 James House, 2-4 Cromac Avenue, Gasworks Business Park, Ormeau Road, Belfast BT7 2JA.

As these Regulations make in relation to Northern Ireland only provision corresponding to provision contained in regulations made by the Secretary of State for Work and Pensions in relation to Great Britain, the requirement for consultation under Article 117(1) of the Order does not apply by virtue of paragraph (2)(e) of that Article.

Article 246 of the Order, which amends some of the enabling provisions under which these Regulations are made, was brought into operation for the purpose of making regulations on 1st July 2005 and for all other purposes on 6th April 2006 by the Pensions (2005 Order) (Commencement No. 5 and Appointed Day) Order (Northern Ireland) 2005 (S.R. 2005 No. 321 (C. 24)).

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