

2005 No. 569

PENSIONS

**The Occupational Pension Schemes (Investment) Regulations
(Northern Ireland) 2005**

Made - - - - - *16th December 2005*

Coming into operation - *30th December 2005*

The Department for Social Development, in exercise of the powers conferred by Articles 35(1), (3), (4) and (7), 36(1), (1A) and (9), 36A, 40(1) and (2), 115(1), 120(2), 122(3) and 166(1) to (3) of the Pensions (Northern Ireland) Order 1995(a) and now vested in it(b), 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 (Investment) Regulations (Northern Ireland) 2005 and shall come into operation on 30th December 2005.

(2) In these Regulations—

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

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

“the FSM Act” means the Financial Services and Markets Act 2000(d);

“the Taxes Act 1988” means the Income and Corporation Taxes Act 1988(e);

“collective investment scheme” has the same meaning as in Part XVII of the FSM Act, but includes arrangements of the type described in paragraphs 4 and 9 of the Schedule to the Financial Services and Markets Act 2000 (Collective Investment Schemes) Order 2001(f) (arrangements not amounting to a collective investment scheme);

“employer-related loan” has for the purposes of regulations 12, 14 and 15 the meaning given in regulation 12(4);

“insurance policy” means a contract of a kind referred to in Article 2 of the Life Directive, but excluding a contract of a kind referred to in Article 2(2)(c) and (d) of that Directive;

“the Life Directive” means Directive 2002/83/EC of the European Parliament and of the Council of 5th November 2002 concerning life assurance(g);

“qualifying insurance policy” means an insurance policy issued by an insurer which is—

(a) S.I. 1995/3213 (N.I. 22); Article 35 is substituted by Article 221 of the Pensions (Northern Ireland) Order 2005 (S.I. 2005/255 (N.I. 1)); Article 36 was amended by article 151 of S.I. 2001/3649 and is amended by Article 222 of the Pensions (Northern Ireland) Order 2005; Article 36A is inserted by Article 223 of that Order and Article 40 was amended by article 152 of S.I. 2001/3649 and article 26 of S.I. 2004/355

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

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

(d) 2000 c. 8

(e) 1988 c. 1

(f) S.I. 2001/1062; paragraph 9(1)(a) was substituted by article 2(2) of S.I. 2001/3650

(g) O.J. No. L345, 19.12.2002, p.1

- (a) a person who has permission under Part IV of the FSM Act to effect or carry out contracts of long-term insurance, or
- (b) an undertaking established in an EEA State (as defined in paragraph 8 of Schedule 3 to the FSM Act) other than the United Kingdom, which is authorised by the competent authorities of that State to carry on the business of direct insurance for the class of assurance as listed in Annex I to the Life Directive in which the insurance policy falls;

“recognised stock exchange” has the same meaning as in section 841 of the Taxes Act 1988;

“scheme” (except in the expression “collective investment scheme”) means an occupational pension scheme;

“scheme undertaking cross-border activities” means a scheme in relation to which the trustees or managers are—

- (a) authorised under Article 264 of the 2005 Order (general authorisation to accept contributions from European employers), or
- (b) approved under Article 265 of the 2005 Order in relation to a European employer;

“small scheme” means a scheme with fewer than 12 members, where—

- (a) all the members are trustees of the scheme and either—
 - (i) 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, or
 - (ii) the scheme has a trustee who is independent in relation to the scheme for the purposes of Article 23(a) (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
- (b) all the members are directors of a company which is the sole trustee of the scheme, and either—
 - (i) 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
 - (ii) 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;

“specified qualifying insurance policy” means a qualifying insurance policy which is a contract falling within paragraph III of Part II of Schedule 1 to the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001(b).

(3) Regulations 12(4)(b), 13(3) and 15(1) must be read with—

- (a) section 22 of the FSM Act (the classes of activity and categories of investment);
- (b) any relevant order under that section, and
- (c) Schedule 2 to that Act (regulated activities).

(4) Subject to paragraph (5) and for the purposes of Articles 35 (investment principles) and 40 (restriction on employer-related investments), “employer”, in relation to a scheme which has no active members, includes every person who was the employer of persons in the description of employment to which the scheme relates immediately before the time at which the scheme ceased to have any active members in relation to it.

(5) In these Regulations, “employer”, in relation to a multi-employer scheme, or a section of a multi-employer scheme, includes—

- (a) in the case of a scheme which has no active members, every person who was the employer of persons in the description of employment to which the scheme, or section,

(a) Article 23 was substituted by Article 32(3) of the Pensions (Northern Ireland) Order 2005
 (b) S.I. 2001/544

relates immediately before the time at which the scheme, or section, ceased to have any active members in relation to it unless after that time—

- (i) a debt under Article 75(a) (deficiencies in the assets) becomes due from that person to the scheme, or section, and
- (ii) either—
 - (aa) the full amount of the debt has been paid by that person to the trustees or managers of the scheme, or section, or
 - (bb) in circumstances where a legally enforceable agreement has been entered into between that person and the trustees or managers of the scheme, or section, the effect of which is to reduce the amount which is payable in respect of the debt, the reduced amount of the debt has been paid in full by that person to those trustees or managers, and
- (b) in any other case, any person who has ceased to be the employer of persons in the description of employment to which the scheme, or section, relates unless—
 - (i) at the time when he so ceased, the scheme, or section, was not being wound up and continued to have active members in relation to it, and
 - (ii) a debt under Article 75 became due at that time from that person to the scheme, or section, and either—
 - (aa) the full amount of the debt has been paid by that person to the trustees or managers of the scheme, or section, or
 - (bb) in circumstances where a legally enforceable agreement has been entered into between that person and the trustees or managers of the scheme, or section, the effect of which is to reduce the amount which is payable in respect of the debt, the reduced amount of the debt has been paid in full by that person to those trustees or managers.

(6) For the purposes of these Regulations, and not withstanding section 39(2) of the Interpretation Act (Northern Ireland) 1954(b), 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.

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

Statement of investment principles

2.—(1) The trustees of a trust scheme must secure that the statement of investment principles prepared for the scheme under Article 35 is reviewed—

- (a) at least every three years, and
- (b) without delay after any significant change in investment policy.

(2) Before preparing or revising a statement of investment principles, the trustees of a trust scheme must—

- (a) obtain and consider the written advice of a person who is reasonably believed by the trustees to be qualified by his ability in and practical experience of financial matters and to have the appropriate knowledge and experience of the management of the investments of such schemes, and
- (b) consult the employer.

(3) A statement of investment principles must be in writing and must cover at least the following matters—

- (a) the trustees' policy for securing compliance with the requirements of Article 36 (choosing investments);

(a) Article 75 was amended by Article 248 of the Pensions (Northern Ireland) Order 2005

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

- (b) their policies in relation to—
 - (i) the kinds of investments to be held;
 - (ii) the balance between different kinds of investments;
 - (iii) risks, including the ways in which risks are to be measured and managed;
 - (iv) the expected return on investments;
 - (v) the realisation of investments, and
 - (vi) the extent (if at all) to which social, environmental or ethical considerations are taken into account in the selection, retention and realisation of investments, and
- (c) their policy (if any) in relation to the exercise of the rights (including voting rights) attaching to the investments.

Application of regulation 2 in relation to multi-employer schemes

3.—(1) In the application of regulation 2 to a scheme in relation to which there is more than one employer, the requirement imposed by paragraph (2)(b) of that regulation—

- (a) where a person has been nominated by all the employers to act as their representative for the purposes of that paragraph, is to consult that person;
- (b) where no person has been so nominated but the employers have not all notified the trustees that they need to be consulted, is (subject to paragraph (2)) to consult all the employers, and
- (c) where no person has been so nominated and the employers have all notified the trustees that they need not be consulted, does not apply.

(2) Where the trustees specify a reasonable period (not being less than 28 days) within which they must receive representations from the employers, sub-paragraph (1)(b) does not require them to consider any representations received after the end of that period.

Investment by trustees

4.—(1) The trustees of a trust scheme must exercise their powers of investment, and any fund manager to whom any discretion has been delegated under Article 34(a) (power of investment and delegation) must exercise the discretion, in accordance with this regulation.

(2) The assets must be invested—

- (a) in the best interest of members and beneficiaries, and
- (b) in the case of a potential conflict of interest, in the sole interest of members and beneficiaries.

(3) The powers of investment, or the discretion, must be exercised in a manner calculated to ensure the security, quality, liquidity and profitability of the portfolio as a whole.

(4) Assets held to cover the scheme's technical provisions must also be invested in a manner appropriate to the nature and duration of the expected future retirement benefits payable under the scheme.

(5) The assets of the scheme must consist predominantly of investments admitted to trading on regulated markets.

(6) Investment in assets which are not admitted to trading on such markets must in any event be kept to a prudent level.

(7) The assets of the scheme must be properly diversified in such a way as to avoid excessive reliance on any particular asset, issuer or group of undertakings and so as to avoid accumulations of risk in the portfolio as a whole. Investments in assets issued by the same issuer or by issuers belonging to the same group must not expose the scheme to excessive risk concentration.

(a) Article 34 was amended by article 150 of S.I. 2001/3649 and is amended by paragraph 43 of Schedule 10 to the Pensions (Northern Ireland) Order 2005

- (8) Investment in derivative instruments may be made only in so far as they—
- (a) contribute to a reduction of risks, or
 - (b) facilitate efficient portfolio management (including the reduction of cost or the generation of additional capital or income with an acceptable level of risk),

and any such investment must be made and managed so as to avoid excessive risk exposure to a single counterparty and to other derivative operations.

- (9) For the purposes of paragraph (5)—
- (a) an investment in a collective investment scheme shall be treated as an investment on a regulated market to the extent that the investments held by that scheme are themselves so invested, and
 - (b) a qualifying insurance policy shall be treated as an investment on a regulated market.

(10) To the extent that the assets of a scheme consist of qualifying insurance policies, those policies shall be treated as satisfying the requirement for proper diversification when considering the diversification of assets as a whole in accordance with paragraph (7).

(11) In this regulation—

“beneficiary”, in relation to a scheme, means a person, other than a member of the scheme, who is entitled to the payment of benefits under the scheme;

“derivative instrument” includes any of the instruments listed in paragraphs (4) to (10) of Section C of Annex I to Directive 2004/39/EC of the European Parliament and of the Council on markets in financial instruments^(a);

“regulated market” means—

- (a) a regulated market within the terms of Council Directive 93/22/EEC on investment services in the securities field^(b);
- (b) a regulated market within the terms of Directive 2004/39/EC, or
- (c) any other market for financial instruments—
 - (i) which operates regularly;
 - (ii) which is recognised by the relevant regulatory authorities;
 - (iii) in respect of which there are adequate arrangements for unimpeded transmission of income and capital to or to the order of investors, and
 - (iv) in respect of which adequate custody arrangements can be provided for investments when they are dealt in on that market;

“technical provisions” has the meaning given by Article 201(2) of the 2005 Order (the statutory funding objective).

Borrowing and guarantees by trustees

5.—(1) Except as provided in paragraph (2), the trustees of a trust scheme, and a fund manager to whom any discretion has been delegated under Article 34, must not borrow money or act as a guarantor in respect of the obligations of another person where the borrowing is liable to be repaid, or liability under a guarantee is liable to be satisfied, out of the assets of the scheme.

(2) Paragraph (1) does not preclude borrowing made only for the purpose of providing liquidity for the scheme and on a temporary basis.

Disapplication of Article 35 and of regulations 2 and 3 in respect of certain schemes

- 6.—(1) Article 35 and regulations 2 and 3 shall not apply to any of the following schemes—
- (a) a scheme which has fewer than 100 members, or

(a) O.J. No. L145, 30.4.2004, p. 1
(b) O.J. No. L141, 11.6.1993, p.27

- (b) a scheme which is—
 - (i) established by, or under, a statutory provision, and
 - (ii) guaranteed by a public authority.
- (2) In this regulation—
 - “local authority” has the meaning given by Article 2(2) of the Superannuation (Northern Ireland) Order 1972(a);
 - “public authority” means—
 - (a) a Minister of the Crown (within the meaning of the Ministers of the Crown Act 1975(b));
 - (b) a government department (including any body or authority exercising statutory functions on behalf of the Crown), or
 - (c) a local authority.

Disapplication of regulations 4 and 5 in respect of schemes with fewer than 100 members

- 7.—(1) Regulations 4 and 5 do not apply to a scheme which has fewer than 100 members.
- (2) Where regulation 4 does not apply to a scheme by virtue only of paragraph (1), the trustees of the scheme in exercising their powers of investment, and any fund manager to whom any discretion has been delegated under Article 34 in exercising the discretion, must have regard to the need for diversification of investments, in so far as appropriate to the circumstances of the scheme.

Modification of regulation 2 in respect of wholly-insured schemes

- 8.—(1) Where, on the preparation or revision of a statement of investment principles under regulation 2, a scheme is a wholly-insured scheme and the trustees do not consider that it should cease to be such a scheme—
 - (a) sub-paragraphs (b) and (c) of regulation 2(3) shall not apply, and
 - (b) the statement of investment principles must cover the reasons for the scheme being a wholly-insured scheme.
- (2) In this regulation, “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(c) (meaning of “stakeholder pension scheme”), which has no investments other than specified qualifying insurance policies.
- (3) For the purposes of paragraph (2), “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) any investments arising from voluntary contributions.

Partial disapplication of regulation 4 in respect of schemes being wound up

- 9.—(1) The requirements of regulation 4(3) to (7) shall apply in respect of a scheme which is being wound up except to the extent that—
 - (a) they conflict with any obligations placed on the trustees arising in consequence of the winding up under or by virtue of the 1995 Order or the 2005 Order, or
 - (b) it is not reasonably practicable to give effect to them having regard to circumstances in connection with the winding up.

(a) S.I. 1972/1073 (N.I. 10)
 (b) 1975 c.26
 (c) S.I. 1999/3147 (N.I. 11)

(2) For the purposes of paragraph (1), a scheme shall be taken to be being wound up during the period which—

- (a) begins with the day on which the time immediately after the beginning of the winding up of the scheme falls, and
- (b) ends when the winding up of the scheme is completed.

Connected and associated persons

10. Articles 4 and 7 of the Insolvency (Northern Ireland) Order 1989^(a) (associated and connected persons) shall be modified in their application for the purposes of Article 40 (restriction on employer-related investments) and these Regulations so that a company shall not be connected with another company solely by reason of one or more of its directors being a director of that other company.

Prescription of investments as employer-related investments

11. For the purposes of Article 40(2)(e), the following are prescribed as employer-related investments—

- (a) the proportion attributable to the scheme's resources (whether directly or through any intervening collective investment scheme) of any investments which—
 - (i) have been made by the operator of any collective investment scheme, and
 - (ii) would have been employer-related investments if they had been made by the scheme;
- (b) any guarantee of, or security given to secure, obligations of the employer or of any person who is connected with, or an associate of, the employer, and for the purposes of Article 40 and these Regulations a guarantee or security given by the trustees or managers shall be regarded as an investment of resources of the scheme equal to the amount of the obligations guaranteed or secured;
- (c) any loan arrangement entered into with any person whereby the trustees' or managers' right to or expectation of repayment depends on the employer's actions or situation, unless it was not the trustees' or managers' purpose in entering into the arrangement to provide financial assistance to the employer;
- (d) where any of a scheme's resources are invested in an insurance policy the terms of which permit—
 - (i) the premiums or other consideration for the rights acquired under the policy, or
 - (ii) any monies otherwise credited to or for the benefit of the trustees or managers or the members,

to be invested in a fund created only for the purposes of that policy, the proportion of the scheme's resources invested in that policy which is the same proportion as B is of A where—

A represents all the assets of the insurer held in the fund, and

B represents that part of A which would, if invested by the scheme, be employer-related investments, and

- (e) where any of a scheme's resources are invested in an insurance policy (not being resources invested in a fund created only for the purposes of that policy) the terms of which permit the trustees or managers or the employer to direct that—
 - (i) some or all of the premiums or other consideration for the rights acquired under the policy, or

^(a) S.I. 1989/2405 (N.I. 19); Article 4 was modified by Schedule 3 to S.R. 2004 No. 307 and amended by paragraph 80 of Schedule 29 to the Civil Partnership Act 2004 (c. 33) and Article 7 was modified by Schedule 3 to S.R. 2004 No. 307

(ii) any monies otherwise credited to or for the benefit of the trustees or managers or the members,

are invested in employer-related investments, any investments made by the insurer from those premiums or other consideration or monies, which would have been employer-related investments if they had been made by the scheme.

Restrictions on employer-related investments

12.—(1) This regulation applies to trust schemes except small schemes.

(2) Subject to regulations 13 to 16—

- (a) not more than five per cent. of the current market value of the resources of a scheme may at any time be invested in employer-related investments, and
- (b) none of the resources of a scheme may at any time be invested in any employer-related loan.

(3) None of the resources of a scheme may at any time be invested in any employer-related investment the making of which involves the entering by the trustees or managers into a transaction at an undervalue where the agreement to enter into that transaction was made on or after 6th April 1997.

(4) In this regulation and in regulations 14 and 15 “employer-related loan” means—

- (a) a loan mentioned in Article 40(2)(d) (including, for the purposes of this regulation only, one which falls within Article 40(2)(d) by virtue of Article 40(3));
- (b) a security mentioned in Article 40(2)(a) which is an instrument creating or acknowledging indebtedness, except any such security which is listed on a recognised stock exchange, and
- (c) an employer-related investment prescribed as such by regulation 11(b) or (c).

(5) In paragraph (3), “transaction at an undervalue” has the same meaning in relation to trustees and managers as it has in Article 202(4) of the Insolvency (Northern Ireland) Order 1989 in relation to a company to which that Article applies.

Investments to which restrictions do not apply

13.—(1) Regulation 12(1) shall not restrict or prohibit investments to which this regulation applies.

(2) This regulation applies to investments prescribed as employer-related investments by regulation 11(e) (but not to investments prescribed as employer-related investments by regulation 11(d)) where the insurance policy—

- (a) is a specified qualifying insurance policy, and
- (b) is issued by an insurer which is the employer.

(3) This regulation applies to any employer-related investment of resources in an account (including a current, deposit or share account) with—

- (a) a person who has permission under Part IV of the FSM Act (permission to carry on regulated activities) to accept deposits, or
- (b) an EEA firm of the kind mentioned in paragraph 5(b) of Schedule 3 to that Act which has permission under paragraph 15 of that Schedule (as a result of qualifying for authorisation under paragraph 12 of that Schedule) to accept deposits.

(4) This regulation applies to any employer-related investment of resources which derives from a member’s voluntary contributions and is invested in employer-related investments with the written agreement of the member who paid those contributions.

(5) This regulation applies to sums due from the employer to the trustees by virtue of a provision in an order under Article 7(a) (appointment of trustees) such as is permitted by Article 8(1)(b) (orders appointing trustees may provide that certain sums are to be treated as a debt due from the employer to the trustees).

(6) This regulation applies to sums which fall or fell to be treated as debts due from the employer to the trustees or managers by virtue of—

- (a) Article 75(2) and (4)(c) (deficiencies in the assets);
- (b) Article 86(2) (schedules of payments to money purchase schemes: supplementary – amounts not paid in accordance with the payment schedule), or
- (c) Article 207(3) of the 2005 Order (failure to make payments),

and to sums which would fall to be so treated by virtue of any of those Articles were they not already debts due from the employer to the trustees or managers.

(7) For the purposes of regulation 11(a), the investments made by the operator of any collective investment scheme shall not be taken into account if—

- (a) the collective investment scheme in question is operated by a person authorised (within the meaning of section 31 of the FSM Act) to carry on investment business in the United Kingdom consisting of or including the operation of collective investment schemes;
- (b) there are at least 10 participants in a collective investment scheme in question;
- (c) not more than 10 per cent. of the assets of the collective investment scheme in question are attributable, whether directly or through any intervening collective investment scheme, to the scheme’s resources, and
- (d) not more than 10 per cent. of the investments of the collective investment scheme in question are invested in securities falling within paragraph 11 of Schedule 2 to the FSM Act and issued by any one issuer.

(8) All schemes in relation to which the respective employers are within the same group of companies shall be treated as—

- (a) a single participant, for the purposes of paragraph (7)(b), and
- (b) one scheme, for the purposes of paragraph (7)(c),

and for the purposes of paragraph (7)(d) all issues within a group of companies shall be treated as issued by a single issuer.

(9) For the purposes of paragraph (8), “group of companies” means a group of companies consisting of a holding company and one or more subsidiaries where “holding company” and “subsidiary” have the same meaning as in Article 4 of the Companies (Northern Ireland) Order 1986(d) (“subsidiary”, “holding company” and “wholly-owned subsidiary”).

(10) Subject to paragraph (11), where the disposal of assets on the winding up of a scheme would otherwise result in a contravention of these Regulations, any employer-related investments held before the commencement of the winding up may be retained while the scheme is being wound up, but there shall be no new investment in employer-related investments while the resources retained under this paragraph exceed 5 per cent. of the current market value of the resources of the scheme.

(11) Paragraph (10) does not apply to permit the retention of—

- (a) employer-related investments which were, prior to the commencement of the winding up, held in contravention of these Regulations or of the Occupational Pension Schemes (Investment) Regulations (Northern Ireland) 1996(e), or

(a) Article 7 was amended by Article 31(1) of the Pensions (Northern Ireland) Order 2005
(b) Article 8 was amended by Article 31(2) of the Pensions (Northern Ireland) Order 2005
(c) Article 75 was amended by Article 248 of the Pensions (Northern Ireland) Order 2005
(d) S.I. 1986/1032 (N.I. 6); Articles 4 and 4A were substituted for Article 4 by Article 62(1) of the Companies (No. 2) (Northern Ireland) Order 1990 (S.I. 1990/1504 (N.I. 10)) and Article 4 was modified by Schedule 2 to S.R. 2004 No. 307
(e) S.R. 1996 No. 584, amended by S.R. 1997 Nos. 160 and 162, S.R. 1999 No. 309, S.R. 2000 Nos. 262 and 382, S.R. 2002 No. 109, S.R. 2003 No. 256 and S.R. 2005 No. 168

(b) employer-related loans to which regulation 14(2)(c) applies.

(12) This regulation applies to a loan to the employer or a company associated with the employer, if the scheme has fewer than 100 members, and—

- (a) the scheme provides benefits for directors of a company which is the employer, or such directors and others;
- (b) there is a qualifying insurance policy taken out under the scheme which is specifically allocated to the provision of benefits under the scheme and the directors' interests under which are used as security for the loan;
- (c) Her Majesty's Revenue and Customs' requirements concerning the loan have been satisfied;
- (d) the directors agreeing to the interests under the policy concerned being used as security for the loan have so agreed in writing, and
- (e) the loan was made and the security given before 9th August 1999.

(13) This regulation applies to any security given over a qualifying insurance policy to secure obligations of the employer, or of any person who is connected with, or an associate of, the employer, where—

- (a) the scheme provides benefits for any director of a company which is the employer;
- (b) the policy is specifically allocated to the provision of benefits under the scheme for that director;
- (c) the obligations secured are to the insurer who issued the policy;
- (d) Her Majesty's Revenue and Customs' requirements concerning the loan and the giving of the security have been satisfied, and
- (e) the director mentioned in sub-paragraph (b) has agreed in writing to the security being given.

Transitional provisions

14.—(1) Where on 6th April 1997 the resources of a scheme were invested in—

- (a) employer-related loans (including such loans as are mentioned in regulation 5(2)(a) of the Occupational Pension Schemes (Investment of Scheme's Resources) Regulations (Northern Ireland) 1992^(a) ("the 1992 Regulations")) which were in being on 18th December 1996 and to which regulation 13 does not apply, or
- (b) other employer-related investments, to the extent that they exceed 5 per cent. of the current market value of the resources of the scheme to which regulation 5(2)(d) of the 1992 Regulations applied immediately before 6th April 1997,

those investments may be retained in accordance with paragraph (2).

(2) To the extent that the employer-related investments mentioned in paragraph (1) consist of—

- (a) employer-related loans to which regulation 5(2)(a) of the 1992 Regulations applied before 6th April 1997, they may, where by virtue of contractual or other legal obligations repayment cannot be required immediately, be retained until the earliest date on which repayment can be enforced;
- (b) securities of the type referred to in regulation 12(4)(b) which, immediately before 6th April 1997, were employer-related investments and—
 - (i) regulation 5(2)(d) of the 1992 Regulations applied to them, or
 - (ii) they were investments which did not contravene the 1992 Regulations,they may be held until the earliest date on which having regard to contractual and other legal obligations, disinvestment may be effected;

^(a) S.R. 1992 No. 47; revoked by regulation 13(1) of S.R. 1996 No. 584

- (c) an employer-related loan the terms of which have, before 1st January 1996, been specifically approved by a court having jurisdiction in relation to the scheme as being in the interests of the members of the scheme, then, provided that the terms of the loan as so approved are not changed, such part of the loan, repayment of which cannot be required other than on the commencement of the winding up of the scheme, may be retained until the winding up of the scheme commences;
- (d) any employer-related loans which do not contravene the 1992 Regulations and to which sub-paragraphs (a) to (c) do not apply, they may be retained until the earliest date on which having regard to the contractual and other legal obligations repayment can be enforced;
- (e) other investments mentioned in paragraph (1)(b) (excluding, for the avoidance of doubt, investments in a collective investment scheme), they may be retained.

(3) If any investment referred to in paragraph (2) is listed on a recognised stock exchange, it may be retained for a period of no more than six months beginning with the date on which it was listed.

(4) There shall be no new investment in employer-related investments while the resources of a scheme retained in employer-related investments (other than investments authorised by regulation 13) exceed 5 per cent. of the current market value of the resources of the scheme.

(5) In this regulation—

“loans” does not include any sums regarded as loans under Article 40(3) (restrictions on employer-related investments), and

“retained”, in relation to a loan, means left undischarged.

Loans that become employer-related

15.—(1) If either a loan or a security which is an investment creating or acknowledging a debt becomes an employer-related loan on or after 6th April 1997 as a result of a change in the ownership of the employer or the person to whom the loan was made, the loan or security may be retained until whichever is the later of—

- (a) the date falling two years after the date on which it became an employer-related loan, or
- (b) where repayment cannot by virtue of contractual or other legal obligations be required or, in the case of securities, disinvestment effected before the date mentioned in sub-paragraph (a), the earliest date on which repayment can be enforced, or disinvestment effected.

(2) In paragraph (1)—

“loan” does not include any sum regarded as a loan under Article 40(3), and

“retained” means left undischarged.

Multi-employer schemes

16.—(1) 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 section,

then regulations 10 to 15 shall apply as if each section of the scheme were a separate scheme.

(2) Where—

- (a) a scheme which has been such a scheme as is mentioned in paragraph (1) 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 (1)(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 6th April 1997) by reason only of there being no members in pensionable service under the section and no contributions which are to be allocated to it,

then regulations 10 to 15 shall apply as if the section in relation to which those conditions have ceased to be satisfied were a separate scheme.

(3) For the purposes of paragraphs (1) and (2), there shall be disregarded any provisions of the scheme by virtue of which contributions or transfers of assets may be made to make provision for death benefits; and where paragraph (1) or (2) applies and contributions or transfers are so made to a section (“the death benefits section”) the assets of which may only be applied for the provision of death benefits, the death benefits section shall also be treated as if it were a separate scheme for the purposes of regulations 10 to 15.

(4) For the purposes of paragraphs (1) to (3), there shall be disregarded any provisions of the scheme by virtue of which on the winding up of the scheme assets attributable to one section may be used for the purposes of another section.

(5) Where there is more than one employer in relation to a scheme (other than a scheme to which paragraph (1) or (2) applies), and at least two of those employers are persons who are neither a company nor a person connected with that company nor associates of each other—

- (a) in regulation 12(2)(a) for “employer-related investments” there shall be substituted “investments which are employer-related investments in relation to a particular employer, and employer-related investments overall must not exceed a prudent level and in any event must not exceed 20 per cent. of the current market value of the scheme”, and
- (b) for regulation 14(4) there shall be substituted—

“(4) There shall be no new investment in employer-related investments while—

 - (a) the resources of a scheme retained in investments which are employer-related investments in relation to a particular employer (other than investments authorised by regulation 13) exceed 5 per cent. of the current market value of the resources of the scheme, or
 - (b) more than 20 per cent overall of the current market value of the resources of the scheme is retained under this regulation in employer-related investments.”.

Scheme undertaking cross-border activities

17. The following shall not apply in the case of a scheme undertaking cross-border activities—

- (a) regulation 6;
- (b) regulation 7;
- (c) the words “except small schemes” in regulation 12(1);
- (d) regulation 13(2) to (4), (7) to (9), (12) and (13);
- (e) regulation 14, and
- (f) regulation 15.

Revocations

18. 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 16th December 2005.



John O'Neill

A senior officer of the Department for Social Development

SCHEDULE

Regulation 18

REVOCATIONS

<i>Column (1)</i> <i>Citation</i>	<i>Column (2)</i> <i>Reference</i>	<i>Column (3)</i> <i>Extent of revocation</i>
The Occupational Pension Schemes (Investment) Regulations (Northern Ireland) 1996	S.R. 1996 No. 584	The whole Regulations
The Personal and Occupational Pension Schemes (Miscellaneous Amendments) Regulations (Northern Ireland) 1997	S.R. 1997 No. 160	In the Schedule, paragraph 8
The Occupational Pension Schemes (Reference Scheme and Miscellaneous Amendments) Regulations (Northern Ireland) 1997	S.R. 1997 No. 162	Regulation 4
The Occupational Pension Schemes (Investment, and Assignment, Forfeiture, Bankruptcy etc.) (Amendment) Regulations (Northern Ireland) 1999	S.R. 1999 No. 309	Regulation 2
The Stakeholder Pension Schemes Regulations (Northern Ireland) 2000	S.R. 2000 No. 262	Regulation 30
The Occupational Pension Schemes (Republic of Ireland Schemes Exemption) Regulations (Northern Ireland) 2000	S.R. 2000 No. 382	Regulation 7
The Occupational and Personal Pension Schemes (Contracting-out) (Miscellaneous Amendments) Regulations (Northern Ireland) 2002	S.R. 2002 No. 109	Regulation 4
The Social Security and Pensions (Financial Services and Markets Act 2000) (Consequential Amendments) Regulations (Northern Ireland) 2003	S.R. 2003 No. 256	Regulation 8
The Occupational Pension Schemes (Employer Debt) Regulations (Northern Ireland) 2005	S.R. 2005 No. 168	In Schedule 2, paragraph 2

EXPLANATORY NOTE

(This note is not part of the Regulations.)

These Regulations replace, with amendments, and revoke the Occupational Pension Schemes (Investment) Regulations (Northern Ireland) 1996. The Regulations supplement changes made to the Pensions (Northern Ireland) Order 1995 (“the 1995 Order”) by the Pensions (Northern Ireland) Order 2005. They include provisions to implement certain requirements of the Directive 2003/41/EC of the European Parliament and of the Council on the activities and supervision of institutions for occupational retirement provision (O.J. No. L235, 23.9.2003, p.10) (“the Directive”), in particular of Articles 12 and 18.

The Regulations impose requirements on trustees of occupational pension schemes in relation to the statement of investment principles required under Article 35 of the 1995 Order and in relation to the choosing of investments. They impose restrictions on borrowing and the giving of guarantees by trustees and in respect of employer-related investments.

Regulation 1 makes provision for citation, commencement and interpretation.

Regulation 2 sets out requirements in respect of the statement of investment principles required under Article 35 of the 1995 Order.

Regulation 3 sets out modified requirements in respect of such statements for schemes in relation to which there is more than one employer.

Regulation 4 sets out requirements in respect of choosing investments.

Regulation 5 sets out restrictions in respect of borrowing and guarantees.

Regulations 6 to 9 disapply Article 35 of the 1995 Order and disapply or modify certain requirements of regulations 2 to 5, in respect of certain schemes.

Regulation 10 defines the expressions “connected persons” and “associated persons” as they apply in these Regulations.

Regulations 11 to 16 prescribe certain investments as employer-related investments in addition to those specified in Article 40(2) of the 1995 Order and set out the restrictions on employer-related investments. They also prescribe investments to which the restrictions do not apply. Special provision is made as regards the application of the restrictions to schemes in relation to which there is more than one employer.

Regulation 17 makes special provision in the case of a scheme undertaking cross-border activities.

Regulation 18 makes consequential revocations.

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 1995 Order does not apply by virtue of paragraph (2)(e) of that Article.

The transposition of Articles 12 and 18 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.

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