

2005 No. 1986

PENSIONS

The Financial Assistance Scheme Regulations 2005

Made - - - - - *19th July 2005*

Coming into force in accordance with regulation 1

ARRANGEMENT OF REGULATIONS

**PART 1
GENERAL**

1. Citation, commencement and extent
2. Interpretation
3. Commencement of winding up
4. Application of Parts 1 and 2 of the Act

**PART 2
ESTABLISHMENT OF THE FINANCIAL ASSISTANCE SCHEME**

5. Scheme manager
6. Funding
7. Annual reports
8. Delegation

**PART 3
QUALIFYING PENSION SCHEMES**

9. Qualifying pension schemes
10. Other schemes which are not qualifying pension schemes
11. Condition to be satisfied by employer
12. Condition to be satisfied: multi-employer schemes
13. Insolvency events
14. Notification of details

**PART 4
QUALIFYING MEMBERS**

15. Qualifying members
16. Insufficient assets

PART 5
ANNUAL AND INITIAL PAYMENTS

- 17. Annual payments
- 18. Initial payments

PART 6
ADMINISTRATION OF PAYMENTS

- 19. Time and manner of payment: general provisions
- 20. Direct credit transfer

SCHEDULE 1 — MODIFICATION OF CERTAIN PROVISIONS OF PARTS 1 AND 2
OF THE ACT

SCHEDULE 2 — DETERMINATION OF ANNUAL AND INITIAL PAYMENTS

Whereas a draft of this instrument was laid before Parliament in accordance with section 316(2)(n) of the Pensions Act 2004(a) and approved by resolution of each House of Parliament;

Now, therefore, the Secretary of State for Work and Pensions, in exercise of the powers conferred upon him by sections 286, 315(2) and 318(1), (4)(a) and (5) of that Act(b), and of all other powers enabling him in that behalf, hereby makes the following Regulations:

PART 1
GENERAL

Citation, commencement and extent

1.—(1) These Regulations may be cited as the Financial Assistance Scheme Regulations 2005 and shall come into force—

- (a) for the purposes of this regulation, regulation 4 and paragraphs 4, 5, 15 and 16 of Schedule 1 in so far as they relate to regulation 4, for the purpose only of the making of regulations, on the day after the day on which these Regulations are made;
- (b) in so far as these Regulations apply in relation to civil partnerships, on 5th December 2005; and
- (c) for all other purposes, on 1st September 2005.

(2) These Regulations extend to Northern Ireland.

(a) 2004 c.35.

(b) Section 286 is modified in relation to multi-employer schemes by S.I.2005/441. Section 318(1) is cited because of the meaning ascribed to the words “modifications”, “prescribed” and “regulations”.

Interpretation

2.—(1) In these Regulations—

“the Act” means the Pensions Act 2004 and references to a numbered section are, unless the context otherwise requires, to a section of the Act(a);

“the Northern Ireland Order” means the Pensions (Northern Ireland) Order 2005(b) and references to a numbered Article are, unless the context otherwise requires, to an Article of that Order;

“the 1993 Act” means the Pension Schemes Act 1993(c);

“the 1995 Act” means the Pensions Act 1995(d);

“the FSMA” means the Financial Services and Markets Act 2000(e);

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

“the Commissioners of HMRC” means the Commissioners of Her Majesty’s Revenue and Customs;

“annual payment” means the amount payable to a beneficiary in respect of each year determined in accordance with regulation 17 and Schedule 2;

“beneficiary” means a qualifying member or, after his death, his survivor;

“initial payment” means a payment made to a beneficiary in accordance with regulation 18;

“multi-employer scheme” and “relevant public authority” have the meanings given in section 307(4) or, as the case may be, Article 280(4);

“notification period” shall be construed in accordance with regulation 14(5)(b);

“qualifying member” shall be construed in accordance with regulation 15;

“qualifying pension scheme” shall be construed in accordance with regulation 9;

“scheme manager” shall be construed in accordance with regulation 5;

“survivor” means, in relation to a member of a qualifying pension scheme who has died—

(a) the member’s widow or widower; or

(b) the member’s surviving civil partner,

but shall not include a person who comes within paragraph (a) or (b) but who is regarded as a qualifying member by virtue of regulation 15(5);

“tax approved scheme” means a scheme which is approved or was formerly approved under section 590 (conditions for approval of retirement benefit schemes) or 591(g) (discretionary approval) of the ICTA or in respect of which an application for such approval has been duly made but has not been determined;

“trustees or managers” shall be construed in accordance with the definition in section 124(1) of the 1995 Act,

and other expressions have the meaning given to them in the Act or, as the case may be, in the Northern Ireland Order.

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- (a) The Act is modified in its application to partially guaranteed pension schemes by S.I.2005/277, in its application to multi-employer schemes by S.I. 2005/441 and in its application to hybrid schemes by S.I.2005/449.
- (b) S.I.2005/255 (N.I.1). The Northern Ireland Order is modified in its application to partially guaranteed pension schemes by S.R.2005/55, in its application to hybrid schemes by S.R.2005/84 and in its application to multi-employer schemes by S.R.2005/91.
- (c) 1993 c.48.
- (d) 1995 c.26.
- (e) 2000 c.8.
- (f) 1988 c.1.
- (g) Sections 590 and 591 are amended by the Finance Act 1988 (c.39), section 35 and Schedule 3, the Finance Act 1989 (c.26), sections 75 and 187 and Schedules 6 and 17, the Finance Act 1991 (c.31), sections 34, 36 and 123 and Schedule 19, the Finance Act 1994 (c.9), section 107, the Finance Act 1995 (c.4), section 59 and the Finance Act 1999 (c.16), section 79 and Schedule 10.

(2) References in these Regulations to provisions of the 1993 Act, the 1995 Act, the Welfare Reform and Pensions Act 1999^(a) and to the Social Security Contributions and Benefits Act 1992^(b) include references to the provisions in force in Northern Ireland corresponding to those provisions.

(3) In these Regulations, “insurance company” means—

- (a) a person who has permission under Part 4 of the FSMA to effect or carry out contracts of long-term insurance; or
- (b) an EEA firm of the kind mentioned in paragraph 5(d) of Schedule 3 to that Act (certain direct insurance undertakings) which has permission under paragraph 15 of that Schedule (as a result of qualifying for authorisation under paragraph 12 of that Schedule) to effect or carry out contracts of long-term insurance,

and in this paragraph, “contracts of long-term insurance” means contracts which fall within Part 2 of Schedule 1 to the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001^(c).

(4) Paragraph (3) shall be read with—

- (a) section 22 of the FSMA (regulated activities);
- (b) any relevant order under that section; and
- (c) Schedule 2 to that Act.

(5) In these Regulations, “normal retirement age” means, subject to paragraph (6), in relation to a member of an occupational pension scheme, the age specified in the rules of that scheme at which that member will normally retire.

(6) Where the normal retirement age—

- (a) determined in accordance with paragraph (5) is more than 65, that age shall be 65;
- (b) cannot be determined in accordance with paragraph (5) from the rules of the qualifying pension scheme, that age shall be such age as the scheme manager shall determine having regard to the rules of that scheme and to such other information as he considers relevant.

(7) In these Regulations, “appointed representative” means—

- (a) a person whose name, address and appointment by a beneficiary or by a person who believes himself to be a beneficiary (“potential beneficiary”) for the purposes of—
 - (i) notifying the scheme manager of the details prescribed in regulation 14(1) and (3); or
 - (ii) receiving payments made under these Regulations,

have been notified to the scheme manager in a document signed by the beneficiary or potential beneficiary in question or by his legal representative and whose appointment has been consented to by the scheme manager; or

- (b) where a beneficiary or a potential beneficiary—

- (i) dies; or
- (ii) is otherwise incapable of acting for himself,

and there is no person appointed under sub-paragraph (a) in respect of that beneficiary or potential beneficiary, a person who has been appointed by the scheme manager to act as the beneficiary’s or the potential beneficiary’s representative for the purposes of these Regulations.

Commencement of winding up

3.—(1) For the purposes of these Regulations, the time when an occupational pension scheme begins to be wound up shall be determined in accordance with this regulation.

(a) 1999 c.30.
(b) 1992 c.4.
(c) S.I.2001/544.

(2) Subject to paragraphs (3) to (6), where the rules of the scheme require or permit the scheme to be wound up and the scheme is wound up under those rules, the scheme begins to be wound up—

(a) either—

(i) at such time as the rules provide that it does so; or

(ii) if the rules make no provision as to that time, at such time as the trustees or managers determine that the scheme shall begin to be wound up; or

(b) as soon as there are no members who are in pensionable service under the scheme, whichever is the later.

(3) Where the rules of the scheme require or permit the scheme to be wound up but the trustees or managers determine in pursuance of section 38 of the 1995 Act^(a) or otherwise that the scheme is not to be wound up for the time being, then for the purposes of paragraph (2), in so far as any provision made by the rules of the scheme as to the time when it begins to be wound up is inconsistent with the trustees' or managers' determination, that provision shall be disregarded.

(4) Where under the rules of the scheme, any person other than the trustees or managers may determine that the scheme is to be wound up, or is not to be wound up for the time being, then the references in paragraphs (2)(a)(ii) and (3) to the trustees' or managers' determination shall be taken, in a case where the winding up begins or is deferred by virtue of that other person's determination, as a reference to his determination.

(5) Paragraph (4) applies where such power is vested in the trustees or managers jointly with another person, or in some but not all of the trustees, as it applies where such a power is vested only in a person other than the trustees or managers.

(6) Where—

(a) the scheme manager is satisfied that the scheme began to wind up during the period prescribed in regulation 9(1)(b); but

(b) the exact date on which the scheme began to wind up cannot be determined,

the scheme begins to be wound up on such date, within that period, as the scheme manager determines.

(7) Where—

(a) a scheme is wound up in pursuance—

(i) of an order by the Determinations Panel on behalf of the Regulator under section 11 of the 1995 Act^(b) (see section 9); or

(ii) of an order of a court; and

(b) the order makes provision as to the time at which the scheme is to begin to be wound up, the scheme begins to be wound up at the time specified in the order or, if none is so specified, the date on which the order takes effect.

Application of Parts 1 and 2 of the Act

4.—(1) The provisions of Parts 1 and 2 of the Act specified in paragraph (2) apply for the purposes of these Regulations with the modifications prescribed in Schedule 1.

(2) The specified provisions are—

(a) section 68 (power for the Regulator to collect information relevant to the Board of the Pension Protection Fund);

(b) section 85 (power to enable the Regulator to disclose restricted information to the Board);

(c) section 168 (administration of compensation payable by the Board);

(a) Section 38 is amended by the Welfare Reform and Pensions Act 1999, Schedule 12, paragraph 50.

(b) Section 11 is amended by section 22 of the Act.

- (d) sections 190 to 204 (except section 202) (information gathering powers of the Board and provisions relating to disclosure of information by the Board); and
- (e) Schedule 8 (permitted disclosures by the Board to facilitate exercise of functions).

(3) Subject to paragraph (5), the provisions of Parts 1 and 2 of the Act which are applied by paragraph (1), shall apply to Northern Ireland for the purposes of these Regulations, with the prescribed modifications, as if those provisions extended to Northern Ireland.

(4) Section 88(4) shall also apply to Northern Ireland for the purposes of these Regulations as if that provision extended to Northern Ireland.

(5) Sections 197 to 201 and 203 shall apply to Northern Ireland only in so far as they relate to disclosure or provision of information—

- (a) by or to the scheme manager;
- (b) by any person who receives information directly or indirectly from the scheme manager;
- (c) by any person for the purpose of enabling or assisting the scheme manager to exercise his functions; and
- (d) by trustees or managers of occupational pension schemes in respect of matters relating to these Regulations.

(6) In so far as this regulation extends provisions to Northern Ireland—

- (a) a person may not be required under or by virtue of those provisions to produce, disclose or permit the inspection of protected items within the meaning given in section 311(2) to (4); and
- (b) if a person claims a lien on a document, its production under any provision made by, or by virtue of, those provisions, does not affect the lien.

PART 2

ESTABLISHMENT OF THE FINANCIAL ASSISTANCE SCHEME

Scheme manager

5.—(1) The financial assistance scheme established by these Regulations shall be managed by the Secretary of State.

(2) References in these Regulations—

- (a) to the scheme manager are to the Secretary of State acting in his capacity as manager of the financial assistance scheme;
- (b) to the Secretary of State are to the Secretary of State acting other than in that capacity.

Funding

6.—(1) Any payments which are required to be made in accordance with these Regulations shall be paid out of a fund which is held, managed and applied by the scheme manager (“the fund”).

(2) The Secretary of State shall pay amounts into the fund out of monies provided by Parliament.

(3) The Secretary of State may pay other amounts into the fund where he—

- (a) is notified in writing that a person wishes to pay an amount into the fund;
- (b) is of the opinion that that amount can be paid into the fund; and
- (c) receives that amount.

Annual reports

7.—(1) The Secretary of State must prepare a report on the financial assistance scheme for each financial year.

(2) Each report must deal with the operation of the financial assistance scheme in the financial year for which it is prepared and in particular—

- (a) the number of persons who have received payments under these Regulations; and
- (b) the total amount of those payments.

(3) The Secretary of State must lay before each House of Parliament a copy of every report prepared by him under this regulation.

(4) In this regulation, “financial year” means—

- (a) the period beginning on 1st September 2005 and ending on 31st March 2006; and
- (b) each successive period of 12 months.

Delegation

8. The scheme manager may make arrangements for any of his functions conferred by, or by virtue of, these Regulations to be exercised, in accordance with those arrangements, by a person on his behalf.

PART 3

QUALIFYING PENSION SCHEMES

Qualifying pension schemes

9.—(1) An occupational pension scheme shall be a qualifying pension scheme for the purposes of these Regulations where—

- (a) immediately before the time when the scheme began to wind up, it was neither a money purchase scheme nor a scheme of a description prescribed in regulation 10;
- (b) the scheme began to wind up during the period beginning on 1st January 1997 and ending on 5th April 2005;
- (c) the employer in relation to that scheme satisfies the condition in regulation 11 or in relation to a multi-employer scheme, the condition in regulation 12 is satisfied; and
- (d) the details prescribed in regulation 14 have been notified to the scheme manager by a person, in the form and manner and before the date prescribed in that regulation.

- (2) The following shall be treated as separate schemes for the purposes of these Regulations—
- (a) in relation to an occupational pension scheme which is not a tax approved scheme but contains one or more sections which, by virtue of section 611(3) of the ICTA(a) (definition of “retirement benefits scheme”), are treated by the Commissioners of HMRC as a tax approved scheme, those sections which are so treated;
 - (b) sections of sectionalised multi-employer schemes as defined for the purposes of regulation 12,
- and references in these Regulations to schemes shall be construed accordingly.

Other schemes which are not qualifying pension schemes

- 10.** The following are descriptions of schemes for the purposes of regulation 9(1)(a)—
- (a) a public service pension scheme under the provisions of which there is no requirement for assets related to the intended rate or amount of benefit under the scheme to be set aside in advance (disregarding requirements relating to additional voluntary contributions);
 - (b) a scheme which is made under section 7 of the Superannuation Act 1972(b) or under Article 9 of the Superannuation (Northern Ireland) Order 1972(c) (superannuation of persons employed in local government service etc.) and provides pensions to persons employed in local government service;
 - (c) a scheme which is made under section 2 of the Parliamentary and Other Pensions Act 1987(d) (power to provide for pensions for Members of the House of Commons etc.);
 - (d) a scheme which is established under section 48 of the Northern Ireland Act 1998(e) (pensions of members), or which was established under Part 2 of the Ministerial Salaries and Members’ Pensions Act (Northern Ireland) 1965(f) or Article 3 of the Assembly Pensions (Northern Ireland) Order 1976(g);
 - (e) a scheme in respect of which a relevant public authority has given a guarantee or made any other arrangements for the purposes of securing that the assets of the scheme are sufficient to meet its liabilities;
 - (f) a scheme which provides relevant benefits within the meaning of section 612(1) of the ICTA but which is neither a tax approved scheme nor a relevant statutory scheme within the meaning of section 611A of that Act(h) (definition of “relevant statutory scheme”);
 - (g) a scheme—
 - (i) which has been categorised before 18th April 2005, by the Commissioners of Inland Revenue, and on or after that date, by the Commissioners of HMRC, for the purposes of its approval as a centralised scheme for non-associated employers;
 - (ii) which is not contracted-out in accordance with section 9 of the 1993 Act(i); and
 - (iii) under the provisions of which the only benefits that may be provided on or after retirement (other than money purchase benefits derived from the payment of voluntary contributions by any person) are lump sum benefits which are not calculated by reference to a member’s salary;
 - (h) a scheme—

(a) Section 611(3) is amended by the Finance Act 1999, section 79 and Schedule 10 and by the Finance Act 2000 (c.17), section 61 and Schedule 13.

(b) 1972 c.11.

(c) S.I.1972/1073 (N.I.10).

(d) 1987 c.45.

(e) 1998 c.47.

(f) 1965 c.18 (N.I.).

(g) S.I.1976/1779.

(h) Section 611A is inserted by the Finance Act 1989 (c.26), section 75 and Schedule 6, paragraph 15 and amended by the Finance Act 1999, section 52(1) and Schedule 5, paragraph 5.

(i) Section 9 is amended by the 1995 Act, section 136(3) and (4), Schedule 5, paragraphs 21 and 24 and by the Social Security Contributions (Transfer of Functions) Act 1999 (c.2), Schedule 1, paragraph 35.

- (i) the only benefits provided by which (other than money purchase benefits) are death benefits; and
- (ii) under the provisions of which no member has accrued rights (other than rights to money purchase benefits);
- (i) a scheme with such a superannuation fund as is mentioned in section 615(6) of the ICTA(a) (exemption from tax in respect of certain pensions);
- (j) a scheme which does not have its main place of administration registered in the United Kingdom;
- (k) a scheme with fewer than two members;
- (l) a scheme which is a small self-administered scheme for the purposes of the Retirement Benefits Schemes (Restriction on Discretion to Approve) (Small Self-administered Schemes) Regulations 1991(b) as in force on the day on which this regulation comes into force.

Condition to be satisfied by employer

11.—(1) The condition to be satisfied by the employer for the purposes of regulation 9(1)(c), where the scheme is not a multi-employer scheme, is that an insolvency event has occurred in relation to the employer on or before the last day of the notification period.

(2) The reference to the employer in paragraph (1)—

- (a) includes every person who employed persons in the description or category of employment to which the scheme relates or related immediately before the time when the scheme began to wind up; or
- (b) where the scheme had no active members immediately before the time it began to wind up, includes every person who employed persons in the description or category of employment to which the scheme relates or related immediately before the time at which the scheme ceased to have any active members.

Condition to be satisfied: multi-employer schemes

12.—(1) In relation to a section of a sectionalised multi-employer scheme, the condition to be satisfied for the purposes of regulation 9(1)(c) is that an insolvency event has occurred on or before the last day of the notification period—

- (a) in relation to the employer in that section;
- (b) where there is more than one employer in that section, in relation to the principal employer in that section; or
- (c) where there is more than one employer in that section and there is no principal employer in that section, in relation to all the employers participating in that section.

(2) In relation to a multi-employer scheme which is not a sectionalised multi-employer scheme, the condition to be satisfied for the purposes of regulation 9(1)(c) is that an insolvency event has occurred on or before the last day of the notification period—

- (a) in relation to the principal employer; or
- (b) where there is no principal employer, in relation to all the employers participating in the scheme.

(3) The references to the employer in paragraph (1) are—

(a) Section 615(6) has effect in relation to trust based occupational pension schemes established in respect of persons wholly employed in a trade or undertaking outside of the United Kingdom. It was amended by the Finance Act 1999, section 79 and Schedule 10.
 (b) S.I.1991/1614.

- (a) to the person who employed persons in the description or category of employment to which the section of the scheme relates or related immediately before the time when the scheme began to wind up; or
 - (b) where the scheme had no active members immediately before the time it began to wind up, to the person who was the employer of persons in the description or category of employment to which the section of the scheme relates or related immediately before the time when the scheme ceased to have any active members in relation to that section.
- (4) The references to the employer in paragraph (2) are—
- (a) to the person who employed persons in the description or category of employment to which the scheme relates or related immediately before the time when the scheme began to wind up; or
 - (b) where the scheme had no active members immediately before the time it began to wind up, to the person who was the employer of persons in the description or category of employment to which the scheme relates or related immediately before the time when the scheme ceased to have any active members in relation to it.
- (5) The references to the principal employer in paragraphs (1)(b) and (c) and (2) are to the employer who was the principal employer immediately before the time when the scheme began to wind up.
- (6) In this regulation—
- “principal employer” means the employer who—
- (a) is the principal employer for the purposes of the scheme, or of a section of a sectionalised multi-employer scheme, in accordance with the rules of the occupational pension scheme; or
 - (b) has power to act on behalf of all the employers in the scheme, or in a section of a sectionalised multi-employer scheme, in relation to the rules of that scheme;
- “sectionalised multi-employer scheme” means a multi-employer scheme which is divided into two or more sections and the provisions of the scheme are such that—
- (a) different sections of the scheme apply or applied to different employers or groups of employers (whether or not more than one section applies or applied to any particular employer or groups including any particular employer);
 - (b) any contributions payable or paid 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 or applied to the employer, to the section which is, or was, appropriate in respect of the employment in question); and
 - (c) a specified part or proportion of the assets of the scheme is, or was, attributable to each section of the scheme and cannot or could not be used for the purpose of any other section of the scheme.

Insolvency events

13.—(1) “Insolvency event” shall, for the purposes of regulations 11 and 12, be interpreted in accordance with—

- (a) section 121(2) to (4) (other than subsection (3)(f) of that section); or
- (b) Article 105(2) to (4) and (12) (other than paragraph (3)(f) of that Article),

and the following provisions of this regulation.

(2) Where the employer in relation to an occupational pension scheme is a person specified in paragraph (3), an insolvency event shall be treated as having occurred in relation to that employer for the purposes of regulations 11 and 12 where the scheme manager is satisfied that—

- (a) that employer was unlikely to continue as a going concern; and
- (b) that situation applied to that employer on or before the last day of the notification period.

(3) The persons specified in this paragraph are—

- (a) a public body—
 - (i) in relation to which it is not possible for an insolvency event within the meaning of section 121 or Article 105 to occur; and
 - (ii) which is not the employer in relation to an occupational pension scheme in respect of which a relevant public authority has either—
 - (aa) given a guarantee in relation to any part of the scheme, any benefits payable under the scheme or any member of the scheme; or
 - (bb) made any other arrangements for the purposes of securing that the assets of the scheme are sufficient to meet any part of its liabilities;
 - (b) a charity (as construed in accordance with the Charities Act 1993(a) or the Charities Act (Northern Ireland) 1964(b)) which is not a company or other body corporate; or
 - (c) a trade union within the meaning given in section 1 of the Trade Union and Labour Relations (Consolidation) Act 1992(c) or in Article 3(1) of the Industrial Relations (Northern Ireland) Order 1992(d) in relation to which it is not possible for an insolvency event within the meaning of section 121 or Article 105 to occur.
- (4) An insolvency event also occurs for the purposes of regulations 11 and 12 where any of the following events occur on or before the last day of the notification period—
- (a) in relation to a company—
 - (i) where an administration order is made—
 - (aa) by the court in relation to the company under, or by virtue of any enactment which applies, Part 2 of the 1986 Act (administration orders) (with or without modification); or
 - (bb) by the High Court in relation to the company under, or by virtue of any statutory provision which applies, Part 3 of the Insolvency (Northern Ireland) Order (administration orders) (with or without modification);
 - (ii) where a resolution is passed for a voluntary winding up of the company with a declaration of solvency under section 89 of the 1986 Act or under Article 75 of the Insolvency (Northern Ireland) Order; or
 - (iii) where notice is published in the Gazette that the company has been struck off the register pursuant to section 652 or 652A of the Companies Act 1985(e) or Article 603 or 603A of the Companies (Northern Ireland) Order 1986(f);
 - (b) in relation to a relevant body, where—
 - (i) any of the events referred to—
 - (aa) in section 121(3) occurs in relation to that body by virtue of the application (with or without modification) of any provision of the 1986 Act or by or under any other enactment; or
 - (bb) in Article 105(3)(g) (insolvency events) occurs in relation to that body by virtue of the application (with or without modification) of any provision of the Insolvency (Northern Ireland) Order or by or under any other statutory provision; or
 - (ii) an administration order is made by the court in respect of the relevant body by virtue of any enactment which applies Part 2 of the 1986 Act or Part 3 of the Insolvency (Northern Ireland) Order (with or without modification);

(a) 1993 c.10.

(b) 1964 c.33 (N.I.).

(c) 1992 c.52.

(d) S.I.1992/807 (N.I.5).

(e) 1985 c.6. Section 652A is inserted by the Deregulation and Contracting Out Act 1994 (c.40), section 13(1) and Schedule 5, paragraph 2.

(f) S.I.1986/1032 (N.I.6). Article 603A is inserted by the Deregulation and Contracting Out Act 1994, section 13(2) and Schedule 6, paragraph 2.

(g) See also Article 105(12).

- (c) in relation to a limited liability partnership, where notice has been published in the Gazette that the partnership has been struck off the register pursuant to section 652 or 652A of the Companies Act 1985(a) or Article 603 or 603A of the Companies (Northern Ireland) Order 1986(b);
- (d) in relation to a building society, where there is dissolution by consent of the members under section 87 of the Building Societies Act 1986 (c) (dissolution by consent);
- (e) in relation to a friendly society, where there is dissolution by consent of the members under section 20 of the Friendly Societies Act 1992(d) (dissolution by consent); and
- (f) in relation to an industrial and provident society, where there is dissolution by consent of the members under section 58 of the Industrial and Provident Societies Act 1965(e) or section 67 of the Industrial and Provident Societies Act (Northern Ireland) 1969(f) (instrument of dissolution).

(5) In this regulation, a reference to Part 2 of the 1986 Act (administration orders) shall, in so far as it relates to a company or society listed in section 249(1) of the Enterprise Act 2002(g) (special administration regimes), have effect as if it referred to Part 2 of the 1986 Act as it had effect immediately before the coming into force of section 248 of the Enterprise Act 2002 (replacement of Part 2 of the 1986 Act).

(6) In this regulation—

“the 1986 Act” means the Insolvency Act 1986(h);

“the Insolvency (Northern Ireland) Order” means the Insolvency (Northern Ireland) Order 1989(i);

“administration order” means an order whereby the management of the company or relevant body, as the case may be, is placed in the hands of a person appointed by the court or, in Northern Ireland, by the High Court;

“the Gazette” means, in respect of companies or limited liability partnerships registered—

- (a) in England and Wales, the London Gazette;
- (b) in Scotland, the Edinburgh Gazette; or
- (c) in Northern Ireland, the Belfast Gazette;

“public body” means a government department or any non-departmental public body established by—

- (a) in relation to Great Britain, an Act of Parliament or by a statutory instrument made under an Act of Parliament to perform functions conferred on it under, or by virtue of, that Act or instrument or any other Act or instrument;
- (b) in relation to Northern Ireland, a statutory provision to perform functions conferred on it under that statutory provision or any other such statutory provision;

“relevant body” means—

- (a) a credit union within the meaning given in section 31(1) of the Credit Unions Act 1979(j) or Article 2(2) of the Credit Unions (Northern Ireland) Order 1985(k) (interpretation);
- (b) a limited liability partnership within the meaning given in section 57(6) or Article 53(6) (partnerships and limited liability partnerships);

(a) Sections 652 and 652A are applied to limited liability partnerships by the Limited Liability Partnerships Regulations 2001 (S.I.2001/1090).

(b) Articles 603 and 603A are applied to limited liability partnerships by the Limited Liability Partnerships Regulations (Northern Ireland) 2004 (S.R.2004/307).

(c) 1986 c.53.

(d) 1992 c.40.

(e) 1965 c.12.

(f) 1969 c.24 (N.I.).

(g) 2002 c.40.

(h) 1986 c.45.

(i) S.I.1989/2405 (N.I.19).

(j) 1979 c.34.

(k) S.I.1985/1205 (N.I.12).

- (c) a building society within the meaning given in section 119 of the Building Societies Act 1986 (interpretation);
- (d) a person who has permission to act under Part 4 of the FSMA (permission to carry out regulated activities);
- (e) the society of Lloyd's and Lloyd's members who have permission under Part 19 of the FSMA (Lloyd's);
- (f) a friendly society within the meaning given in the Friendly Societies Act 1992; or
- (g) a society which is registered as an industrial and provident society under the Industrial and Provident Societies Act 1965 or under the Industrial and Provident Societies Act (Northern Ireland) 1969;

“statutory provision” has the meaning given in section 1(f) of the Interpretation Act (Northern Ireland) 1954(a).

Notification of details

14.—(1) Where an occupational pension scheme is winding up, the prescribed details for the purposes of regulation 9(1)(d) are—

- (a) the name of the scheme;
- (b) the pension scheme registration number which is allocated to that scheme in the register;
- (c) the name (and if there has been a change of name, the previous name) and address of any employer of earners in employment to which the scheme relates or has related;
- (d) the name and address of at least one trustee of the scheme.

(2) The persons who may supply the details in paragraph (1) are—

- (a) any trustee of the scheme including a trustee appointed by the Regulator under section 7 or 23(1) of the 1995 Act(b);
- (b) a member of the scheme or his appointed representative;
- (c) a surviving spouse or civil partner of a member of the scheme who has died; or
- (d) any professional adviser in relation to the scheme.

(3) Where an occupational pension scheme has wound up, the prescribed details for the purposes of regulation 9(1)(d) are—

- (a) the name of the scheme; and
- (b) the name (and if there has been a change of name, the previous name) and address of any employer of earners in employment to which the scheme related.

(4) The persons who may supply the details in paragraph (3) are—

- (a) a former trustee or manager of the scheme;
- (b) a former member of the scheme or his appointed representative;
- (c) a surviving spouse or civil partner of a former member of the scheme who has died;
- (d) any former professional adviser in relation to the scheme; or
- (e) any insurance company which is paying annuities to former members of that scheme.

(5) The details in paragraphs (1) and (3) must—

- (a) be notified in writing; and
- (b) have been notified to the scheme manager—
 - (i) no earlier than 1st September 2005; but

(a) 1954 c.33 (N.I.). Section 1(f) is amended by the Northern Ireland (Modification of Enactments No.1) Order 1999 (S.I.1999/663), Article 2(1) and Schedule 1, paragraph 9(1).
 (b) Section 7 is amended by the Act, Schedule 12, paragraph 36. Section 23 is substituted by section 36(3) of the Act.

- (ii) by no later than 28th February 2006 or by no later than such later date by which the scheme manager has indicated that he may accept notification of those details in the case of any particular scheme.

PART 4

QUALIFYING MEMBERS

Qualifying members

15.—(1) A member or a former member of a qualifying pension scheme is a qualifying member of that scheme for the purposes of these Regulations where—

- (a) he is a member of the scheme in respect of whom that scheme's pension liabilities are unlikely to be satisfied in full because the scheme has insufficient assets; or
- (b) he had ceased to be a member of the scheme and in respect of whom that scheme's pension liabilities were not satisfied in full, at the time he ceased to be a member, because the scheme had insufficient assets,

and the conditions in paragraphs (2) to (4) are satisfied in relation to that member or former member.

(2) The condition in this paragraph is that the member or former member must have an accrued right to a benefit under the scheme.

(3) The condition in this paragraph is that the member or former member—

- (a) was a member of the qualifying pension scheme immediately before the scheme began to wind up; or
- (b) was not a member of the scheme at that time but became a pension credit member of the scheme on or after the day on which the scheme began to wind up.

(4) The condition in this paragraph is that the member or former member—

- (a) had attained his normal retirement age for the scheme of which he is or was a member as at 14th May 2004;
- (b) had not attained that age as at that date but would attain that age on or before 14th May 2007; or
- (c) had died before attaining that age but would have attained that age on or before 14th May 2007.

(5) A person who is not a member or a former member of a qualifying pension scheme is to be regarded as a qualifying member of such a scheme for the purposes of these Regulations where—

- (a) he was entitled to a present payment from a qualifying pension scheme immediately before the scheme began to wind up;
- (b) that payment was attributable to the pensionable service of a former member of that scheme who has died;
- (c) the scheme's pension liabilities in respect of that person are unlikely to be satisfied in full because the scheme has insufficient assets; and
- (d) that person, as at 14th May 2004—
 - (i) had attained the normal retirement age for the member of that scheme in respect of whose pensionable service the payment from that scheme was attributable; or
 - (ii) had not attained that age but would attain that age on or before 14th May 2007.

Insufficient assets

16.—(1) A scheme has or had insufficient assets for the purposes of regulation 15 if—

- (a) in relation to a scheme which is winding up, at any time during the period beginning immediately before the scheme began to wind up and ending immediately before the liabilities of the scheme were discharged; or
- (b) in relation to a scheme which has wound up, immediately before the liabilities of the scheme were discharged,

the assets of the scheme are, or were, insufficient to satisfy in full the liabilities of the scheme.

(2) The liabilities of the scheme which are to be taken into account for the purposes of paragraph (1) are the liabilities of the scheme estimated by reference to the scheme rules but disregarding—

- (a) any provision of the scheme rules which limits the amount of its liabilities by reference to the amount of its assets; and
- (b) any liabilities in respect of money purchase benefits.

(3) The amount or value of the liabilities referred to in paragraph (2) must be estimated on the assumption that the liabilities will be, or have been, discharged by the purchase of annuities of the kind described in section 74(3)(c) of the 1995 Act (discharge of liabilities: annuity purchase).

(4) The liabilities of the scheme which are to be taken into account under paragraph (2) include all expenses (except the cost of the annuities referred to in paragraph (3)) which—

- (a) in the opinion of the trustees or managers of the scheme, are likely to be incurred in connection with the winding up of the scheme; or
- (b) in the case of a wound up scheme, were so incurred.

PART 5

ANNUAL AND INITIAL PAYMENTS

Annual payments

17.—(1) Schedule 2 makes provision for the determination of the amount of annual payments to be paid to, or in respect of, qualifying members of qualifying pension schemes including provision for—

- (a) a cap to be imposed on such amounts; and
- (b) an amount to be paid only where an amount determined under that Schedule is equal to, or exceeds, a specified amount.

(2) Except where paragraph (3) applies, a qualifying member of a qualifying pension scheme shall be entitled to an annual payment determined in accordance with Schedule 2 from—

- (a) 14th May 2004; or
- (b) the day on which the qualifying member attains the age of 65,

whichever is the later.

(3) Where the scheme manager is satisfied that a qualifying member is terminally ill within the meaning given in section 66(2)(a) of the Social Security Contributions and Benefits Act 1992^(a), that member shall be entitled to an annual payment determined in accordance with Schedule 2 from the day on which the scheme manager is first notified that that member may be terminally ill.

(4) A survivor of a qualifying member of a qualifying pension scheme shall be entitled to an annual payment determined in accordance with Schedule 2 from—

- (a) 14th May 2004; or
- (b) the day after the day on which that qualifying member died,

whichever is the later.

^(a) 1992 c.4.

(5) The year in respect of which the annual payment is to be made shall be the year starting on the day on which a monthly instalment of the annual payment or, as the case may be, an initial payment, is first payable to a beneficiary by virtue of regulation 19 and in respect of subsequent years, on each anniversary of that day.

(6) Annual payments which are payable to a beneficiary under this Part shall continue for life.

Initial payments

18.—(1) This regulation applies where—

- (a) a qualifying pension scheme is winding up; and
- (b) a qualifying member of that scheme—
 - (i) has attained the age of 64; or
 - (ii) has not attained that age but the scheme manager is satisfied that that member is terminally ill within the meaning given in section 66(2)(a) of the Social Security Contributions and Benefits Act 1992.

(2) Where this regulation applies, the trustees or managers of the scheme may make a written request to the scheme manager for a payment to be made to that qualifying member (“an initial payment”).

(3) On receipt of a request for an initial payment, the scheme manager may, in his discretion, make an initial payment to the qualifying member from the day on which—

- (a) the member attains the age of 65; or
- (b) if earlier, it is determined that the member is terminally ill within the meaning in paragraph (1)(b)(ii),

in anticipation of that member being entitled to an annual payment.

(4) In exercising his discretion under paragraph (3), the scheme manager may only have regard to—

- (a) the amount, if any, of any interim pension within the meaning in paragraph 2 of Schedule 2(a) being paid to the qualifying member from the qualifying pension scheme; and
- (b) any circumstances relating to the scheme which, in the opinion of the scheme manager, are relevant to determining whether an initial payment should be made.

(5) Schedule 2 makes provision for the determination of the amount of initial payments.

(6) The scheme manager may, at any time before the amount of the annual payment is determined, redetermine the amount of any initial payment paid under paragraph (3) if he is satisfied that the amount being paid by way of initial payment, as determined in accordance with Schedule 2, may be incorrect.

PART 6

ADMINISTRATION OF PAYMENTS

Time and manner of payment: general provisions

19.—(1) The scheme manager shall pay the annual payment or an initial payment to the beneficiary or to his appointed representative, in equal monthly instalments on the day of each month specified by the scheme manager for the making of such payments.

(2) For the purposes of paragraph (1), where the amount of a monthly instalment would, but for this paragraph, include a fraction of a penny, that fraction shall be disregarded if it is less than half a penny and shall otherwise be treated as a penny.

(a) Paragraph 2 is modified by paragraph 10(a) of Schedule 2.

(3) The scheme manager shall start to pay the monthly instalments payable to a beneficiary on the first day specified in paragraph (1) which is as soon as reasonably practicable after the day on which—

- (a) the beneficiary becomes entitled to an annual payment under regulation 17(2) to (4); or
- (b) the scheme manager determines that an initial payment may be made under regulation 18(3).

(4) Monthly instalments shall be paid by means of direct credit transfer or by such other means as appear to the scheme manager to be appropriate in the circumstances of any particular case.

Direct credit transfer

20.—(1) Subject to paragraphs (3) and (4), monthly instalments under regulation 19 may, by an arrangement between the scheme manager and the beneficiary or his appointed representative, be paid by way of direct credit transfer into a bank or other account—

- (a) in the name of the beneficiary, his appointed representative or any other person with the consent of the beneficiary; or
- (b) in the joint names of the beneficiary and any other person or the appointed representative and any other person.

(2) Monthly instalments shall be paid in accordance with paragraph (1) within seven days of the day on which each instalment is payable under regulation 19(1).

(3) The scheme manager may make a particular payment by direct credit transfer otherwise than in accordance with paragraph (1) if it appears to him to be appropriate to do so for the purpose of paying any arrears.

(4) The arrangements under this regulation may be terminated—

- (a) by the beneficiary or his appointed representative, by notice in writing delivered or sent to the scheme manager; or
- (b) by the scheme manager if the arrangement seems to him to be no longer appropriate to the circumstances of the particular case.

(5) A direct credit transfer into the account of an appointed representative or of any person to whom an amount is paid with the consent of the beneficiary, shall be a good discharge to the scheme manager for any sum paid under these Regulations.

Signed by authority of the Secretary of State for Work and Pensions.

19th July 2005

Philip A. Hunt
Parliamentary Under-Secretary of State,
Department for Work and Pensions

MODIFICATION OF CERTAIN PROVISIONS OF PARTS 1 AND 2 OF THE ACT

1. In section 68 (power for the Regulator to collect information relevant to the Board of the Pension Protection Fund), for “the Board of the Pension Protection Fund”, substitute “the scheme manager of the financial assistance scheme which are conferred on him by regulations made under, or by virtue of, section 286”.

2. In section 85 (disclosure by the Regulator for facilitating the exercise of functions by the Board)—

- (a) for “Section 82 does not preclude” substitute “Neither section 82 nor Article 77 of the Pensions (Northern Ireland) Order 2005 precludes”;
- (b) for the words “the Board of the Pension Protection Fund to exercise its functions”, substitute “the scheme manager of the financial assistance scheme to exercise functions conferred on him by regulations made under or by virtue of section 286, and Part 2 of the Pensions (Northern Ireland) Order 2005 shall be read accordingly”.

3. In section 88(4) (disclosure of tax information by the Regulator), after “subsection (3)” insert “or as mentioned in Article 83(3) of the Pensions (Northern Ireland) Order 2005”.

4. In section 168 (administration of compensation payable by the Board)—

- (a) in subsection (1), for “this Chapter” substitute “the financial assistance scheme established by regulations under section 286”;
- (b) for subsection (2), substitute—
 - “(2) Regulations under subsection (1) may, in particular, make provision—
 - (a) for the recovery of amounts paid by the scheme manager of the financial assistance scheme in excess of entitlement;
 - (b) specifying the circumstances in which payments from the financial assistance scheme can be suspended.”; and
- (c) omit subsection (3).

5. In section 190 (information to be provided to the Board etc.)—

- (a) in subsection (1), for paragraphs (a) and (b), substitute—
 - “(a) to the scheme manager, or
 - (b) to a person—
 - (i) with whom the scheme manager has made arrangements for any of his functions to be exercised on his behalf, and
 - (ii) who is authorised by the scheme manager for the purposes of the regulations,”
- (b) in subsection (2), for “of entitlement to compensation under Chapter 3 of this Part” substitute “that a person is entitled to a payment from the financial assistance scheme”.

6. In section 191 (notices requiring provision of information to the Board)—

- (a) in subsection (1)(b), for “the Board’s” substitute “the scheme manager’s”;
- (b) in subsections (2) and (3), for “the Board”, in each place, substitute “the scheme manager”; and
- (c) in subsection (3)—
 - (i) omit “and” at the end of paragraph (d);

(ii) after paragraph (d), insert—

“(da) in the case of a wound up scheme, any insurance company (within the meaning in the Financial Assistance Scheme Regulations 2005) which is paying annuities to former members of the scheme, and”; and

(iii) in paragraph (e), for “the Board’s” substitute “the scheme manager’s”.

7. In section 192 (entry of premises to enable performance of functions by the Board)—

(a) for “the Board”, in each place, substitute “the scheme manager”;

(b) in subsection (1)(f), for “the Board’s” substitute “the scheme manager’s”; and

(c) in subsection (6), for “The Board” substitute “The scheme manager”.

8. In section 194 (warrants to enforce entry of premises and obtaining of documents by, or on behalf, of the Board)—

(a) for “the Board”, in each place, substitute “the scheme manager”;

(b) omit in both places “, or any corresponding provision in force in Northern Ireland”;

(c) in subsection (1), after “information on oath” insert “or, in Northern Ireland, on complaint on oath”;

(d) in subsection (1)(b), for “the Board’s” substitute “the scheme manager’s”;

(e) in subsection (2)(a), after “the information” insert “or complaint”; and

(f) in subsection (6), for “The Board” substitute “The scheme manager”.

9. In section 195(1)(b) (offence of providing false or misleading information to the Board), for the words from “by the Board” to the end of that paragraph substitute “by the scheme manager for the purposes of exercising his functions.”.

10. In section 196 (use of information by the Board)—

(a) for “the Board”, in each place, substitute “the scheme manager”; and

(b) for “its functions”, in each place, substitute “his functions”.

11. In section 197 (restricted information)—

(a) in subsections (1) and (3), after “the Board”, in each place, insert “or the scheme manager”;

(b) in subsection (4), after “its functions” insert “or by the scheme manager in the exercise of his functions”;

(c) in subsection (6)(a), after “that section” insert “(disregarding any modifications of that section made by the Financial Assistance Scheme Regulations 2005)”; and

(d) after subsection (6), insert—

“(6A) Information which—

(a) is obtained under section 191 by a person authorised under subsection (2)(b) of that section, but

(b) if obtained by the scheme manager, would be restricted information,

is treated for the purposes of subsections (1) and (3) and sections 198 to 201 and 203 as restricted information which the person has received from the scheme manager.”.

12. In section 198 (disclosure by the Board of restricted information for facilitating exercise of functions by the Board)—

(a) at the end of subsection (1), add “or the scheme manager to exercise his functions”;

(b) in subsection (2)—

(i) after “its functions”, insert “or the scheme manager properly to exercise any of his functions”; and

- (ii) after “the Board”, in the second place, insert “or, as the case may be, the scheme manager”; and
- (c) in subsection (3)—
 - (i) after “the Board”, in both places, insert “or, as the case may be, the scheme manager”; and
 - (ii) for “he” substitute “that person”.

13. In section 200(1) (disclosure by the Board of restricted information for facilitating the exercise of functions by other supervisory authorities)—

- (a) after “the Board”, in the first place, insert “or the scheme manager”; and
- (b) after “the Board”, in the second place, insert “or, as the case may be, the scheme manager”.

14. In section 201 (other permitted disclosures of restricted information by the Board)—

- (a) in subsection (1)—
 - (i) after “the Board”, in the first place, insert “or the scheme manager”;
 - (ii) after “the Board”, in the second place, insert “or, as the case may be, the scheme manager”;
- (b) in subsection (2), after “the Board”, in both places, insert “or the scheme manager”;
- (c) in subsection (2)(d), for “it has a right” substitute “the Board or the scheme manager has a right”;
- (d) in subsection (8), for “with the consent of the Board” substitute—
 - “—
 - (a) in a case where the disclosure under that subsection was made by the Board, with the consent of the Board, and
 - (b) in a case where the disclosure under that subsection was made by the scheme manager, with his consent”;
- (e) for subsection (9)(a), substitute—
 - “(a) in a case where the disclosure under that subsection was made by the Board, with the consent of the Board,
 - (aa) in a case where the disclosure under that subsection was made by the scheme manager, with his consent, and”;
- (f) in subsection (10)—
 - (i) after “its” insert “or his”;
 - (ii) after “the Board” insert “or, as the case may be, the scheme manager”; and
 - (iii) after “it” insert “or him”.

15. In section 203 (provision of information to members of schemes etc. by the Board)—

- (a) in subsection (1), after “the Board” insert “or the scheme manager”;
- (b) in subsections (3)(c), (5)(b) and (c) and (6)(c), after “the Board”, in each place, insert “or, as the case may be, the scheme manager”;
- (c) after “the Board’s”, in each place, insert “or the scheme manager’s”;
- (d) omit “or” at the end of subsection (1)(b)(ii) and insert after that sub-paragraph—
 - “(iia) relating to any determination made in relation to the financial assistance scheme, or”;
- (e) in subsection (2), after “Chapter 3” insert “or, as the case may be, to a payment from the financial assistance scheme”;
- (f) in subsection (4)—
 - (i) in paragraph (a), after “who is” insert “or was”;

- (ii) in paragraph (b), after “member” insert “or former member”; and
- (g) after subsection (6)(a)(iv), insert—
 - “(v) in the case of a wound up scheme, any insurance company (within the meaning in the Financial Assistance Scheme Regulations 2005) which is paying annuities to former members of the scheme,”.

16. In section 204 (interpretation of sections 190 to 203)—

- (a) after subsection (2), insert—
 - “(2A) The “scheme manager” is the person who manages the financial assistance scheme.
 - (2B) The “financial assistance scheme” is the scheme established by regulations under section 286.”; and
- (b) after subsection (3), add—
 - “(4) Where the scheme manager has functions in relation to a scheme which is wound up, any reference to a trustee, manager, professional adviser or employer in relation to the scheme is to be read as reference to a person who held that position in relation to the scheme before it wound up.”.

DETERMINATION OF ANNUAL AND INITIAL PAYMENTS

Introductory

1.—(1) This Schedule applies for the purposes of determining the amount of an annual payment or of an initial payment payable to or in respect of qualifying members of qualifying pension schemes.

(2) In this Schedule—

“the certification date” means the date in respect of which the trustees or managers of the qualifying pension scheme have certified that the information relating to the qualifying member’s actual pension is correct;

“guaranteed minimum pension” has the meaning given in section 8(2) of the 1993 Act;

“scheme rules” means the rules of the qualifying pension scheme.

(3) Paragraphs 2 to 5 are subject to paragraphs 6 to 9.

Actual pension

2.—(1) In this Schedule, “actual pension” means, subject to sub-paragraph (3), the annual rate of annuity which has, or could have been, purchased for the beneficiary as at the certification date with the assets available to discharge the liability of the scheme to him after that liability has, or had been, determined.

(2) The liability of the scheme to the beneficiary shall be determined for the purposes of sub-paragraph (1)—

(a) in accordance with section 73 of the 1995 Act; or

(b) where that section does not apply, in accordance with the scheme rules.

(3) The annual rate of annuity which can be purchased for the beneficiary for the purposes of sub-paragraph (1) with the assets referred to in that sub-paragraph, shall be determined—

(a) where the beneficiary is, or was, a member of the qualifying pension scheme, having regard to the amount which would, or has already, come into payment to him from the scheme when the qualifying member attains, or attained, his normal retirement age;

(b) where the beneficiary is a survivor of a member of that scheme, having regard to the annual rate of annuity which will come into payment to him immediately on the purchase of the annuity from the assets of the scheme;

(c) on the basis that benefits payable to survivors and increases in the annual rate of annuity in payment are no more generous than provided in relation to pensions under the scheme rules; and

(d) on the basis that there has been no commutation of benefits deriving from the scheme.

(4) Where the scheme manager is satisfied that it is not possible for him to determine the annual rate of annuity for the purposes of sub-paragraph (1) having regard to the information available to him, he shall determine the annual rate of annuity on the basis of the sum which would discharge the liability of the scheme to the beneficiary and to such other matters as he considers relevant.

Qualifying members receiving pensions from the qualifying pension scheme

3.—(1) This paragraph applies where immediately before a qualifying pension scheme began to wind up, a qualifying member was entitled to present payment of a pension under the scheme rules.

(2) The annual payment payable to a qualifying member to whom this paragraph applies shall be—

(expected pension x 0.8) — actual pension.

(3) In this paragraph, “expected pension” means the annual rate of the pension which would have been in payment to the qualifying member in respect of rights accrued in a qualifying pension scheme as at the certification date if the scheme had not started to wind up.

Active and deferred members

4.—(1) This paragraph applies in respect of a qualifying member of a qualifying pension scheme who immediately before a qualifying pension scheme began to wind up, was an active member or a deferred member of that scheme.

(2) The annual payment payable to a qualifying member to whom this paragraph applies shall be—

(expected pension x 0.8) — actual pension.

(3) In sub-paragraph (2), “expected pension” means, subject to sub-paragraph (4), the aggregate of—

- (a) the annual rate of the pension to which the qualifying member would have been entitled in accordance with the scheme rules had he attained his normal retirement age when the pensionable service relating to the pension ended;
- (b) the revaluation amount for the first revaluation period (see sub-paragraphs (5) and (6)); and
- (c) the revaluation amount for the second revaluation period (see sub-paragraphs (7) to (11)).

(4) In any case where the scheme manager is satisfied, having regard to the information available to him, that it is not possible for him to identify any one of the elements in sub-paragraph (3), he may determine how the annual payment is to be calculated having regard to such matters as he considers relevant.

(5) The first revaluation period is the period beginning on the day on which the qualifying member’s pensionable service ended and ending on the day before the day on which the scheme began to wind up.

(6) The revaluation amount for the first revaluation period is the amount by which the annual rate of the pension under sub-paragraph (3)(a) would fall to be revalued—

- (a) in relation to any guaranteed minimum pension, in accordance with section 16 of the 1993 Act, having regard to the relevant scheme rules; and
- (b) in relation to the remainder of the pension, in accordance with Chapter 2 of Part 4 of the 1993 Act.

(7) The second revaluation period is the period beginning on the day on which the scheme began to wind up and ending on the certification date.

(8) The revaluation amount for the second revaluation period is, subject to sub-paragraph (12)—

- (a) where that period is less than one month, nil; or
- (b) in any other case, the revaluation percentage of the aggregate of the annual rate of the pension under sub-paragraph (3)(a) and the revaluation amount for the first revaluation period under sub-paragraph (6).

(9) In sub-paragraph (8), “the revaluation percentage” means the lesser of—

- (a) the percentage increase in the general level of prices in Great Britain during the second revaluation period determined in accordance with sub-paragraph (7); and
- (b) the maximum revaluation rate.

(10) The method for determining the percentage increase in the general level of prices in Great Britain during the second revaluation period is—

$$100 \times \frac{A}{B} - 100$$

where—

A is the level of the retail prices index for the month which falls two months before the month in which the certification date falls;

B is the level of the retail prices index for the month two months before the month during which the relevant qualifying pension scheme began to wind up.

(11) In sub-paragraph (9)(b), “the maximum revaluation rate” in relation to the second revaluation period is—

- (a) if that period is a period of 12 months, 5%; or
- (b) in any other case, the percentage that would be the percentage mentioned in sub-paragraph (9)(a) had the general level of prices in Great Britain increased at the rate of 5% compound per annum during that period.

(12) In determining the revaluation amount for the second revaluation period in accordance with sub-paragraphs (8) to (11), no revaluation shall be made in respect of any benefits which are not subject to revaluation under the scheme rules.

Survivors of qualifying members

5.—(1) This paragraph applies where, immediately before a qualifying pension scheme began to wind up, a qualifying member—

- (a) was entitled to present payment of a pension under the scheme rules and that pension was attributable—
 - (i) to the member’s pensionable service; or
 - (ii) (directly or indirectly) to a pension credit to which the member became entitled under section 29(1)(b) of the Welfare Reform and Pensions Act 1999(a); or
- (b) was an active member or a deferred member of that scheme,

and that member dies on or after the day on which the scheme began to wind up.

(2) The annual payment payable to the survivor of a qualifying member to whom this paragraph applies shall be determined in accordance with sub-paragraph (3) or (6).

(3) Where the qualifying member dies on or before the certification date, the annual payment payable to his survivor shall be—

$$\frac{\text{expected pension} \times 0.8}{2} - \text{actual pension}$$

2.

(4) In sub-paragraph (3), “expected pension” shall, subject to sub-paragraph (5), be determined—

- (a) where the qualifying member was entitled to present payment of a pension under the scheme rules immediately before his death, in accordance with paragraph 3(3); or
- (b) where the qualifying member was an active member or a deferred member of a qualifying pension scheme immediately before his death, in accordance with paragraph 4(3).

(5) In any case where the scheme manager is satisfied that it is not possible for him to identify either or both elements of the formula in sub-paragraph (3), he may determine how the annual payment is to be calculated having regard to the scheme rules and such other matters as he considers relevant.

(6) Where the qualifying member dies after the certification date, the annual payment payable to his survivor shall be—

(a) 1999 c.30.

- (a) one-half of the annual payment which was payable to that member in accordance with paragraph 3 or 4 immediately before his death; or
- (b) where the annual payment was not payable to that member immediately before his death, one-half of the annual payment which would have been payable to him in accordance with paragraph 3 or 4 had he attained the age of 65 immediately before his death.

Exclusion of certain benefits

6.—(1) No account shall be taken of the benefits specified in sub-paragraph (2) when determining, for the purposes of this Schedule—

- (a) the assets available to be used to discharge a liability of a qualifying pension scheme;
- (b) the liabilities of such a scheme; and
- (c) the annual rate of pension from such a scheme.

(2) The specified benefits are—

- (a) money purchase benefits;
- (b) benefits derived from the payment of voluntary contributions where, on the winding up of the scheme, the assets of the scheme have first been applied to satisfy liabilities in respect of those benefits; and
- (c) any guaranteed minimum pension where an accrued rights premium or a pensioner’s right’s premium was paid in respect of the qualifying member.

(3) In sub-paragraph (2)(c), “accrued rights premium” and “pensioner’s right’s premium” respectively have the meaning given in section 55(6)(a) and (b) of the 1993 Act as in force before 6th April 1997(a).

Cap on expected pension and actual pension

7.—(1) Where the amount of a qualifying member’s expected pension determined in accordance with the previous provisions of this Schedule multiplied by 0.8, exceeds £12,000, the amount of the annual payment payable to, or in respect of, that member under paragraphs 3 to 5 shall be determined on the basis that the product of that calculation was £12,000.

(2) Where the amount of a qualifying member’s actual pension determined in accordance with paragraph 2 exceeds—

- (a) the amount of a qualifying member’s expected pension determined in accordance with the previous provisions of this Schedule multiplied by 0.8; or
- (b) £12,000,

no annual payment shall be payable to, or in respect of, that member.

De minimis rule

8. Where the amount of an annual payment determined in accordance with the previous provisions of this Schedule would, but for this paragraph—

- (a) in the case of paragraphs 3 and 4, be less than £520;
- (b) in the case of paragraph 5, be less than £260,

the amount of that payment shall be nil.

Revaluation

9.—(1) The amount of the annual payment shall be determined in accordance with the preceding paragraphs of this Schedule on the basis of the circumstances applying as at the certification date.

(a) Section 55 is repealed in part and amended by the 1995 Act, sections 141 and 151 and Schedule 5, paragraph 50.

(2) Where there is a period of one month or more between the certification date and the date on which the annual payment is first payable to the beneficiary in accordance with regulation 17, the annual payment shall be increased by the appropriate revaluation percentage of that amount.

(3) In sub-paragraph (2), “the appropriate revaluation percentage” means the lesser of—

- (a) the percentage increase in the general level of prices in Great Britain during the second revaluation period determined in accordance with paragraph 4(7); and
- (b) the maximum revaluation rate.

(4) The method for determining the percentage increase in the general level of prices in Great Britain during that period is—

$$100 \times \frac{A}{B} - 100$$

where—

A is the level of the retail prices index for the month which falls two months before in which the annual payment is first payable to the beneficiary under regulation 17;

B is the level of the retail prices index for the month two months before the month in which the certification date falls.

(5) In sub-paragraph (3)(b), “the maximum revaluation rate” in relation to that period is—

- (a) if that period is a period of 12 months, 5%; and
- (b) in any other case, the percentage that would be the percentage mentioned in sub-paragraph (3)(a) had the general level of prices in Great Britain increased at the rate of 5% compound per annum during that period.

Initial payments

10. The preceding provisions of this Schedule shall apply for the purposes of determining the amount of an initial payment with the following modifications—

- (a) for paragraph 2, substitute—

“Interim pension

2. In this Schedule, “interim pension” means the annual rate of pension in payment or proposed to be paid to the qualifying member from the assets of the qualifying pension scheme of which he is a member, on or after the time when the scheme began to wind up but before the day on which the scheme’s liabilities to the member were discharged.”;

- (b) for “actual pension”, in each place, substitute “interim pension”;
- (c) for “0.8”, in each place, substitute “0.6”.

Rounding

11. Where the amount of an annual payment or an initial payment determined in accordance with this Schedule results in a fraction of a penny, that fraction shall be treated as a penny.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations establish a financial assistance scheme, allowing for payments to be made to, or in respect of, certain members or former members of certain occupational pension schemes where the liabilities of the scheme to those members are unlikely to be satisfied in full.

Part 1 makes provision for citation, commencement and extent, and also for interpretation of words and phrases used in the Regulations. In particular, it prescribes when a scheme is deemed to have started to wind up for the purposes of these Regulations (regulation 3), applies parts of Parts 1 and 2 of the Pensions Act 2004 (c.35) for the purposes of these Regulations with the modifications prescribed in Schedule 1 and makes special provision for Northern Ireland (regulation 4).

Part 2 establishes the financial assistance scheme. It provides that the scheme is to be managed by the Secretary of State (regulation 5), that there is to be a fund out of which payments are to be made which shall consist both of monies allocated by Parliament and other amounts which may be provided by third parties on a voluntary basis (regulation 6), that the Secretary of State must report to Parliament on the operation of the financial assistance scheme in respect of each financial year (regulation 7) and that the scheme manager may delegate performance of his functions arising under, or by virtue of, these Regulations to another person on his behalf (regulation 8).

Part 3 prescribes which occupational pension schemes are to be regarded as qualifying pension schemes for the purposes of these Regulations. It both lists the basic criteria (regulation 9) and describes certain types of scheme which are not to be regarded as qualifying pension schemes (regulation 10). It also prescribes the conditions which must apply to the employer for a scheme to be so regarded (regulations 11 and 12), what are to be insolvency events for the purposes of these Regulations (regulation 13) and what details about the scheme must be provided to the scheme manager before the scheme can be regarded as a qualifying pension scheme (regulation 14).

Part 4 prescribes which persons are to be regarded as qualifying members for the purposes of these Regulations (regulation 15) and the basis for ascertaining when a scheme is regarded as having insufficient assets for discharging its liability to the member (regulation 16).

Part 5 prescribes that annual payments are payable to, or in respect of, qualifying members of qualifying pension schemes, that the amounts of those payments are to be determined in accordance with Schedule 2 and that those payments are payable for the life of the beneficiary (regulation 17). It also prescribes that initial payments can be made to qualifying members in certain circumstances (regulation 18).

Part 6 deals with the administration of payments. It prescribes how and when annual payments and initial payments are to be paid (regulation 19), and the arrangements for making payments by direct credit transfer (regulation 20).

The modifications in Schedule 1—

- allow an inspector on behalf of the Pensions Regulator to collect information on behalf of the scheme manager (paragraph 1);

- allow the Regulator to disclose restricted information to facilitate the scheme manager's functions (paragraphs 2 and 3);

- allow for regulations to be prescribed which allow amounts overpaid from the financial assistance scheme to be recovered and payments from the financial assistance scheme to be suspended (paragraph 4);

- allow for regulations to be prescribed to require certain information to be supplied to the scheme manager (paragraph 5);

- allow notices to be issued requiring the provision of such information and for enforcement action to be taken if such information is not provided (paragraphs 6 to 9);

allow the scheme manager to use information (paragraph 10) and to disclose restricted information in certain circumstances and for certain purposes (paragraphs 11 to 14);
allow for regulations to require the scheme manager and other persons to disclose certain information in certain circumstances (paragraph 15);
make appropriate interpretation provisions (paragraph 16).

Schedule 2 prescribes the method for calculating the amount of an annual payment under these Regulations for each category of qualifying member or their survivor (paragraphs 1 to 5). It also prescribes certain benefits which are not to be taken into account in determining the annual payment (paragraph 6), for a cap to be imposed on the amount of expected or actual pension to be taken into account (paragraph 7) and for no payment to be made if the amount of the annual payment does not exceed a certain amount (paragraph 8). It also prescribes the method for calculating initial payments (paragraph 10).

A regulatory impact assessment has not been published for this instrument as it has only a negligible impact on business, charities and voluntary bodies.

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