

2007 No. 186

PENSIONS

**The Pension Protection Fund (Closed Schemes) Regulations
(Northern Ireland) 2007**

Made - - - - - *20th March 2007*

Coming into operation - - - - - *6th April 2007*

The Department for Social Development makes the following Regulations in exercise of the powers conferred by Articles 137(4) and (7), 140(1), (2) and (6), 141(1) and (7) and 287(2) and (3) of the Pensions (Northern Ireland) Order 2005(a).

Citation, commencement and interpretation

1.—(1) These Regulations may be cited as the Pension Protection Fund (Closed Schemes) Regulations (Northern Ireland) 2007 and shall come into operation on 6th April 2007.

(2) In these Regulations—

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

“the appropriate person” means the actuary as defined in Article 140(6) (valuations of closed schemes);

“Article 140 valuation” means an actuarial valuation under that Article;

“closed scheme” and “closed section” shall be construed in accordance with Article 139 (treatment of closed schemes);

“effective date” for the purposes of an Article 140 valuation, means the date by reference to which the assets were valued and the full scheme liabilities and the protected liabilities were calculated;

“protected liabilities” has the meaning given by Article 115;

“segregated scheme” means a multi-employer scheme which is divided into two or more sections where—

- (a) any contributions payable to the scheme by an employer in relation to the scheme or by a member are allocated to that employer’s or that member’s section, and
- (b) a specified proportion of the assets of the scheme is attributable to each section of the scheme and cannot be used for the purposes of any other section.

(3) In these Regulations, in the case of a scheme which is a segregated scheme, where these Regulations apply to a section of a scheme which is for the purposes of Part III(b) of the Order a closed section, for “closed scheme” and “scheme” substitute “closed section” and “section”.

(a) S.I. 2005/255 (N.I. 1); see the definition of “determination notice” in Article 137(7) and paragraph (b)(i) of the definition of “the actuary” in Article 140(6)

(b) Part III is modified in its application to multi-employer schemes by S.R. 2005 No. 91 as amended by S.R. 2005 Nos. 194 and 357

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

Applications and determination notices under Article 137

2.—(1) An application to the Board for the purposes of Article 137(2) (closed schemes) shall be in writing and shall contain the following information—

- (a) a description of the type or purpose of the application;
- (b) the date on which the application is made;
- (c) where the application is made in respect of a scheme, the name, address and pension scheme registration number of that scheme;
- (d) where the application is made in respect of a section of a segregated scheme—
 - (i) the name, address and pension scheme registration number of that scheme, and
 - (ii) the name of the section;
- (e) a description by the trustees or managers of the scheme of the steps they have taken to obtain a full buy-out quotation in respect of that scheme, and—
 - (i) the names and addresses of any persons they have approached for that purpose, and
 - (ii) the date on which any such approach was made, and
- (f) where the Board does not already have the information, the name and address of each of the trustees or managers of that scheme.

(2) An application to the Board for the purposes of Article 137 shall be accompanied by evidence in the following form—

- (a) a copy of any request made by the trustees or managers of the scheme in respect of which the application is made for a full buy-out quotation in respect of that scheme, and
- (b) a copy of any refusal given to those trustees or managers in response to such a request.

(3) A determination notice issued by the Board under Article 137(6) shall be in writing and shall contain the following information—

- (a) the name or type of notice issued;
- (b) the date on which the notice is issued;
- (c) where the notice is issued in respect of a scheme, the name, address and pension scheme registration number of that scheme;
- (d) where the notice is issued in respect of a section of a segregated scheme—
 - (i) the name, address and pension scheme registration number of that scheme, and
 - (ii) the name of the section;
- (e) the Board's determination to authorise or not to authorise the scheme to continue as a closed scheme, and
- (f) where the Board has authorised the scheme to continue as a closed scheme, an explanation of the provisions of—
 - (i) Article 139 (treatment of closed schemes) in so far as they will operate while the scheme is a closed scheme;
 - (ii) Article 140 (valuations of closed schemes) in so far as they will operate while that scheme is a closed scheme, and
 - (iii) Article 141 (applications and notifications where closed schemes have insufficient assets) in so far as they will operate if at any time the trustees or managers of that scheme while it is a closed scheme become aware that the value of the assets of the scheme is less than the amount of the protected liabilities in relation to the scheme.

Obtaining of actuarial valuations of closed schemes

3.—(1) In this regulation—

“the determination date” means the date immediately after—

- (a) the expiry of the period within which the issue of the determination notice may be reviewed by virtue of Chapter 6 of Part III of the Order (reviews, appeals and maladministration), or
- (b) if the issue of the notice is so reviewed—
 - (i) the review and any reconsideration;
 - (ii) any reference to the PPF Ombudsman in respect of the issue of the notice, and
 - (iii) any appeal against his determination or directions,has been finally disposed of and the notice has not been revoked, varied or substituted;

“the relevant period” is the period of three years beginning immediately after the relevant time of the actuarial valuation of the scheme under Article 127 (Board’s obligation to obtain valuation of assets and protected liabilities);

“the relevant time” shall be construed in accordance with Article 127(11)(c).

(2) The effective date of the first Article 140 valuation shall—

- (a) be within the relevant period, or
- (b) where the determination date did not fall within the relevant period, be within the period of 15 months beginning on the determination date.

(3) Any subsequent Article 140 valuation shall have an effective date which is not more than three years after the effective date of the previous Article 140 valuation.

(4) The trustees or managers of a closed scheme shall obtain any Article 140 valuation of the scheme within the period of 15 months after its effective date.

Valuation of the assets and liabilities of closed schemes

4. For the purposes of Article 140—

- (a) the assets, the full scheme liabilities and the protected liabilities in relation to a closed scheme, and
- (b) their value or amount,

shall be determined, calculated and verified in accordance with the provisions of the Schedule.

Prescribed qualifications for the purposes of Article 140

5. For the purposes of the definition of “the actuary” contained in Article 140(6), a person with prescribed qualifications is—

- (a) a fellow of the Faculty of Actuaries(a), or
- (b) a fellow of the Institute of Actuaries(b).

Applications and notifications where closed schemes have insufficient assets

6.—(1) Where the trustees or managers of a closed scheme are required under Article 141(1) to make an application to the Board for it to assume responsibility for the scheme, they must do so within six months of the time when they become aware that the value of the assets of the scheme is less than the amount of the protected liabilities in relation to the scheme.

(2) An application to the Board for the purposes of Article 141(1) shall be in writing and shall contain the following information—

(a) The Faculty of Actuaries can be contacted at Faculty of Actuaries, MacLaurin House, 18 Dublin Street, Edinburgh EH1 3PP
(b) The Institute of Actuaries can be contacted at Institute of Actuaries, Staple Inn Hall, High Holborn, London WC1V 7QJ

- (a) a description of the type or purpose of the application;
- (b) the date on which the application is made;
- (c) where the application is made in respect of a scheme, the name, address and pension scheme registration number of that scheme;
- (d) where the application is made in respect of a section of a segregated scheme—
 - (i) the name, address and pension scheme registration number of that scheme, and
 - (ii) the name of the section;
- (e) a statement by the trustees or managers of the scheme in respect of which the application is made that the value of the assets of the scheme is less than the amount of the protected liabilities in relation to the scheme and the date on which they became so aware;
- (f) a statement by the trustees or managers of the scheme in respect of which the application is made whether or not they obtained advice from the appropriate person before they became aware that the value of the assets of the scheme is less than the amount of the protected liabilities in relation to the scheme;
- (g) a statement by the trustees or managers of the scheme in respect of which the application is made of—
 - (i) the value of the assets of the scheme, and
 - (ii) the amount of the protected liabilities in relation to the scheme, and
- (h) where the Board does not already have the information, the name and address of each of the trustees or managers of that scheme.

(3) Where the Regulator becomes aware that the value of the assets of a closed scheme is less than the amount of the protected liabilities in relation to that scheme, the notice which the Regulator must give to the Board under Article 141(3) shall be in writing and shall contain the following information—

- (a) the name or type of notice given;
- (b) the date on which the notice is given;
- (c) where the notice is given in respect of a scheme, the name, address and pension scheme registration number of that scheme;
- (d) where the notice is given in respect of a section of a segregated scheme—
 - (i) the name, address and pension scheme registration number of that scheme, and
 - (ii) the name of the section;
- (e) a statement by the Regulator that it has become aware that the value of the assets of the scheme is less than the amount of the protected liabilities in relation to the scheme;
- (f) the date on which the Regulator became aware that the value of the assets of the scheme is less than the amount of the protected liabilities in relation to the scheme, and
- (g) where the Board does not already have the information, the name and address of each of the trustees or managers of that scheme.

(4) Where the Board receives a notice from the Regulator to which paragraph (3) applies, the notice under Article 141(4) which the Board must give to the trustees or managers of the scheme in question shall be in writing and shall contain the following information—

- (a) the name or type of notice given;
- (b) the date on which the notice is given;
- (c) where the notice is given in respect of a scheme, the name, address and pension scheme registration number of that scheme;
- (d) where the notice is given in respect of a section of a segregated scheme—
 - (i) the name, address and pension scheme registration number of that scheme, and
 - (ii) the name of the section;

- (e) a statement that the Board received a notice from the Regulator under Article 141(3), the effect of that notice and the date on which it was given by the Regulator;
- (f) the address for communications at which the Board may be contacted in respect of the giving of the notice, and
- (g) whether the notice given by the Board contains any information which is restricted information under Article 179 (restricted information), and, if so, the nature of the restrictions.

Transitional provision for schemes with an assessment date before 1st April 2007

7.—(1) In this regulation, “assessment date” means the date on which the assessment period in relation to a scheme or closed scheme, or (where there has been more than one such assessment period) the last one, began.

(2) In the case of a scheme or closed scheme with an assessment date before 1st April 2007, these Regulations shall have effect until 31st December 2007 as if for the definition of “relevant accounts” in paragraph 1 of the Schedule there were substituted—

““relevant accounts” means—

- (a) audited accounts for the scheme which are prepared in respect of a period ending with the effective date;
- (b) if none are so prepared, the latest such accounts which are available at the effective date, or
- (c) if the appropriate person’s opinion is that it is practicable to use them, the latest such accounts which are available on the date the appropriate person signs the Article 140 valuation;”.

Sealed with the Official Seal of the Department for Social Development on 20th March 2007

(L.S.)

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

VALUATION OF THE ASSETS, THE FULL SCHEME LIABILITIES
AND THE PROTECTED LIABILITIES IN RELATION TO A CLOSED
SCHEME

PART 1

1. In this Schedule—

“Article 75 debt” means so much of the amount treated by Article 75(a) of the 1995 Order (deficiencies in the assets) as a debt due from the employer to the trustees or managers at the applicable time;

“contribution notice” means a notice issued under Article 34 (contribution notices where avoidance of employer debt), 43 (contribution notices where non-compliance with financial support direction) or 51 (contribution notice where failure to comply with restoration order);

“financial support direction” means a direction issued under Article 39 (financial support directions);

“pension credit rights” has the meaning given by Article 121(1)(b) of the 1995 Order (interpretation of Part II);

“pre-6th April 1997 contract of insurance” means a contract of insurance that—

- (a) falls within the definition of a relevant contract of insurance in Article 145(8) (effect of Board assuming responsibility for a scheme);
- (b) was taken out before 6th April 1997, and
- (c) the trustees or managers are, or should reasonably be aware of;

“relevant accounts” for the purposes of identifying and valuing the assets of a scheme, means audited accounts for the scheme which—

- (a) contain the information specified in Part 2 of this Schedule;
- (b) show a true and fair value of—
 - (i) the financial transactions of the scheme during the period to which the accounts relate (“the accounting period”);
 - (ii) the amount and disposition of the assets at the end of the accounting period, and
 - (iii) the liabilities of the scheme, other than the liabilities to pay pensions and benefits, after the end of the accounting period;
- (c) include a report by the auditor in writing as to whether or not in his opinion the requirements of paragraphs (a) and (b) are satisfied, and
- (d) are prepared in respect of a period ending with the effective date of the valuation;

“restoration order” has the meaning given by Article 48 (restoration orders where transactions at an undervalue).

2. There shall be excluded from the value of the closed scheme’s assets—

(a) Article 75 was amended by Article 248 of the Pensions (Northern Ireland) Order 2005 and is modified in its application to multi-employer schemes by S.R. 2005 No. 168 as amended by S.R. 2005 No. 387

(b) The definition of “pension credit rights” was inserted by paragraphs 50(3) of Schedule 9 to the Welfare Reform and Pensions (Northern Ireland) Order 1999 (S.I. 1999/3147 (N.I. 11))

- (a) any amounts treated as a debt due to the trustees or managers which are unlikely to be recouped without disproportionate cost or unlikely to be recovered within a reasonable time, and
- (b) an amount in respect of the value of any pre-6th April 1997 contract of insurance if—
 - (i) the trustees or managers have taken all reasonable steps to obtain information concerning that contract of insurance (whether by searching the records of the scheme or otherwise), and
 - (ii) the information they provide concerning that contract of insurance is insufficient, in the opinion of the appropriate person, to conduct a valuation.

3. Subject to paragraph 6(3) and (4), where the Regulator issues a contribution notice or a financial support direction or makes a restoration order in relation to a scheme prior to the effective date of the valuation, any amount due under such a notice, direction or order shall be regarded as an asset of the scheme.

4. Subject to paragraphs 2 and 6, in determining the value of the assets of a closed scheme for the purposes of an Article 140 valuation, the appropriate person shall adopt the value given of the assets of the scheme stated in the relevant accounts and that value shall be taken to be the value of those assets at the effective date.

5.—(1) Subject to paragraph 6, in the case of protected liabilities the amount of a protected liability shall be the estimated cost of securing scheme benefits calculated in accordance with Schedule 6 to the Order (pension compensation provisions) to the member by means of an annuity purchased at the market rate at the effective date.

(2) Where paragraph 2(b) applies, the amount representing the value of a protected liability in respect of the benefits secured by a pre-6th April 1997 contract of insurance shall be excluded from the valuation of the scheme's protected liabilities.

6.—(1) For the purposes of an Article 140 valuation, where for the purpose of giving effect to a pension sharing order or provision, arrangements are being made by the closed scheme for the transfer from it of any pension credit rights, until such time as the trustees or managers of the scheme to which the transfer is being made ("the receiving scheme") have received assets of the full amount agreed by them as consideration for the transfer, it shall be assumed—

- (a) that the rights have not been transferred, and
- (b) that any assets transferred in respect of the transfer of those rights are assets of the scheme making the transfer and not of the receiving scheme.

(2) For the purposes of an Article 140 valuation, in the case of a pre-6th April 1997 contract of insurance, the value shall be—

- (a) the amount of the liability secured where the contract of insurance falls within the definition of a relevant contract of insurance in Article 145(8), or where this is not the case either—
- (b) the surrender value of the contract of insurance, or
- (c) where it appears to the appropriate person that the surrender value of the contract of insurance does not accurately reflect the actual value at the effective date, then he shall adopt such a value as appears to him to be appropriate.

(3) In the case of an asset to which paragraph 3 applies, the appropriate person shall adopt as the value of the asset the amount due to the closed scheme given in the notice, direction or order.

(4) For the purposes of an Article 140 valuation—

- (a) where the appropriate person, in accordance with guidance issued by the Board under Article 140(3), holds the opinion that any Article 75 debt falling due to the closed scheme will be recouped in the future, then he shall treat the proportion of the Article 75 debt that he believes will be recovered as an asset of the scheme;
- (b) where an amount is due under a contribution notice, a financial support direction or a restoration order, and—

- (i) a proportion of the amount due has been recouped before the effective date, and
- (ii) the appropriate person, in accordance with any guidance issued by the Board in accordance with Article 140(3), holds the opinion that no further payments due under the notice, direction or order will be recouped by the closed scheme,

the appropriate person shall adjust the value of the asset contained in the notice, direction or order to the value recouped by the trustees or managers of the closed scheme before the effective date;

- (c) if the appropriate person—

- (i) has been given notice, or
- (ii) holds the opinion,

that the value of any asset set out in the relevant accounts, that is not excluded from the actuarial valuation, is substantially different at the effective date from that set out in the relevant accounts, then he shall adjust the value of the asset to the market value of the asset at the effective date, or

- (d) where the appropriate person—

- (i) has been given notice, or
- (ii) holds the opinion,

in accordance with any guidance issued by the Board in accordance with Article 140(3), that there exists an asset of the scheme which is not listed in the relevant accounts, and which is not excluded from the actuarial valuation, then he shall adopt such a value for the asset as he considers appropriate.

(5) The appropriate person shall not make an adjustment to the value of an interest in real property unless the adjustment reflects a more recent valuation given by a chartered surveyor in accordance with any relevant practice statements and guidance issued by the Royal Institution of Chartered Surveyors^(a) current on the date the valuation is signed.

7. An Article 140 valuation shall be verified by the Board if it is satisfied that the valuation was prepared in accordance with these Regulations and any guidance issued by the Board in accordance with Article 140(3).

PART 2

Contents of Accounts Audited by the Auditor of the Scheme

1. An account of the financial additions to, withdrawals from, and changes to, the value of the fund during the accounting period.

2.—(1) A statement, as at the end of the accounting period, of the assets at market value, or the trustees' or managers' estimate thereof where the market value is not readily ascertainable, and liabilities of the scheme, other than liabilities to pay pensions and benefits after the end of the accounting period—

- (a) giving, in the case of any assets which are stated as an estimate of their market value, the reason why the valuation is an estimate;
- (b) showing the distribution of the investments and other assets of the scheme between each of the following categories (where none of the investments falls within a particular category, that fact is not required to be stated), namely—
 - (i) insurance policies;
 - (ii) public sector fixed interest investments, separately showing quoted securities and unquoted securities;

^(a) The Royal Institution of Chartered Surveyors can be contacted at RICS Contact Centre, Surveyor Court, Westwood Way, Coventry CV4 8JE

- (iii) other fixed interest investments, separately showing quoted securities and unquoted securities;
- (iv) index-linked securities, separately showing quoted securities and unquoted securities;
- (v) equities (including convertible shares), separately showing quoted equities and unquoted equities;
- (vi) property (which in this paragraph means any right or interest in freehold or leasehold land or buildings);
- (vii) unit trusts invested in property;
- (viii) other unit trusts;
- (ix) managed funds (other than unit trusts) invested in property;
- (x) other managed funds (not being unit trusts);
- (xi) loans (whether or not secured by mortgage);
- (xii) cash deposits and cash in hand;
- (xiii) investments and other assets not included in sub-heads (i) to (xii), and
- (c) showing separately, in the case of investments in each category, investments in the United Kingdom and investments outside the United Kingdom, and, in the case of cash investments mentioned in head (b)(vii) to (x), investments where the company operating the unit trust or managed fund is, and where it is not, a company registered in the United Kingdom.

(2) Where the assets include insurance policies which are specifically allocated to the provision of benefits for, and which provide all the benefits payable under the scheme to, particular members or other persons in respect of particular members or both, those policies must be included in the statement and there must be a note of the existence of such policies but that entry need not include their market value or an estimate.

(3) Where the assets—

- (a) are invested only for the purposes of securing additional money purchase benefits derived from voluntary contributions, and
- (b) are specifically allocated to the provision of additional benefits for particular members or other persons in respect of particular members (or both),

a note that heads (a) and (b) apply must be included in the statement, but that entry need not include the market value or an estimate of value of those assets.

3. Where any assets or liabilities are denominated in currencies other than sterling, a conversion of those assets into sterling and an explanation of the basis on which they have been converted.

4. Particulars of any investment (other than in UK Government securities) in which more than 5 per cent. of the total value of the net assets of the scheme is invested, and if any such investment is an insurance policy, a statement of its main characteristics.

5. Where the scheme has employer-related investments, within the meaning of Article 40(2)(a) of the 1995 Order (restriction on employer-related investments), a statement—

- (a) as to the percentage of the scheme's resources invested in such investments at the end of the accounting period, and
- (b) if that percentage exceeds 5 per cent., as to the percentage of the scheme's resources which are investments to which regulation 13 of the Occupational Pension Schemes (Investment) Regulations (Northern Ireland) 2005(b) (investments to which restrictions do not apply) applies.

(a) Article 40 was amended by paragraph 45 of Schedule 10 to the Pensions (Northern Ireland) Order 2005, Article 152(2) of S.I. 2001/3649 and Article 26 of S.I. 2004/355

(b) S.R. 2005 No. 569; regulation 13 was amended by regulation 7(3) of S.R. 2006 No. 141

6. In respect of every other amount shown in the accounts other than the amounts referred to in paragraph 7, a statement of the corresponding amount for the scheme year previous to the accounting period, except in a case where regulation 2 of the Occupational Pension Schemes (Requirement to obtain Audited Accounts and a Statement from the Auditor) Regulations (Northern Ireland) 1997**(a)** (requirement of trustees or managers to obtain documents) is complied with by the trustees or managers of a scheme for the first time.

7. The total amount of the purchases and the total amount of the sales of investments during the accounting period.

8. A statement whether the accounts have been prepared in accordance with the Statement of Recommended Practice, the guidelines “Financial Reports of Pension Schemes” published by the Pensions Research Accountants Group**(b)** or another organisation approved for this purpose by the Accounting Standards Board**(c)**, current at the end of the accounting period and, if not, an indication of where there are any material departures from those guidelines.

(a) S.R. 1997 No. 40; relevant amending Regulations are S.R. 2000 No. 107 and S.R. 2005 No. 421

(b) Copies of this guidance can be obtained from Croner CCH Group Limited, 145 London Road, Kingston-upon-Thames, Surrey KT2 6SR

(c) The Accounting Standards Board can be contacted at 5th floor, Aldwych House, 71-91 Aldwych, London WC2B 4HN

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations make provision relating to various requirements under Articles 137, 140 and 141 of the Pensions (Northern Ireland) Order 2005 (“the Order”) in relation to closed schemes.

Regulation 2 makes provision in respect of applications to the Board of the Pension Protection Fund (“the Board”) under Article 137 of the Order for authority for a scheme to continue as a closed scheme in circumstances where the trustees or managers of the scheme are unable to obtain a full buy-out quotation. It also makes provision in respect of the form and content of determination notices issued by the Board under that Article.

Regulation 3 provides that the trustees or managers of closed schemes must obtain an initial actuarial valuation under Article 140 of the Order of the scheme’s assets, full scheme liabilities and protected liabilities within a prescribed period. It also provides that such trustees or managers must obtain Article 140 actuarial valuations at least every three years after the initial such valuation.

Regulation 4 and the Schedule provide for how the assets, full scheme liabilities and the protected liabilities in relation to a closed scheme, and their amount or value, are to be determined, calculated and verified in accordance with Article 140 of the Order.

Regulation 5 prescribes the qualifications required of a person conducting an actuarial valuation under Article 140 of the Order.

Regulation 6 sets out the time limit for making applications to the Board under Article 141 of the Order in circumstances where a closed scheme has insufficient assets. It also makes provision in respect of the form and content of applications and notifications to the Board under that Article, and in respect of the form and content of notifications given by the Board under that Article.

Regulation 7 makes transitional provision in relation to the coming into operation of the definition of “relevant accounts”.

As these Regulations are made before the end of the period of six months beginning with the coming into operation of the provisions of the Order by virtue of which they are made, the requirement to consult under Article 289(1) of the Order does not apply by virtue of paragraph (2)(c) of that Article.