

2006 No. 297

PENSIONS

The Occupational Pension Schemes (Winding up Procedure Requirement) Regulations (Northern Ireland) 2006

Made - - - - *3rd July 2006*

Coming into operation - *24th July 2006*

The Department for Social Development, being a Department designated(a) for the purposes of section 2(2) of the European Communities Act 1972(b), in relation to matters relating to personal and occupational pensions makes the following Regulations in exercise of the powers conferred by that section, sections 109(1) and 177(2) to (4) of the Pension Schemes (Northern Ireland) Act 1993(c), and now vested in it(d), and Articles 55(2)(h), 64(2)(a) and 287(3) of the Pensions (Northern Ireland) Order 2005(e).

Citation, commencement and interpretation

1.—(1) These Regulations may be cited as the Occupational Pension Schemes (Winding up Procedure Requirement) Regulations (Northern Ireland) 2006 and shall come into operation on 24th July 2006.

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

Amendment of the Pensions (Northern Ireland) Order

2. After Article 210 of the Pensions (Northern Ireland) Order 2005 (powers of the Regulator) insert—

“Requirements for winding up procedure

210A.—(1) Where an occupational pension scheme in respect of which a recovery plan has been prepared under Article 205(g) begins to wind up during the recovery period, the trustees or managers of the scheme must as soon as reasonably practicable prepare a winding up procedure.

(a) See Schedule 2 to the European Communities (Designation) (No. 7) Order 2004 (S.I. 2004/3328)
(b) 1972 c. 68
(c) 1993 c. 49; section 109 was amended by section 48 of the Child Support, Pensions and Social Security Act (Northern Ireland) 2000 (c. 4 (N.I.)), paragraph 13 of Schedule 10 to the Pensions (Northern Ireland) Order 2005 (S.I. 2005/255 (N.I. 1)) and paragraph 15 of the Schedule to S.R. 2005 No. 434
(d) See Article 8(b) of S.R. 1999 No. 481
(e) S.I. 2005/255 (N.I. 1)
(f) 1954 c. 33 (N.I.)
(g) Article 205 is modified in respect of schemes undertaking cross-border activities by S.R. 2005 No. 568 and in respect of schemes that are subject to the regulatory own funds requirement by S.R. 2005 No. 570

- (2) A winding up procedure must—
- (a) set out the action to be taken to establish the liabilities to, or in respect of, the members of the scheme, in respect of pensions and other benefits, and to recover any assets of the scheme;
 - (b) give an estimate of the amount of time it will take to establish those liabilities and to recover any such assets;
 - (c) give an indication of which of the accrued rights or benefits (if any), to which a person is entitled under the scheme, are likely to be affected by a reduction in actuarial value;
 - (d) specify which one or more of the ways mentioned in Article 74(3)(a) to (e) of the 1995 Order^(a) will be used to discharge the liabilities to, or in respect of, the members of the scheme in respect of pensions or other benefits;
 - (e) give an estimate of the amount of time it will take to discharge those liabilities.
- (3) The requirement imposed by paragraph (2)(c) applies only to the extent that the trustees or managers have sufficient information to give such an indication.
- (4) A winding up procedure must be appropriate having regard to the nature and circumstances of the scheme.
- (5) A winding up procedure may be reviewed, and if necessary revised, where the trustees or managers consider that there are reasons that may justify a variation to it.
- (6) The trustees or managers must send a copy of any winding up procedure to the Regulator as soon as reasonably practicable after it has been prepared or, as the case may be, revised.
- (7) Where any requirement of this Article is not complied with, Article 10 of the 1995 Order^(b) (civil penalties) applies to a trustee or manager who has failed to take all reasonable steps to secure compliance.
- (8) In this Article “recovery period”, in relation to an occupational pension scheme, means the period specified in the scheme’s recovery plan in accordance with Article 205(2)(b).”.

Amendment of the Occupational Pension Schemes (Disclosure of Information) Regulations

3. In regulation 7(1) of the Occupational Pension Schemes (Disclosure of Information) Regulations (Northern Ireland) 1997^(c) (availability of other documents)^(d) after sub-paragraph (d) insert—

- “(e) an outline of the winding up procedure prepared or revised under Article 210A of the 2005 Order^(e) (requirements for winding up procedure),”.

Amendment of the Register of Occupational and Personal Pension Schemes Regulations

4. In regulation 3 of the Register of Occupational and Personal Pension Schemes Regulations (Northern Ireland) 2005^(f) (registrable information)—

- (a) in paragraph (1) after sub-paragraph (f) add—
 - “(g) in the case where an occupational pension scheme in respect of which a recovery plan has been prepared under Article 205 of the 2005 Order begins

(a) S.I. 1995/3213 (N.I. 22)); Article 74(3) was amended by paragraph 45 of Schedule 9 to the Welfare Reform and Pensions (Northern Ireland) Order 1999 (S.I. 1999/3147 (N.I. 11)), Article 60 of S.I. 2002/1555 and Article 247(2)(c) of the Pensions (Northern Ireland) Order 2005

(b) Article 10 was amended by paragraph 9 of Schedule 2 to the Welfare Reform and Pensions (Northern Ireland) Order 1999 and Schedule 11 to the Pensions (Northern Ireland) Order 2005

(c) S.R. 1997 No. 98; relevant amending Regulations are S.R. 2005 No. 568

(d) The heading was substituted by paragraph 6(5)(a) of Schedule 3 to S.R. 2005 No. 568

(e) The definition of “the 2005 Order” was inserted by paragraph 6(2)(a) of Schedule 3 to S.R. 2005 No. 568

(f) S.R. 2005 No. 93

to wind up during the recovery period, the date on which the winding up commenced.”, and

(b) for paragraph (4) substitute—

“(4) In this regulation—

“multi-employer scheme” means a trust scheme in relation to which there is more than one employer;

“recovery period” means the period specified in the scheme’s recovery plan in accordance with Article 205(2)(b) of the 2005 Order.”.

Amendment of the Occupational Pension Schemes (Scheme Funding) Regulations

5.—(1) The Occupational Pension Schemes (Scheme Funding) Regulations (Northern Ireland) 2005^(a) shall be amended in accordance with paragraphs (2) and (3).

(2) In regulation 8 (recovery plan) omit paragraph (8).

(3) In regulation 17 (exemptions - general)—

(a) in paragraph (1)(1) for “subject to regulation 18” substitute “subject to paragraph (1A) and regulation 18”;

(b) after paragraph (1) insert—

“(1A) Article 210A (requirements for winding up procedure) applies to a scheme where—

(a) a recovery plan has been prepared under Article 205, and

(b) the scheme begins to wind up during the recovery period.”, and

(c) after paragraph (2) insert—

“(2A) In paragraph (1A) “recovery period” means the period specified in the scheme’s recovery plan in accordance with Article 205(2)(b).”.

Sealed with the Official Seal of the Department for Social Development on 3rd July 2006



John O'Neill

A senior officer of the Department for Social Development

(a) S.R. 2005 No. 568; those Regulations are modified in their application to an occupational pension scheme that is subject to the regulatory own funds requirement by S.R. 2005 No. 570

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations implement paragraph (c) of Article 16.2 of the European Union Directive 2003/41/EC on the activities and supervision of institutions for occupational retirement provision (OJ No. L 235, 23.9.03, p.10) (“the Directive”).

Regulation 2 inserts Article 210A into the Pensions (Northern Ireland) Order 2005 (“the 2005 Order”). Paragraph (1) of that Article provides that the trustees or managers of a scheme must prepare a winding up procedure as soon as reasonably practicable after a scheme begins to wind up during the recovery period. Paragraph (8) defines “the recovery period” as the period specified in the scheme’s recovery plan in accordance with Article 205(2)(b) of the 2005 Order. Paragraph (2) provides that the winding up procedure must include specified information. Paragraph (6) provides that the trustees or managers must send a copy of the winding up procedure to the Pensions Regulator as soon as reasonably practicable after it has been prepared or revised. Paragraph (7) provides that penalties under Article 10 of the Pensions (Northern Ireland) Order 1995 apply to a trustee or manager who has failed to take all reasonable steps to ensure compliance with the requirements of Article 210A of the 2005 Order.

Regulation 3 amends the Occupational Pension Schemes (Disclosure of Information) Regulations (Northern Ireland) 1997 to require the trustees or managers of a scheme to disclose an outline of the winding up procedure to the members of the scheme and their representatives.

Regulation 4 amends the Register of Occupational and Personal Pension Schemes Regulations (Northern Ireland) 2005 to prescribe that where a scheme begins to wind up during the recovery period, the date the winding up of the scheme commenced is registrable information for the purposes of Article 55(2)(h) of the 2005 Order.

Regulation 5 amends the Occupational Pension Schemes (Scheme Funding) Regulations (Northern Ireland) 2005 to remove the disclosure provision in regulation 8 as a consequence of regulation 4 of these Regulations. It also amends regulation 17 enabling Article 210A of the 2005 Order to apply to a scheme in respect of which a recovery plan has been prepared under Article 205 of that Order and the scheme begins to wind up during the recovery period.

As these Regulations, in so far as they are made under the 2005 Order, 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 to consult under Article 289(1) of the Order does not apply by virtue of paragraph (2)(e) of that Article.

The transposition of Article 16.2(c) of the Directive is detailed in a 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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