



Statutory Document No. 136/07

THE PENSION SCHEMES ACT 1995

THE PENSION SCHEMES LEGISLATION (APPLICATION) (No. 4) ORDER 2007

Approved by Tynwald

20th March 2007

Coming into operation in accordance with Article 1

In exercise of the powers conferred on the Department of Health and Social Security by section 1 of the Pension Schemes Act 1995(a), and of all other enabling powers, the following Order is hereby made:-

Citation and commencement

1. (1) This Order may be cited as the Pension Schemes Legislation (Application) (No. 4) Order 2007 and shall, subject to section 1(4) of the Pension Schemes Act 1995, come into force as provided in paragraph (2).

(2) This Article and Articles 2 and 3 shall come into force forthwith and each provision of the applied legislation, as modified, shall be deemed to have come into force on the same day as it did so in Great Britain.

Interpretation

2. (1) In this Order "the applied legislation" means the Occupational Pension Schemes (Payments to Employer) Regulations 2006(b).

(2) Unless the context otherwise requires -

- (a) any reference in any of the applied legislation to any provision in an instrument of a legislative character which is not itself a provision of any of the applied legislation shall be construed as if the provision so referred to had been in force in the Island from the date on which that instrument of a legislative character had effect in Great Britain;
- (b) reference in any legislation applied by this Order to any provision of any such legislation or of any other legislation applied to the Island by an order under section 1 of the Pension Schemes Act 1995 or section 1 of the Social Security Act 2000(c) shall be construed as a reference to that legislation as it has effect in the Island.

(a) 1995 c.11; (b) S.I. 2006/802; (c) 2000 c.5.

Application to the Island of the applied legislation

3. The applied legislation, as modified and shown in the Schedule to this Order, shall apply to the Island as part of the law of the Island.

SCHEDULE

This Schedule sets out the text of regulations 1, 2, 12 and 15 to 18 of the Occupational Pension Schemes (Payments to Employer) Regulations 2006 (S.I. 2006/802) with such exceptions, adaptations and modifications made where necessary.

Note: Modifications subject to which the legislation is applied to the Island are in *bold italic* type

STATUTORY INSTRUMENTS

2006 No. 802

PENSIONS

The Occupational Pension Schemes (Payments to Employer) Regulations 2006

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PART 1

Citation, commencement and interpretation

Citation and commencement

1. These Regulations may be cited as the Occupational Pension Schemes (Payments to Employer) Regulations 2006 and shall *be deemed to have* come into force on 6th April 2006.

Interpretation

2. (1) In these Regulations—

"the 1995 Act" means the Pensions Act 1995;

"the 2004 Act" means the Pensions Act 2004;

"excluded person" means a deferred member or pension credit member whose current address is not known to the trustees or managers of the scheme, and in respect of whom correspondence sent to the last known address of such a member, by the trustees or managers, has been returned;

"statutory scheme" has the meaning given by section 14(1) of the Income Tax (Retirement Benefit Schemes) Act 1978 (of Tynwald).

(2) In the application of—

(a) *omitted*;

(b) these Regulations,

to a scheme which has no active members, references to the employer have effect as if they were references to the person who was the employer immediately before the occurrence of the event after which the scheme ceased to have such members.

PART 2

Schemes not in wind up

3. to 11. *Omitted.*

PART 3

Exemption

Exemption

12. (1) *Section 76* (excess assets on winding up) of the 1995 Act¹ shall not apply to a *statutory* scheme.

(2) *Omitted.*

Transitional

13. *Omitted.*

Modifications in relation to earmarked schemes

14. *Omitted.*

PART 4

Schemes in wind up

Notice of proposal to distribute excess assets to the employer

15. (1) The prescribed requirements for the notice specified in section 76(3)(d) (excess assets on winding up) are set out in paragraphs (2) to (5).

(2) Where the trustees or the employer propose to exercise the power in section 76(1)(c) of the 1995 Act (*power to distribute assets to employer on winding-up*), the trustees or, as the case may be, the employer, must take all reasonable steps to ensure that each member, except any excluded person, is sent a written notice divided into two parts, of the proposal in accordance with the following provisions of this regulation.

(3) The first part must—

(a) inform the member as to—

(i) the trustees' estimate of the value of the assets remaining after the liabilities of the scheme have been fully discharged and the persons or class of person to whom, and in what proportions, it is proposed that they should be distributed; and

(ii) whether the requirements of section 76(3) of the 1995 Act are satisfied;

(b) invite the member, if he wishes, to make written representations in relation to the proposal to the trustees or, as the case may be, to the employer, before a specified date (which is not earlier than two months after the date on which the first part is given); and

(c) advise the member—

(i) that the second part of the notice will be sent to him if the trustees or, as the case may be, the employer intend to proceed with the proposal to exercise that power; and

¹ Section 76 was inserted into the Pensions Act 1995 by article 14 of the Pensions Act 1995 (Application) (Amendment) Order 2006 (see S.D. 17/06).

- (ii) that no excess assets may be distributed to the employer in accordance with the proposal until at least three months after the date on which the second part is sent to him.

(4) The second part of the notice must be given after the date specified in accordance with paragraph (3)(b) and at least three months before the power is exercised and must—

- (a) contain the information referred to in paragraph (3)(a), including any modifications to the proposal; and
- (b) advise the member that he may make written representations to the *Department* before a specified date (which is not earlier than three months after the date on which the second part of the notice is sent to him) if he considers that any of the requirements of section 76(3) of the 1995 Act are not satisfied.

(5) The parts of the notice under paragraphs (3) or (4) shall be treated as having been given to a member where it has been sent by post to either—

- (a) the address at which he was last known to be living; or
- (b) in the case of a person who was an active member, immediately before the commencement of the winding up of the scheme, an address at which he is currently known to be employed.

Circumstances in which the *Department* must be satisfied that *the* requirements of section 76 of the 1995 Act are met

16. (1) For the purposes of section 76(2) of the 1995 Act the prescribed circumstances are that—

- (a) subject to paragraph (2), in relation to any proposal to which that section applies, the *Department* receives—
 - (i) written representations from a member to the effect that any requirements of section 76(3) of the 1995 Act are not satisfied; or
 - (ii) information from any source sufficient to raise a doubt as to whether all the requirements are satisfied; and
- (b) the *Department* notifies the trustees or, as the case may be, the employer in writing that the power should not be exercised until the *Department* has confirmed in writing that it is satisfied that those requirements are satisfied.

(2) Where notice has been given to a member in accordance with regulation 15(3), paragraph (1)(a)(i) shall only apply in the case of representations received by the *Department* from the member before the date specified in accordance with regulation 15(4)(b) (expiry date of the second part of notice).

Additional requirement for *the* purposes of section 76 of the 1995 Act

17. Where—

- (a) the date specified in accordance with regulation 15(4)(b) (expiry date of the second part of the notice) has passed; and
- (b) the trustees or, as the case may be, the employer have not received notification from the *Department* in accordance with regulation 16(1)(b),

the trustees or, as the case may be, the employer shall obtain written confirmation from the *Department* that it has not received any representations or information referred to in regulation 16(1)(a) and that section 76(4) of the 1995 Act accordingly, does not apply.

PART 5

Multi-employer schemes

Schemes with more than one employer

18. (1) Where—

- (a) a scheme in relation to which there is more than one employer is divided into two or more sections; and
- (b) the provisions of the scheme are such that they meet conditions A and B,

these Regulations shall apply as if each section of the scheme were a separate scheme.

(2) Condition A is that contributions payable to the scheme by an employer, or by a member in employment under that employer, are allocated to that employer's section (or, if more than one section applies to the employer, to the section which is appropriate in respect of the employment in question).

(3) Condition B is that a specified part or proportion of the assets of the scheme is attributable to each section and cannot be used for the purposes of any other section.

(4) In their application to a scheme—

- (a) which has been such a scheme as is mentioned in paragraph (1);
- (b) which is divided into two or more sections, at least one of which applies only to members who are not in pensionable service under the section;
- (c) the provisions of which have not been amended so as to prevent conditions A and B being met in relation to two or more sections; and
- (d) in relation to one or more sections of which those conditions have ceased to be met at any time by reason only of there being no members in pensionable service under the section and no contributions which are to be allocated to it,

section 76 of the 1995 Act and these Regulations apply as if the section in relation to which those conditions have ceased to be satisfied were a separate scheme.

(5) For the purposes of paragraphs (1) to (4), any provisions of the scheme by virtue of which contributions or transfers of assets may be made to make provision for death benefits are disregarded.

(6) But if paragraph (1) or (4) applies and, by virtue of any provisions of the scheme, contributions or transfers of assets to make provision for death benefits are made to a section ("the death benefits section") the assets of which may only be applied for the provision of death benefits, the death benefits section is also to be treated as if it were a separate scheme for the purpose of *section* 76 of the 1995 Act and these Regulations.

(7) For the purposes of this regulation, any provisions of a scheme by virtue of which assets attributable to one section may on the winding up of the scheme or a section be used for the purposes of another section are disregarded.

(8) *Omitted.*

PART 6

Revocations

Revocations

19. *Omitted.*

SCHEDULE 1

Omitted.

SCHEDULE 2

Omitted.

Made 6th February 2007



Minister for Health and Social Security

EXPLANATORY NOTE

(This note is not part of the Order)

1. Section 1 of the Pension Schemes Act 1995 enables the Department by Order to apply to the Island, as part of the law of the Island and incorporating such exceptions, adaptations and modifications as may be specified by the Order, any legislation to which that Act applies.
2. *Inter alia*, the Act applies to the Pension Schemes Act 1993, the Pensions Act 1995 and the Pensions Act 2004 (all Acts of the United Kingdom Parliament) and to any statutory instrument made or having effect as if made under any of those Acts.

3. This Order applies to the Isle of Man the Occupational Pension Schemes (Payments to Employer) Regulations 2006, the provisions of which are summarised in the following paragraphs. The applied legislation is deemed to have come into force on 6th April 2006, at the same time it did so in Great Britain.
4. *Introduction - Section 76 of the Pensions Act 1995 (excess assets on winding-up to be distributed to the employer)*
 - 4.1 Section 76 applies to a tax-exempt approved pension scheme set up under trust which is being wound up where the sponsoring employer or trustees have the power to distribute assets to the employer on the scheme's winding up. Under subsection (3) of section 76 that power cannot be exercised unless the following requirements are met –
 - the scheme's liabilities have been met in full; and
 - if the scheme's assets can be distributed to anyone other than the employer, either they have been distributed to those persons or a decision has been taken not to exercise that power; and
 - the scheme members have been given notification in accordance with requirements prescribed in regulations of the proposal to distribute the excess assets to the employer (see section 76(3)(d)).
 - 4.2 Regulations under subsection (2) of section 76 may require that further conditions must be satisfied before a scheme's assets may be distributed to an employer.
 - 4.3 Under subsection (7) of section 76 any trustee who purports to exercise the power to distribute the scheme's assets to the employer on winding up other than in accordance with the requirements of section 76 may be subject to a penalty under section 10 of the Pensions Act 1995 unless they have taken all reasonable steps to ensure compliance with section 76.
 - 4.4 Under subsection (8) of section 76 regulations may provide that (in prescribed circumstances) section 76's requirements do not apply to certain types of schemes or do so in a modified way.
5. **The Occupational Pension Schemes (Payments to Employer) Regulations 2006) (S.I. 2006/802) (regulations 1, 2, 12 and 15 to 18 only)**
 - 5.1 Regulation 1 provides for the citation and commencement of the Regulations and regulation 2 provides for the interpretation of certain terms appearing in them.
 - 5.2 Regulation 12 provides that section 76's requirements do not apply to statutory occupational pension schemes.
 - 5.3.1 Regulation 15 specifies the form in which the trustees or the employer (as the case may be) of the scheme in question must notify the scheme members as to how they plan to distribute the remaining surplus to the employer on the scheme's winding up.
 - 5.3.2 The first part of the notice must include an estimate of what the value of the assets will be after the scheme's liabilities have been met in full and how it is intended that they will be distributed. It must also give the member at least two months in which to object to the proposal to distribute the surplus.

- 5.3.3 The second part of the notice must be given after the end of the period within which the members were asked to make representations in relation to the proposal and at least three months before any distribution occurs. It must advise the members of any modifications made to the proposal to distribute the surplus and tell them that they have at least 3 months in which to make written representations to the DHSS if they consider that any of the requirements of section 76(3) of the 1995 Act are not satisfied.
- 5.4 Where such representations have been made or doubt has arisen in the matter from another source, then regulation 16 provides that no distribution may take place until the DHSS has notified the trustees or employer that it is satisfied that the requirements of section 76(3) have been met.
- 5.5 Where regulation 16 does not apply then regulation 17 provides that the surplus must still not be distributed until the DHSS has confirmed to the trustees or employer that no such representations or allegations have been made to it.
- 5.6 Regulation 18 provides for the way in which the Regulations are to apply in relation to a scheme with more than one employer which is divided into two or more sections and the scheme meets certain conditions.