

2007 No. 193

PENSIONS

**The Pension Protection Fund (Miscellaneous Amendments)
Regulations (Northern Ireland) 2007**

Made - - - - - *22nd 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 110(1)(b), 127(3) and (4), 135(8) and (9)(b), 147(6)(a), 152(1) and (2)(e), 162(1)(a) and (3), 188(2)(a) and 287(2) and (3) of the Pensions (Northern Ireland) Order 2005(a).

Citation and commencement

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

Amendment of the Pension Protection Fund (Entry Rules) Regulations

2.—(1) The Pension Protection Fund (Entry Rules) Regulations (Northern Ireland) 2005(b) shall be amended in accordance with paragraphs (2) and (3).

(2) In regulation 2(1) (schemes which are not eligible schemes)—

(a) after sub-paragraph (f) insert—

“(fa) a tax registered scheme(c) which, immediately before 6th April 2006, was a former approved superannuation fund within the meaning of paragraph 1(1)(b) of Schedule 36 to the Finance Act 2004(d) (deemed registration of existing schemes);”;

(b) in sub-paragraph (l) for head (i) substitute—

“(i) the provisions of the scheme provide that any decision made by the trustees is made by the unanimous agreement of the trustees who are members of the scheme, or”;

(c) in sub-paragraph (m) for head (i) substitute—

“(i) the provisions of the scheme provide that any decision made by the company in its capacity as trustee is made by the unanimous agreement of the directors of that company who are members of the scheme, or”.

(a) S.I. 2005/255 (N.I. 1); Part III is modified in its application to partially guaranteed schemes, hybrid schemes and multi-employer schemes by, respectively, S.R. 2005 Nos. 55, 84 and 91 (as amended by S.R. 2005 Nos. 194 and 357); *see also* paragraph (b) of the definition of “audited scheme accounts” in Article 135(8)

(b) S.R. 2005 No. 126; relevant amending Regulations are S.R. 2006 No. 155

(c) The definition of “tax registered scheme” was substituted for the definition of “tax approved scheme” by regulation 21(2) of S.R. 2006 No. 155

(d) 2004 c. 12

(3) In paragraph 5(b)(a) of the Schedule (contents of accounts audited by the auditor of the scheme) for the words from “regulation 13” to the end of the paragraph substitute “regulation 13 of the Occupational Pension Schemes (Investment) Regulations (Northern Ireland) 2005(b) (investments to which restrictions do not apply) applies.”.

Amendment of the Pension Protection Fund (Valuation) Regulations

3.—(1) The Pension Protection Fund (Valuation) Regulations (Northern Ireland) 2005(c) shall be amended in accordance with paragraphs (2) to (6).

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

(a) after the definition of “pension credit rights” insert—

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

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

(b) for the definition of “relevant accounts” substitute—

““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 the Schedule(d);
- (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 relevant time of the valuation;”.

(3) In regulation 2 (provision of actuarial valuation to determine scheme underfunding)—

(a) for paragraph (1) substitute—

“(1) The trustees or managers of an eligible scheme shall provide the Board or the Regulator on the Board’s behalf with its first Article 162 valuation—

- (a) in the case of an eligible scheme which is a registrable scheme prior to 6th April 2007—
 - (i) within 15 months of the relevant time of that valuation; or
 - (ii) by 31st March 2008,whichever is the earlier;
- (b) in the case of an eligible scheme which becomes a registrable scheme on or after 6th April 2007, within 15 months of the effective date of the first actuarial valuation obtained by them under Article 203(e) of the Order (actuarial valuations and reports).”;

(a) Paragraph 5(b) was amended by regulation 21(5)(b) of S.R. 2006 No. 155

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

(c) S.R. 2005 No. 131 to which there are amendments not relevant to these Regulations

(d) Inserted by the Schedule to these Regulations

(e) Article 203 is modified by S.R.2005 Nos. 568 and 570

- (b) omit paragraphs (2) and (3);
 - (c) in paragraph (5) for “12 months” substitute “15 months”.
- (4) In regulation 3 (excluded assets) after paragraph (b) add—
- “(c) in the case of either an Article 127 or Article 162 valuation, 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 that they provide concerning that contract of insurance is insufficient, in the opinion of the appropriate person, to conduct a valuation.”.
- (5) In regulation 6 (valuation of protected liabilities)—
- (a) the provisions of the regulation shall become paragraph (1) of the regulation;
 - (b) after that paragraph add—
 - “(2) Where regulation 3(c) applies, the amount representing the value of a protected liability^(a) in respect of the benefits secured by a pre-6th April 1997 contract of insurance shall be excluded from the valuation of the eligible scheme’s protected liabilities.”.
- (6) At the end add the Schedule as set out in the Schedule to these Regulations.

Amendment of the Pension Protection Fund (General and Miscellaneous Amendments) Regulations

4. In regulations 6 (circumstances where the Board is not required to recover overpaid scheme benefits) and 16 (recovery of PPF compensation overpayments) of the Pension Protection Fund (General and Miscellaneous Amendments) Regulations (Northern Ireland) 2006^(b)—

- (a) in paragraph (2) for “it shall determine, having regard to any evidence provided under paragraph (1)(c)(ii),” substitute “it shall, as soon as reasonably practicable, determine”;
- (b) after paragraph (2) insert—
 - “(2A) The Board may request such additional information, from the person who gave the hardship notification, as it reasonably requires for the purpose of making a determination under paragraph (2).
 - (2B) In making such a determination, the Board shall have regard to any evidence provided under paragraph (1)(c)(ii) and any information provided under paragraph (2A).”.

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

5.—(1) In the case of a scheme with an assessment date before 1st April 2007, the definition of “relevant accounts” in regulation 1(2) of the Pension Protection Fund (Valuation) Regulations (Northern Ireland) 2005 shall continue to have effect until 31st December 2007 as if regulation 3(2)(b) of these Regulations had not come into operation.

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

(a) The term “protected liabilities” is defined in Article 115(1) of the Pensions (Northern Ireland) Order 2005
 (b) S.R. 2006 No. 155

Revocations

6. The following provisions are revoked—

- (a) paragraph 13A of the Schedule to the Pension Protection Fund (Reviewable Matters) Regulations (Northern Ireland) 2005^(a) (prescribed period for failure to make a determination under regulation 6(2) of the Pension Protection Fund (General and Miscellaneous Amendments) Regulations (Northern Ireland) 2006);
- (b) regulation 21(5)(b) of the Pension Protection Fund (General and Miscellaneous Amendments) Regulations (Northern Ireland) 2006;
- (c) regulation 3 of the Pension Protection Fund (Reviewable Matters and Review and Reconsideration of Reviewable Matters) (Amendment) Regulations (Northern Ireland) 2006^(b).

Sealed with the Official Seal of the Department for Social Development on 22nd March 2007

(L.S.)

John O'Neill

A senior officer of the Department for Social Development

^(a) S.R. 2005 No. 127; paragraph 13A was inserted by regulation 3 of S.R. 2006 No. 156
^(b) S.R. 2006 No. 156

SCHEDULE

Regulation 3(6)

SCHEDULE TO BE ADDED TO THE PENSION PROTECTION FUND (VALUATION) REGULATIONS (NORTHERN IRELAND) 2005

“SCHEDULE

Regulation 1(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;
 - (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 (investments to which restrictions do not apply) applies.

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(b) (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(c) or another organisation approved for this purpose by the Accounting Standards Board(d), current at the end of the accounting period and, if not, an indication of where there are any material departures from those guidelines."

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

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

(d) 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 amend the Pension Protection Fund (Entry Rules) Regulations (Northern Ireland) 2005 (“the Entry Rules Regulations”), the Pension Protection Fund (Valuation) Regulations (Northern Ireland) 2005 (“the Valuation Regulations”) and the Pension Protection Fund (General and Miscellaneous Amendments) Regulations (Northern Ireland) 2006 (“the General Regulations”).

Regulation 2 amends the Entry Rules Regulations to provide that former approved superannuation funds will cease to be eligible schemes for the purposes of the Pension Protection Fund. It also provides for any decisions which fall to be made by the trustees or company in its capacity as trustee to be made by the unanimous agreement of the trustees, or directors of that company, who are members of the scheme. It also amends a reference.

Regulation 3 amends the Valuation Regulations to add a definition of “pre-6th April 1997 contract of insurance” and substitutes the definition of “relevant accounts”. It amends the prescribed date by which an eligible scheme, which becomes a registrable scheme before the commencement date, submits its initial actuarial valuation, in accordance with Article 162 of the Pensions (Northern Ireland) Order 2005, to within 15 months of the relevant time of the valuation or by 31st March 2008, whichever is the earlier. It also amends the prescribed date by which the trustees or managers of an eligible scheme provide any subsequent actuarial valuation to the Board of the Pension Protection Fund (“the Board”), or the Pensions Regulator, to within 15 months of the relevant time of that valuation. It further provides for the amount representing the value of a pre-6th April 1997 contract of insurance to be excluded from the actuarial valuation of the assets and protected liabilities of an eligible scheme if, in the opinion of the appropriate person (as defined in regulation 1(2) of the Valuation Regulations), there is insufficient information about that contract of insurance with which to conduct a valuation. It also adds a Schedule to make provision for the information to be contained in the audited scheme accounts.

Regulation 4 amends provisions of the General Regulations which specify circumstances in which the Board is not required to recover overpayments of scheme benefits or compensation. Non-recovery of an amount is permitted in cases where its recovery would cause hardship and, in determining whether such grounds exist, the amendments made by this regulation provide that the Board may seek additional information and, having regard to the information before it, must make its determination as soon as is reasonably practicable.

Regulation 5 makes transitional provision in relation to the coming into operation of the substituted definition of “relevant accounts” in the Valuation Regulations.

Regulation 6 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 to consult under Article 289(1) of the Pensions (Northern Ireland) Order 2005 does not apply by virtue of paragraph (2)(e) of that Article.