

## **GN29: Occupational Pension Schemes - Actuaries Advising the Trustees or a Participating Employer**

### ***Classification***

Practice Standard

### ***Legislation or Authority***

Pensions Act 1995 (1995, c.26). Sections 47, 48, 56 to 61 and 101.

The Occupational Pension Schemes (Scheme Administration) Regulations 1996.

SI 1996/1715.

Northern Ireland has its own body of law relating to pensions and, in relation to Northern Ireland, references to the Great Britain legislation contained in this Guidance Note should be read as including references to the corresponding Northern Ireland legislation. Appendix C shows Northern Ireland legislation corresponding to the Great Britain legislation mentioned in this Guidance Note.

The functions of the Contributions Agency and of the Department of Health and Social Services for Northern Ireland have been transferred with effect from 1 April 1999 to the Inland Revenue under the Social Security Contributions (Transfer of Functions, etc.) Act 1999 (1999, c.2).

### ***Application***

In relation to any occupational pension scheme:

- (i) the Scheme Actuary appointed under the Pensions Act 1995
- (ii) any other actuary advising the Trustees whether or not there is a Scheme Actuary
- (iii) any other actuary advising a participating employer whether or not there is a Scheme Actuary

Actuaries in each of the above categories should read the whole Guidance Note and not just those parts specific to each category.

### ***Author***

Pensions Board

### ***Status***

Approved under Due Process

<b><i>Version</i></b>	<b><i>Effective from</i></b>
1.0	01.10.96
2.0	06.04.97
3.0	01.03.99
3.1	01.07.99

## **1. Introduction**

- 1.1 In this Guidance Note the term 'Trustees' should be read as 'Managers' (as defined in Section 124 (1) of the Pensions Act 1995) for schemes which are not established under trust.
- 1.2 The Pensions Act 1995 and Regulations thereunder prescribe certain advice which must be given by the Scheme Actuary. They do not require all actuarial advice which is provided to the Trustees to be given by the Scheme Actuary (although Trustees must appoint all actuaries who provide them with actuarial advice on which they wish to rely). This Guidance Note is written principally on the basis that all actuarial advice to the Trustees is provided by the Scheme Actuary. Appendix A contains guidance both for actuaries who are advising the Trustees but who are not appointed as the Scheme Actuary and actuaries who are advising a participating employer in relation to a scheme but who are not advising the Trustees.
- 1.3 Where another actuary is appointed as a "professional adviser" to the Trustees as defined in Section 47 (4) of the Pensions Act 1995, in addition to the Scheme Actuary, the Scheme Actuary should require the Trustees to set out in writing to both actuaries, the division in responsibilities consistent with the Pensions Act 1995 and Regulations thereunder and to authorise both actuaries to communicate with each other on matters relevant to the scheme.

## **2. Appointment**

- 2.1 An actuary should not accept or retain an appointment as a Scheme Actuary unless satisfied that he or she has appropriate knowledge and practical experience of that category of scheme (or unless he or she will be acting with the guidance of a 'mentor' Scheme Actuary with appropriate knowledge and practical experience - see paragraph 4.7) and the Scheme Actuary Certificate is current.
- 2.2 When a Scheme Actuary is appointed to replace a Scheme Actuary who has resigned or been removed by the Trustees, an actuary may not normally act as Scheme Actuary until the Trustees have provided a statement from the previous Scheme Actuary as referred to in Section 3 below. In exceptional circumstances (for example where the previous Scheme Actuary is incapacitated) it may be possible for an actuary to act as Scheme Actuary without the Trustees providing such a statement, but the Secretary of the Professional Affairs Board must be consulted first.
- 2.3 The Scheme Actuary should be appointed in writing by the Trustees. The letter of appointment should cover at least those matters which the Regulations require to be included. If the Scheme Actuary's responsibilities are to extend beyond the Scheme Actuary's statutory duties the additional responsibilities must be stated. The letter of appointment from the Trustees should also allow the Scheme Actuary to respond to questions from the

scheme's auditor and liaise with the Scheme Auditor with regard to circumstances that may be reportable to Opra (see Sections 6 and 7). The Scheme Actuary should acknowledge his or her appointment as Scheme Actuary in writing to the Trustees in the manner, and within the timescale, required by the Regulations. The Scheme Actuary should ensure that the Trustees are aware that appointment as Scheme Actuary is a personal appointment and not the appointment of the firm for which the actuary works. However, the Scheme Actuary must advise the Trustees if he or she moves to another firm.

- 2.4 If the Scheme Actuary accepts an appointment to advise a participating employer on matters relating to the scheme, the Scheme Actuary should inform the Trustees. If the Scheme Actuary accepts an appointment from a participating employer to provide such advice as may be required from time to time, the Scheme Actuary only needs to inform the Trustees that there is an ongoing appointment and does not need to inform the Trustees whenever advice is given to the employer. If the Scheme Actuary is asked to advise a participating employer the Scheme Actuary must consider whether there may be a conflict of interest (see Section 5 below).
- 2.5 The Scheme Actuary should require the Trustees to notify him or her in writing of any changes in his or her responsibilities, in which event the Scheme Actuary should consider whether it is appropriate to act or to continue to do so.
- 2.6 The Scheme Actuary must obtain from the Trustees a signed Undertaking agreeing to advise the Scheme Actuary of such events as the Scheme Actuary specifies. The events specified should be those which the Scheme Actuary considers could be of material significance to the finances of the scheme. The list in Appendix B illustrates the types of event which might typically be appropriate to include on the Undertaking, but the list is not intended to be exhaustive.
- 2.7 In drawing up the Undertaking the Scheme Actuary must be satisfied that the Trustees understand what the Scheme Actuary would consider to be 'material', 'unexpected', 'major' etc. The Undertaking should also include appropriate timescales for notifying events. The terms of the Undertaking should be reviewed by the Scheme Actuary as frequently as he or she considers to be necessary or appropriate.
- 2.8 The Undertaking from the Trustees must also allow the Scheme Actuary access at all reasonable times and in all reasonable circumstances, on request, to:
  - 2.8.1 the Scheme's books, accounts and supporting documentation,
  - 2.8.2 copies of the minutes of all Trustees' meetings and meetings of sub-committees of the Trustees,

- 2.8.3 copies of all Trustees' resolutions,
- 2.8.4 copies of all documents constituting the scheme,
- 2.8.5 such additional information and explanation as may be required for the performance of the duties of the Scheme Actuary.
- 2.9 Whilst the Scheme Actuary does not have to require the Trustees to provide him or her with the information referred to in Paragraph 2.8 automatically, there may be occasions when the Scheme Actuary will need to insist that specific information of the types listed is provided (or access to such information is allowed) without delay. The Scheme Actuary must therefore be allowed access to the information in order to assist him or her in assessing whether circumstances which come to the Scheme Actuary's attention in the course of his or her work may be of material significance to Opra. Whenever the Scheme Actuary receives any of the information referred to in paragraph 2.8 (e.g. in the course of his or her work as adviser to the Trustees, or a participating employer, or as a result of specific enquiries initiated by him or her in relation to the scheme) , the Scheme Actuary must assess it to determine whether it suggests that there are circumstances which may need to be reported to Opra (see paragraph 7.6).
- 2.10 A newly appointed Scheme Actuary to a scheme which is or has been contracted-out on a salary-related or mixed benefits basis and still retains salary related contracted-out liabilities should consider whether any events which have occurred since the resignation or removal of the previous Scheme Actuary or which have been notified to him or her by the previous Scheme Actuary (see paragraph 3.3.2) might invalidate a Supplementary Certificate A, Certificate T, Statement of Comfort, Certificate C or Reference Scheme Test Certificate provided by the previous Scheme Actuary. If the new Scheme Actuary concludes that any such certificate has been invalidated he or she should notify the Contracted-out Employment Group (COEG) in writing as soon as is practicable. If the newly appointed Scheme Actuary is unable to assess within six months of his or her appointment, the impact of any such events, the new Scheme Actuary should notify the COEG.

### **3. Resignation or Removal**

- 3.1 The resignation of the Scheme Actuary should be in writing to the Trustees. The Scheme Actuary should consider whether the circumstances of the resignation give rise to any duty to notify Opra of the circumstances of the scheme. The Scheme Actuary should provide a resignation statement as specified in the Regulations, including a statement of any circumstances connected with his or her resignation which in his or her opinion might significantly affect the interests of members, prospective members or beneficiaries and should specify the date from which the resignation is effective.

- 3.2 Where a Scheme Actuary is removed by the Trustees the Scheme Actuary should consider whether the circumstances of his or her removal give rise to any duty to notify Opra of the circumstances of the scheme. The Scheme Actuary should, within the prescribed period, provide to the Trustees a removal statement as specified in the Regulations, including a statement of any circumstances connected with his or her removal which in his or her opinion might significantly affect the interests of members, prospective members or beneficiaries.
- 3.3 The outgoing Scheme Actuary should also provide the incoming Scheme Actuary with the accumulated list of non-reported breaches (see paragraph 7.8) including those noted by previous Scheme Actuaries, or confirmation that no such breaches have been recorded. The outgoing Scheme Actuary should also:
- 3.3.1 provide the incoming Scheme Actuary with copies of any reports made to Opra by the outgoing Scheme Actuary or previous Scheme Actuaries (and copies of reports to Opra made by other parties which were sent by that party to the then Scheme Actuary) and advise the incoming Scheme Actuary of any other reports to Opra of which the outgoing Scheme Actuary is aware. The outgoing Scheme Actuary should inform the incoming Scheme Actuary whether the Trustees and the Scheme Auditor have been informed of any such report to Opra.
- 3.3.2 in the case of a scheme which is or has been contracted-out on a salary-related or mixed benefits basis and still retains salary related contracted-out liabilities, provide the incoming Scheme Actuary with details of any events notified to the outgoing Scheme Actuary which he or she has been unable to consider prior to the date of his or her removal in relation to the continuing validity of a Supplementary Certificate A, Certificate T, Statement of Comfort and, if appropriate, Reference Scheme Test Certificate or Certificate C.
- 3.3.3 in the case of a scheme which is or has been contracted-out on a salary-related or mixed benefits basis and still retains salary related contracted-out liabilities, notify the COEG of his or her removal or resignation within one month of the event.
- 3.4 A Scheme Actuary who expects to be absent from the office for a prolonged period should consider resigning the appointment. A Scheme Actuary must put in place arrangements for the Trustees to be advised of the need to appoint a new Scheme Actuary if he or she becomes unable to continue to act for a prolonged period and is unable to advise the Trustees of the fact himself or herself (e.g. through sudden severe illness).

#### **4. Responsibilities**

- 4.1 The Scheme Actuary must act in accordance with his or her responsibilities under the Pensions Act 1995 and Regulations thereunder, the Trust Deed and Rules and any additional responsibilities detailed in the letter of appointment from the Trustees. It should be noted that the provisions of Part I of the Pensions Act 1995 and Regulations thereunder override anything in the Trust Deed and Rules which conflicts with them.
- 4.2 The Scheme Actuary should remember that the duty of care extends to persons and organisations who can reasonably expect to rely on the advice and information for the purposes for which it is given by the Scheme Actuary. The Scheme Actuary has no direct contractual responsibility in this capacity to members or to other third parties, but the Scheme Actuary should bear in mind that advice given may be made available to third parties (e.g. employers, beneficiaries and regulatory bodies).
- 4.3 The Scheme Actuary should advise the Trustees if a proposed action would in his or her opinion materially affect the financing or solvency of the scheme. Where a separate appointment is held with a participating employer, the Scheme Actuary should consider whether, in the light of his or her professional responsibility to respect confidentiality, it is also appropriate to inform the participating employer.
- 4.4 On receipt of information from the Trustees that the scheme will discontinue or wind-up, the Scheme Actuary should write to the Trustees to advise them of the need to take actuarial advice on the financial and investment implications for the scheme.
- 4.5 The Scheme Actuary must be satisfied that whoever carries out the administration of the scheme will collect and hold the data that the Scheme Actuary requires in order to carry out his or her responsibilities, and that the information will be provided to the Scheme Actuary in an appropriate form. It would not normally be expected that an audit of the scheme's administration procedures would be necessary. It will normally be sufficient for the Scheme Actuary to advise the administrator of the data he or she requires and for the administrator to confirm that such information will be provided. If the Scheme Actuary is not satisfied with the adequacy of the administrative arrangements in this respect, the Scheme Actuary should advise the Trustees and consider any further action that is needed.
- 4.6 The Scheme Actuary should communicate direct with the Trustees (and, if applicable, with any participating employer for whom he or she also acts). However, the Scheme Actuary may accept written instruction from the Trustees to send written communications addressed to them to their nominee. If such an instruction is accepted, the Scheme Actuary must be alert to any indication that significant advice is not reaching all the Trustees. Any oral

advice relating to the Scheme Actuary's statutory responsibilities given to the Trustees must be confirmed, or recorded, in writing.

- 4.7 Any Scheme Actuary who is in doubt as to the proper course of action in relation to his or her statutory duties should seek advice from another Scheme Actuary with appropriate knowledge and practical experience or from the Secretary of the Professional Affairs Board. A Scheme Actuary who holds a Scheme Actuary Certificate on the basis of recourse to a 'mentor' Scheme Actuary with more relevant experience should normally seek advice from the actuary who countersigned his or her application for a Scheme Actuary Certificate. In the absence of that 'mentor', advice can be sought from any Scheme Actuary who acts in his or her own right without recourse to a further Scheme Actuary. It is emphasised, however, that the responsibility for fulfilling the Scheme Actuary's statutory duties is the Scheme Actuary's alone, even when advice has been sought from another actuary.
- 4.8 A 'mentor' Scheme Actuary who countersigns a Scheme Actuary's application for a Scheme Actuary Certificate is only required to give advice to the Scheme Actuary on request, and not to monitor his or her work.
- 4.9 If the Scheme Actuary expects to be absent for a prolonged period, but does not intend to resign the appointment (see paragraph 3.4), he or she must put in place arrangements so that he or she is kept advised of developments in relation to the scheme during the period of absence.
- 4.10 If a reportable event becomes known in the Scheme Actuary's office during his or her absence then it could be considered that the Scheme Actuary ought to have known of the relevant information. The Scheme Actuary should therefore consider what arrangements should be put in place for short periods of absence (e.g. holidays or illness) to monitor developments. For example, the Scheme Actuary could arrange for another of the Trustees' professional advisers, such as the Advising Actuary (see paragraph A 1.1.1), to be kept advised of developments. However, it should be noted that if such an arrangement is made, the Scheme Actuary would be personally at risk for breaches of Section 48(1) of the Pensions Act 1995 if the professional adviser failed to report to Opra where the Scheme Actuary would have had an obligation to do so (but see Section A 7.7).

## **5. Potential Conflicts of Interest**

- 5.1 The Scheme Actuary must advise the Trustees immediately he or she becomes aware of any conflict of interest that he or she has. Conflicts of interest could potentially arise in various situations, for example if the Scheme Actuary is advising both the Trustees and a participating employer, if the Scheme Actuary and a trustee are both partners in the same firm or if the firm for which the Scheme Actuary works provides other services to the Trustees (e.g. acting as the Scheme Auditor or administrator). If a Scheme Actuary believes that there could be a conflict of interest in a particular situation he or she

should refer to the Memorandum on Professional Conduct and consider whether it is proper for him or her to act.

- 5.2 If the Scheme Actuary also advises a participating employer, the Scheme Actuary must make it clear whenever advice is given either orally or in writing whether the advice is being given to the Trustees or to the participating employer. Such a Scheme Actuary may not discuss any advice required or requested by the Trustees with the participating employer without the prior agreement of the Trustees (or vice versa). For example, the Scheme Actuary may not discuss the results of Minimum Funding Requirement calculations with the participating employer without the prior agreement of the Trustees.
- 5.3 The Scheme Actuary may act for more than one scheme within the same group of associated employers, including in relation to a merger or bulk transfer between such schemes, provided that any conflict of interest does not prevent him or her from acting and that the agreement of the Trustees of all the schemes involved is first obtained.
- 5.4 A Scheme Actuary employed by a Life Office should take care to ensure that the Trustees know he or she is acting as the representative of the Life Office and not as Scheme Actuary if discussing any commercial aspects of his or her employer's products, in particular bulk cash surrender values. In such circumstances the Scheme Actuary should tell the Trustees that they are not receiving independent advice on this aspect, as the Scheme Actuary has a conflict of interest in this matter, and that they must consider whether they should seek independent advice.

## **6. Relationship with other Advisers**

- 6.1 The Scheme Actuary may supply information or documents to another adviser (including an adviser of a participating employer), provided the Scheme Actuary has the authority of the Trustees. The letter of appointment from the Trustees must allow the Scheme Actuary to respond to questions from the Scheme Auditor to assist their understanding of the actuarial aspects of the scheme, for example the Valuation Report and supporting actuarial statements. If the Trustees so instruct, the Scheme Actuary may also respond to similar questions from the Trustees' other advisers. The Scheme Actuary should, in normal circumstances, keep the Trustees informed of communications with third parties relevant to the Trustees.
- 6.2 In order to avoid having to seek the Trustees' authority to provide information to the purchaser's/vendor's actuary in relation to a confidential disposal/acquisition the Scheme Actuary may wish to include in the terms of his or her appointment the right to provide specified information at the employer's request in relation to any disposal or acquisition.



- 6.3 The Scheme Actuary should liaise where relevant with the Scheme Auditor to ensure consistency of data between the Actuarial Valuation and the accounts.
- 6.4 If a Scheme Actuary considers that one of the Trustees' or participating employers' advisers may have any information which the Scheme Actuary believes could be relevant to the Scheme Actuary's duties, the Scheme Actuary should ask the Trustees to obtain that information. In particular, the Scheme Actuary should consider, at the time of each Minimum Funding Requirement certification, whether there is any information that could be needed from the Trustees', or participating employers', advisers.

## **7. Reporting to Opra**

- 7.1 Under Section 48(1) of the Pensions Act 1995 a Scheme Actuary has a duty to give a written report to Opra immediately if he or she has reasonable cause to believe that any duty relevant to the administration of the scheme imposed by any enactment or rule of law on the Trustees, the employer, any professional adviser or any prescribed person acting in connection with the scheme has not been or is not being complied with and that the failure to comply is likely to be of material significance in the exercise by Opra of any of its functions. It should be remembered that a 'rule of law' is not restricted to the Pensions Act 1995 or other legislation but could also include, for example, any non-compliance with the terms of the scheme documentation.
- 7.2 The Scheme Actuary also has a duty to give a written report to Opra immediately in the circumstances, and by reference to any matters, prescribed under relevant Regulations made under the Pensions Act 1995.
- 7.3 If a Scheme Actuary considers that the Trustees have failed to comply with the terms of the Undertaking referred to in paragraph 2.6, or to allow access to the information specified in paragraph 2.8, the Scheme Actuary should provide a statement to the Trustees to that effect specifying the circumstances, and should consider whether Opra should also be notified or consulted (see paragraph 7.7) or the failure recorded on the list of non-reported breaches (but see paragraph 7.9).
- 7.4 The Scheme Actuary is not expected to search for circumstances which would be reportable; he or she merely has a duty to report circumstances which come to his or her attention (e.g. in the course of advising the Trustees (whether in relation to the Scheme Actuary's statutory responsibilities, or otherwise) and, if applicable, in the course of advising any of the participating employers). Subject to 2.9 the Scheme Actuary is not expected to ask for any information from the Trustees above that which the Scheme Actuary would need if he or she did not have a duty to report to Opra, unless the Scheme Actuary considers that a Trustee, participating employer or adviser may have relevant information about circumstances which may need to be reported to Opra .

- 7.5 The Pensions Act 1995 states that no duty to which a Scheme Actuary is subject shall be regarded as contravened, merely because of information in a written report to Opra. Thus the duty of confidentiality to the client in paragraph 7 of the Memorandum on Professional Conduct is not broken by written communication to Opra in furtherance of the duty imposed on the Scheme Actuary under the Pensions Act 1995.
- 7.6 The Scheme Actuary will need to assess information which comes to his or her attention in the course of his or her work to determine whether in his or her view that information is likely to be of material significance to Opra in terms of paragraph 8.1. In making that assessment the Scheme Actuary should take into account his or her own knowledge of the scheme and any current guidance that may have been issued by Opra. Material significance does not have the same meaning as materiality in the context of financial statements. Whilst a particular event may be trivial in terms of its possible effect on the financial condition of the scheme it may be of a nature or type which is likely to change the perception of Opra. For example, dishonesty by a Trustee may not be significant in financial terms but would have a significant effect on Opra's consideration of whether that person is suitable to remain a Trustee. Section 8 contains examples of events which might be materially significant.
- 7.7 In considering whether or not an occurrence is likely to be material to Opra the Scheme Actuary should consider discussing the circumstances with Opra possibly without identifying the client involved (but see paragraph 7.14).
- 7.8 The Scheme Actuary should maintain a cumulative record containing full details of any breaches which do not themselves fall to be reported to Opra under Section 48 of the Pensions Act 1995 but which may in his or her judgement, in aggregate, indicate a matter which does need to be reported. The Scheme Actuary should review the accumulated list on each new entry and a written report should be made immediately to Opra once the necessary conditions are satisfied. The Scheme Actuary should also, within an appropriate timescale depending on the circumstances, advise the Trustees of each new entry, recording his or her advice to the Trustees, the Trustees' reactions and the timescales involved.
- 7.9 The Scheme Actuary needs to remember that his or her decision as to whether to report or not may be called into question at a future date, for example, on the basis of what he or she knew at the time, what he or she ought to have known in the course of his or her professional duties including duties not related to his or her appointment as Scheme Actuary, what he or she ought to have concluded and what he or she ought to have done.
- 7.10 In normal circumstances the Scheme Actuary would wish to communicate with Opra with the knowledge of the Trustees provided this does not delay the report (see paragraph 7.12). However, when the matter giving rise to a statutory duty to report direct to Opra casts doubts on the integrity of the Trustees, or in cases of suspected fraud, the Scheme Actuary should make the

report to Opra without informing the Trustees. Similarly, in normal circumstances the Scheme Auditor should be advised if a report is made to Opra.

- 7.11 Whilst it may not be appropriate for the Scheme Actuary to make extensive verification, the Scheme Actuary will need to obtain evidence or demonstrate that there is reasonable cause to believe Opra should be notified. In requiring the Scheme Actuary to show that there is 'reasonable cause to believe', it is not necessary that the Scheme Actuary should determine whether there has been a failure of duty by persons specified in the Regulations but only whether there could be. Unsubstantiated evidence should be tested as far as practicable if documentary proof is not available. In deciding whether there is evidence, or reasonable cause to believe, that Opra should be notified Scheme Actuaries should consider discussing the circumstances with senior colleagues, the Scheme Auditor or the Secretary of the Professional Affairs Board. In some circumstances it may be appropriate for the Scheme Actuary to take legal advice.
- 7.12 Once evidence justifying a report to Opra is available, or the Scheme Actuary has reasonable cause to believe that Opra should be notified, the Scheme Actuary should notify Opra 'immediately'. Immediate notification is a requirement of the Pensions Act 1995 but 'immediately' is not a defined term. Each case must be taken on its own facts.
- 7.13 When making a written report to Opra under Section 48 of the Pensions Act 1995 the Scheme Actuary should follow the procedures specified in Opra guidance current at the date of making the report.
- 7.14 If the Scheme Actuary decides to discuss the circumstances of a case with Opra, care must be taken to properly represent all the circumstances of the case in question as known to the Scheme Actuary. There are criminal sanctions available to Opra in the event of deliberate or reckless misrepresentation of any circumstances as set out in Section 101(5) of the Pensions Act 1995.

## **8. Significant Events**

- 8.1 Without prejudice to the generality of 7.1 Opra must be notified of any of the undernoted actions or attempted actions by the Trustees or any other party which appears to be a breach of law and specifically Regulations made under the Pensions Act 1995 and any current guidance which may have been issued by Opra. However, it is emphasised that the circumstances surrounding such events must be considered carefully and that the decision as to whether or not a report is made is the Scheme Actuary's alone.
- 8.1.1 circumstances giving reasonable doubt as to the security of the assets of the scheme caused by an illegal act by a relevant person (see Section 7).

- 8.1.2 the failure of the Trustees to replace the Minimum Funding Certificate on expiry or any of the documentation required by the Pensions Act 1995 and the Regulations.
- 8.1.3 the failure of the Trustees and principal employer to adopt a schedule of contributions satisfactory to the Scheme Actuary to enable him or her to certify it.
- 8.1.4 the failure of the Trustees in determining their investment principles properly to take into account the kind of investments to be held, the balance between different types of investments to be held, risk, the expected return on investments, the realisation of investments and any other matters which may be prescribed by Regulations under the Pensions Act 1995.

## **APPENDIX A**

### **Actuaries who are not the Scheme Actuary but who are responsible for giving advice to the Trustees or to a Participating Employer**

#### **A 1. Introduction**

- A 1.1 This Appendix gives guidance to an actuary who is not appointed as Scheme Actuary but who is:
- A 1.1.1 appointed by the Trustees as a "professional adviser" as defined in Section 47 (4) of the Pensions Act 1995 ('Advising Actuary') or
  - A 1.1.2 responsible for giving advice to a participating employer in relation to a scheme or is advising the Trustees without being a "professional adviser" as defined in Section 47 (4) of the Pensions Act 1995 ('Other Actuary').
- A 1.2 An actuary who is to act as an Advising Actuary or an Other Actuary should read the whole Guidance Note and not just this Appendix.
- A 1.3 The situation of an Advising Actuary could arise, for example, where an actuary is appointed to give a second opinion on matters connected with the work of the Scheme Actuary. The situation of an Other Actuary who advises the Trustees could arise, for example, where an actuary provides advice on general consultancy issues but not actuarial matters.
- A 1.4 If there is to be an Advising Actuary or an Other Actuary, either a firm could be appointed to provide the services of an actuary or an individual actuary could be appointed. This Appendix is written principally on the basis that an individual actuary is appointed. If a firm is appointed, the individual Advising Actuary or Other Actuary providing advice on any particular matter must be identifiable as the source of the advice and must act in accordance with this Appendix.
- A 1.5 The Scheme Actuary will require the Trustees to set out in writing the division of responsibilities between the Scheme Actuary and the Advising Actuary consistent with the Pensions Act 1995 and Regulations thereunder and to authorise both parties to communicate with each other on matters relevant to the scheme (see paragraph 1.3 of the main Guidance Note).
- A 1.6 Where there is no Scheme Actuary the Advising Actuary or the Other Actuary should interpret this Appendix appropriately.

#### **A 2. Appointment**

- A 2.1 It is a requirement of the Regulations that an Advising Actuary must be appointed in writing by the Trustees except in prescribed circumstances

and that the letter of appointment must cover prescribed matters. The Advising Actuary has to acknowledge the appointment in writing to the Trustees in the manner, and within the timescale, required by the Regulations.

- A 2.2 An actuary should not act as an Advising Actuary or an Other Actuary unless satisfied that he or she has appropriate knowledge and practical experience of that category of scheme, and the type of work involved, or will be acting in co-operation with or with the guidance of an actuary with appropriate knowledge and experience.
- A 2.3 An Advising Actuary can provide a second opinion on matters connected with the statutory duties of the Scheme Actuary, but cannot be appointed to carry out those duties. An Advising Actuary must be satisfied that the work that he or she is to carry out is not the statutory responsibility of the Scheme Actuary.
- A 2.4 If an Advising Actuary or an Other Actuary is to advise both the Trustees and a participating employer on matters relating to the scheme, the Advising Actuary or Other Actuary should inform the Trustees. If the Advising Actuary or Other Actuary is to provide a participating employer with such advice as may be required from time to time, the Advising Actuary or Other Actuary only needs to inform the Trustees that there is an ongoing appointment and does not need to inform the Trustees whenever advice is given to the employer. If the Advising Actuary or Other Actuary is asked to advise both the Trustees and a participating employer the Advising Actuary or Other Actuary must consider whether there may be a conflict of interest (see Section A 5 below).
- A 2.5 The Advising Actuary should require the Trustees to notify him or her in writing of any changes in his or her responsibilities, in which event the Advising Actuary should consider whether it is appropriate to act or to continue to do so.
- A 2.6 The Other Actuary (if advising the Trustees) must not give advice in areas which are defined under Section 47(3) of the Pensions Act 1995 unless the basis of his or her appointment by the Trustees is changed to that of a "professional adviser" as defined in Section 47(4) of this Act. If the nature of the Other Actuary's appointment by the Trustees is changed in this manner, he or she would become an Advising Actuary or a Scheme Actuary (if the incumbent is to be replaced) and he or she would then be subject to the professional and statutory responsibilities of a professional adviser as defined in this Guidance Note and in the Regulations. If it is proposed to the Other Actuary that his or her terms of appointment should be extended in this way, he or she must consider whether this would be appropriate - see appropriate earlier paragraphs on 'Appointment' in Sections 2 and A 2 of this Guidance Note. If, however, the terms of the appointment of the Other Actuary are not to change, then the Other Actuary must ask the Trustees to redirect any questions requiring advice of

a nature as defined under Section 47(3) of the Act to the Scheme Actuary or to the Advising Actuary as appropriate.

### **A 3. Resignation or Removal**

- A 3.1 The Regulations require that the resignation of an Advising Actuary should be in writing to the Trustees except in prescribed circumstances and should specify the date from which the resignation is effective. The Advising Actuary should consider whether the circumstances of the resignation give rise to any need to notify Opra of the circumstances of the scheme or inform the Scheme Actuary (see paragraph A 7.8 below).
- A 3.2 Where an Advising Actuary is removed by the Trustees the Advising Actuary should consider whether the circumstances of his or her removal give rise to any need to notify Opra of the circumstances of the scheme or inform the Scheme Actuary (see paragraph A 7.8 below).

### **A 4. Responsibilities**

- A 4.1 An Advising Actuary must act in accordance with his or her responsibilities (if any) under the Trust Deed and Rules, the provisions of the Pensions Act 1995 and Regulations thereunder and the responsibilities detailed in the letter of appointment from the Trustees to the Advising Actuary. It should be noted that the provisions of Part I of the Pensions Act 1995 and Regulations thereunder override anything in the Trust Deed and Rules which conflicts with them.
- A 4.2 An Advising Actuary and an Other Actuary should remember that the duty of care extends to persons and organisations who can reasonably expect to rely on the advice and information for the purposes for which it is given by the Advising Actuary or the Other Actuary. Neither the Advising Actuary nor the Other Actuary has any direct contractual responsibility in this capacity to members or to other third parties, but the Advising Actuary and the Other Actuary should bear in mind that the advice may be made available to third parties.
- A 4.3 An Advising Actuary should advise the Trustees, and consider advising the Scheme Actuary, if a proposed action would in the opinion of the Advising Actuary materially affect the financing or solvency of the scheme. Where the Advising Actuary also advises a participating employer, the Advising Actuary should consider whether, in the light of his or her professional responsibility to respect confidentiality, it is also appropriate to inform the participating employer. An Other Actuary should advise the Trustees to refer all questions which might impact on the financing or solvency of the scheme to the Scheme Actuary - see A 2.6.

- A 4.4 On receipt of information from the Trustees that the scheme will discontinue or wind-up the Advising Actuary or Other Actuary (if advising the Trustees) should write to the Trustees to advise them of the need to take actuarial advice from the Scheme Actuary on the financial and investment implications for the scheme.
- A 4.5 An Advising Actuary or Other Actuary (if advising the Trustees) should draw to the attention of the Trustees any circumstances of which he or she becomes aware which may need to be notified to the Scheme Actuary.
- A 4.6 An Advising Actuary should normally discuss matters of concern with the Scheme Actuary. Likewise, if an Other Actuary (if advising the Trustees) has matters of concern in relation to the scheme, he or she should seek the Trustees' permission to discuss such matters with the Scheme Actuary in the first instance or with the Advising Actuary if applicable.
- A 4.7 An Advising Actuary or Other Actuary (if advising the Trustees or a committee of the Trustees) should communicate direct with the Trustees or committee (and, if applicable, with any participating employer for whom he or she also acts). However, an Advising Actuary or Other Actuary may accept written instruction from the Trustees (or the committee of the Trustees) to send written communications addressed to them to their nominee. If such an instruction is accepted, the Advising Actuary or Other Actuary must be alert to any indication that significant advice is not reaching all the Trustees (or the committee of the Trustees).

## **A 5. Potential Conflicts of Interest**

- A 5.1 An Advising Actuary must advise the Trustees immediately he or she becomes aware of any conflict of interest that he or she has. Conflicts of interest could potentially arise in various situations, for example if an Advising Actuary is advising both the Trustees and a participating employer, if the Advising Actuary and a trustee are both partners in the same firm, or the firm for which the Advising Actuary works provides other services to the Trustees (e.g. acting as the Scheme Auditor or administrator). Conflicts of interest could also arise for Other Actuaries. If an Advising Actuary or an Other Actuary believes that there could be a conflict of interest he or she should refer to the Memorandum on Professional Conduct and consider whether it is proper for him or her to act.
- A 5.2 If an Advising Actuary or an Other Actuary advises both the Trustees and a participating employer, the Advising Actuary or Other Actuary must make it clear whenever advice is given either orally or in writing whether the advice is being given to the Trustees or to the participating employer. Such an Advising Actuary or Other Actuary may not discuss any advice required or requested by the Trustees with the participating employer without the prior agreement of the Trustees (or vice versa).



A 5.3 An Advising Actuary or Other Actuary may act for more than one scheme within the same group of associated employers, including in relation to a merger or bulk transfer between such schemes, provided that any conflict of interest does not prevent him or her from acting and that the agreement of the Trustees of all the schemes involved is first obtained.

A 5.4 An Advising Actuary or Other Actuary employed by a Life Office should take care to ensure that the Trustees know he or she is acting as the representative of the Life Office and not as an adviser to the Trustees if discussing any commercial aspects of his or her employer's products, in particular bulk cash surrender values. In such circumstances the Advising Actuary or Other Actuary should tell the Trustees that they are not receiving independent advice on this aspect, as the Advising Actuary or Other Actuary has a conflict of interest in this matter, and that they must consider whether they should seek independent advice.

## **A 6. Relationship with Other Advisers**

A 6.1 An Advising Actuary or Other Actuary (if advising the Trustees) may supply information or documents to another adviser (including an adviser of a participating employer), provided the Advising Actuary or Other Actuary has the authority of the Trustees. An Advising Actuary or Other Actuary (if advising the Trustees) should in normal circumstances keep the Trustees informed of communications with third parties relevant to the Trustees.

A 6.2 In order to avoid having to seek the Trustees' authority to provide information to the purchaser's/vendor's actuary in relation to a confidential disposal/acquisition an Advising Actuary or Other Actuary may wish to include in the terms of his or her appointment the right to provide specified information at the employer's request in relation to any disposal or acquisition.

A 6.3 A professional responsibility is owed to the Scheme Actuary by an Advising Actuary (or Other Actuary). Whilst there is room for differences in opinion in relation to professional advice and judgement, an Advising Actuary (or Other Actuary) must ensure that he or she does not in any way diminish the status or role of the Scheme Actuary. However, this does not prevent an Advising Actuary from making properly reasoned comments on the work of the Scheme Actuary if he or she feels that it is appropriate or necessary to do so. Likewise the Other Actuary (if advising the Trustees) may also make properly reasoned comments on the work of the Scheme Actuary if he or she feels that it is necessary to do so and provided such advice would be consistent with the terms of appointment of the Other Actuary - see A 2.6.

- A 6.4 If an Advising Actuary believes that one of the Trustees' or participating employers' advisers may have any information which could be relevant to his right to report to Opra, the Advising Actuary should ask the Trustees to obtain that information. In similar circumstances an Other Actuary who has a right to report to Opra should contact the adviser, although the adviser's duty of confidentiality may prevent him or her from responding.

## **A 7. Reporting to Opra**

- A 7.1 Under Section 48(4) of the Pensions Act 1995 an Advising Actuary has a right (but not a duty) to give a report to Opra if he or she has reasonable cause to believe that any duty relevant to the administration of the scheme imposed by any enactment or rule of law on the Trustees, the employer, any professional adviser or any prescribed person acting in connection with the scheme has not been or is not being complied with and that the failure to comply is likely to be of material significance in the exercise by Opra of any of its functions. It should be remembered that a 'rule of law' is not restricted to the Pensions Act 1995 or other legislation but could also include, for example, any non-compliance with the terms of the scheme documentation.
- A 7.2 An Advising Actuary also has a right (but not a duty) to give a report to Opra in the circumstances and by reference to any matters prescribed under relevant Regulations made under the Pensions Act 1995.
- A 7.3 An Advising Actuary is not expected to search for circumstances which would be reportable; the Advising Actuary merely has a right to report circumstances which come to his or her attention, (e.g. in the course of advising the Trustees and, if applicable in the course of advising any of the participating employers). An Advising Actuary is not expected to ask for any information from the Trustees, above that which the Advising Actuary would need if the Advising Actuary did not have a right to report to Opra, unless the Advising Actuary considers that a Trustee, participating employer or adviser may have relevant information about circumstances which may need to be reported to Opra (see paragraph A 6.4).
- A 7.4 The Pensions Act 1995 states that no duty to which an Advising Actuary is subject shall be regarded as contravened, merely because of information in a report to Opra. Thus the duty of confidentiality to the client in paragraph 7 of the Memorandum on Professional Conduct is not broken by communication to Opra in furtherance of the right to report to Opra given to the Advising Actuary under the Pensions Act 1995.
- A 7.5 Advising Actuaries will need to assess information which comes to their attention in the course of their work to determine whether in their view that information is likely to be of material significance to Opra in terms of paragraph A 7.1. In making that assessment Advising Actuaries should take into account their own knowledge of the scheme and any current

guidance that may have been issued by Opra. Material significance does not have the same meaning as materiality in the context of financial statements. Whilst a particular event may be trivial in terms of its possible effect on the financial condition of the scheme it may be of a nature or type which is likely to change the perception of Opra. For example, dishonesty by a Trustee may not be significant in financial terms but would have a significant effect on Opra's consideration of whether that person is suitable to remain a Trustee. Section 8 of the Guidance Note contains examples of events which might be materially significant.

- A 7.6 In considering whether or not an occurrence is likely to be material to Opra the Advising Actuary should consider discussing the circumstances with Opra, possibly without identifying the client involved (but see paragraph A 7.14).
- A 7.7 If under paragraph 4.10 arrangements have been made for the Advising Actuary to be kept advised of developments during a Scheme Actuary's short period of absence, the Advising Actuary should report to Opra if he or she has reasonable cause to believe that a reportable event has occurred. The Advising Actuary must also maintain the accumulated list of non-reported breaches (see paragraph 7.8).
- A 7.8 In other circumstances, if the Advising Actuary has reasonable cause to believe a reportable event has occurred, he or she should either make a report to Opra or inform the Scheme Actuary immediately (unless either Opra or the Scheme Actuary have already been notified of the reportable event and the Advising Actuary has no additional information to add to the report).
- A 7.9 In normal circumstances Advising Actuaries would wish to communicate with Opra or the Scheme Actuary with the knowledge of the Trustees. However, when the matter giving rise to a right to report direct to Opra casts doubts on the integrity of the Trustees, or in cases of suspected fraud, an Advising Actuary should make the report to Opra or inform the Scheme Actuary without informing the Trustees.
- A 7.10 Whilst it may not be appropriate for an Advising Actuary to make extensive verification, an Advising Actuary will need to obtain evidence or demonstrate that there is reasonable cause to believe Opra should be notified, if a report is to be made. In requiring an Advising Actuary to show that there is 'reasonable cause to believe', it is not necessary that the Advising Actuary should determine whether there has been a failure of duty by persons specified in the Regulations but only whether there could be. Unsubstantiated evidence should be tested as far as practicable if documentary proof is not available. In deciding whether there is evidence, or reasonable cause to believe, that Opra should be notified, Advising Actuaries should consider discussing the circumstances with senior colleagues or the Secretary of the Professional Affairs Board. In some

circumstances it may be appropriate for the Advising Actuary to take legal advice.

- A 7.11 When making a report to Opra under Section 48(4) of the Pensions Act 1995 an Advising Actuary should follow the procedures specified in Opra guidance current at the date of making the report.
- A 7.12 A copy of the report should normally be sent to the Scheme Actuary.
- A 7.13 An Other Actuary can report to Opra but such advisers are not legally obliged to do so and they have statutory protection against breaches of confidentiality only if they are involved in the administration of the scheme. An Other Actuary who does not have statutory protection but has knowledge of matters which could be relevant to the Scheme Actuary's duty to report to Opra should, unless prevented by his or her duty of confidentiality, contact the Scheme Actuary immediately. If the Other Actuary is prevented by his or her duty of confidentiality from discussing the matters with the Scheme Actuary, the Other Actuary should consider discussing the situation with the Secretary of the Professional Affairs Board without identifying the client involved. An Other Actuary who has statutory protection and has reasonable cause to believe that a reportable event has occurred should make a report to Opra or, if he or she is not prevented by his or her duty of confidentiality, inform the Scheme Actuary immediately.
- A 7.14 If the Advising Actuary or Other Actuary decides to discuss the circumstances of a case with Opra, care must be taken to properly represent all the circumstances of the case in question as known to the Advising Actuary or Other Actuary. There are criminal sanctions available to Opra in the event of deliberate or reckless misrepresentation of any circumstances as set out in Section 101(5) of the Pensions Act 1995.

## Appendix B

This Appendix illustrates the types of event which might typically be appropriate to include on the Trustees' Undertaking (see paragraph 2.6 of the Guidance Note). The list is not intended to be exhaustive.

- B 1. Any changes in the Trust Deed and Rules of the scheme affecting contribution or benefit levels or the degree of priority accorded to benefits in the event of the winding up of the scheme or any changes which affect the normal retirement date.
- B 2. Any action to terminate, reduce or suspend contributions to the scheme.
- B 3. Any change in the definition of pensionable pay and any unexpected change in the general remuneration levels of scheme members.
- B 4. Any unexpected increase or decrease in the number of members, deferred pensioners or pensioners resulting for example from:
  - B 4.1 the acquisition or sale of participating companies,
  - B 4.2 a large scale redundancy exercise,
  - B 4.3 a change in early retirement policy or experience.
- B 5. Any augmentation of benefits on early, normal or late retirement or on the death or withdrawal from service of a scheme member, except where the cost is met by additional contributions at the time by reference to tables provided for the purpose, or as otherwise agreed.
- B 6. Any discretionary increases to pensions in payment and/or preserved pensions.
- B 7. Payment or receipt of a bulk transfer value.
- B 8. Any change in the arrangements for insuring death in service benefits or a change from insured to self-administered or vice versa.
- B 9. Any major change in the investment policy or in the investment management arrangements, including:
  - B 9.1 any significant increase in employer-related investment or any change resulting in the limit being exceeded,
  - B 9.2 any major change in asset allocation,
  - B 9.3 any significant increase in concentration of investment,

- B 9.4 any change in the custody arrangements.
- B 10. Any significantly adverse investment performance relative to the objectives agreed with the investment managers or to investment conditions generally, or where there are grounds to believe that it may have occurred, or any other substantial depreciation.
- B 11. Non-payment of the employer's and/or employees' contributions stated in the most recent Supplementary Certificate A or Contribution Schedule within 30 days of the due date.
- B 12. Any change in scheme year for accounting purposes.
- B 13. Any change of the policy of the scheme for the payment of expenses.
- B 14. Any decision to wind-up or otherwise discontinue the scheme.
- B 15. Any application for a refund of surplus to a participating employer.
- B 16. A relevant insolvency event in relation to any of the participating employers.

## Appendix C

### Northern Ireland Legislation

Except as indicated below there is no difference in the numbering of the provisions mentioned in this Guidance Note.

#### GB Provision

Pensions Act 1995 (c.26)

Section

Part I

Section 101

Section 124(1)

The Occupational Pension Schemes (Scheme Administration) Regulations 1996 (SI 1996/1715)

#### NI Provision

Pensions (Northern Ireland) Order 1995 (SI 1995/3213 (NI 22))

Article

Part II

Article 99

Article 121(1)

The Occupational Pension Schemes (Scheme Administration) Regulations (Northern Ireland) 1997 (SR 1997 No 94)