

GN29: Occupational Pension Schemes - Advisers to the Trustees or a Participating Employer

Classification

Practice Standard

Legislation or Authority

Pensions Act 1995 (1995, c.26). Sections 47, 48, 101 and 124(1).

Regulations set out in Appendix C.

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 (shown in Appendix C).

Application

Any Fellow, Associate, Affiliate who holds a qualification with an overseas actuarial body, or Student of the Faculty or Institute of Actuaries (a 'relevant person') who in relation to any occupational pension scheme, advises the Trustees (whether or not as a Scheme Actuary) or a participating employer. It also applies to a mentor of a Scheme Actuary.

Author

Pensions Board

Status

Approved under Due Process.

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3.1	01.07.99
4.0	01.03.02

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 Sections 2-6 of this Guidance Note contain guidance for Scheme Actuaries appointed under Section 47(1)(b) of the Pensions Act 1995. Appendix A contains guidance both for relevant persons who are advising the Trustees but who are not appointed as the Scheme Actuary and relevant persons who are advising a participating employer in relation to a scheme but who are not advising the Trustees.
- 1.3 A relevant person to whom this Guidance Note applies must read the whole Guidance Note and not just those parts specific to his or her role.

2 Appointment

- 2.1 An actuary must not accept or retain an appointment as a Scheme Actuary unless he or she holds a current Scheme Actuary Certificate.
- 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 the statement or declaration from the previous Scheme Actuary as referred to in Section 3 below. In exceptional circumstances it may be possible for an actuary to act as Scheme Actuary without the Trustees providing such a statement or declaration, but other than in the case of the death of a Scheme Actuary the Secretary of the Professional Affairs Board must be consulted first.
- 2.3 The letter of appointment from the Trustees must allow the Scheme Actuary to respond to questions from the Scheme Auditor to assist the Scheme Auditor's understanding of the actuarial aspects of the scheme and to liaise with the Scheme Auditor with regard to circumstances that may be reportable to Opra (see Section 6).
- 2.4 The Scheme Actuary must 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 leaves the firm.
- 2.5 The Scheme Actuary must obtain the Trustees' written agreement to advise the Scheme Actuary of specified events which could, in the Scheme Actuary's opinion, be of material significance to the finances of the scheme. Appendix B illustrates the types of event which a Scheme Actuary might typically require the Trustees to notify to him or her, but the list is not intended to be exhaustive.

- 2.6 In drawing up the list of events to be notified the Scheme Actuary must be satisfied that the Trustees understand what the Scheme Actuary would consider to be 'material', 'unexpected', 'major' etc. Appropriate timescales for notifying events must also be included. The list must be reviewed by the Scheme Actuary as frequently as he or she considers to be necessary or appropriate.
- 2.7 The Scheme Actuary must also obtain the Trustees' written agreement to allow the Scheme Actuary access at all reasonable times and in all reasonable circumstances, on request, to:
- 2.7.1 the scheme's books, accounts and supporting documentation,
 - 2.7.2 copies of the minutes of all Trustees' meetings and meetings of sub-committees of the Trustees,
 - 2.7.3 copies of all Trustees' resolutions,
 - 2.7.4 copies of all documents constituting the scheme,
 - 2.7.5 such additional information and explanation as may be required for the performance of the duties of the Scheme Actuary.
- 2.8 The Scheme Actuary does not have to require the Trustees to provide him or her automatically with the information referred to in paragraph 2.7. However, 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 in order to assist him or her in assessing whether circumstances which come to the Scheme Actuary's attention may be of material significance to Opra.
- 2.9 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, 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 If a Scheme Actuary resigns or is removed by the Trustees, he or she must consider whether the circumstances of the resignation or removal give rise to any duty to notify Opra of the circumstances of the scheme. The Scheme Actuary's resignation or removal statement or declaration must include, in addition to the information required under the Regulations, 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.
- 3.2 The outgoing Scheme Actuary must provide the incoming Scheme Actuary with:
- (a) the list of non-reported breaches (see paragraph 6.10) including those noted by previous Scheme Actuaries where still relevant, or
 - (b) confirmation that no non-reported breaches have been recorded or
 - (c) confirmation that the outgoing Scheme Actuary does not consider any of the non-reported breaches recorded by him or her, or notified by the previous Scheme Actuary, still to be relevant to any future decision on reporting to Opra (see paragraph 6.11).
- 3.3 The outgoing Scheme Actuary must 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 must 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 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 must consider whether or not to resign 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.

4 Responsibilities

- 4.1 The Scheme Actuary must advise the Trustees if a proposed action or inaction 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.
- 4.2 On receipt of information from the Trustees that the scheme will discontinue or wind-up, the Scheme Actuary must write to the Trustees to advise them of the need to take actuarial advice on the financial and investment implications for the scheme.
- 4.3 If the Scheme Actuary is not satisfied that the scheme's administrative arrangements are adequate to provide him or her with the data that will be required in order to carry out his or her responsibilities, the Scheme Actuary must advise the Trustees and consider any further action that is needed.
- 4.4 If a Scheme Actuary who holds a Scheme Actuary Certificate on the basis of recourse to a 'mentor' Scheme Actuary is in any doubt as to the proper course of action in relation to his or her statutory duties he or she must initially seek advice from his or her current mentor. In the absence of that 'mentor', advice must be sought from any Scheme Actuary who acts in his or her own right without recourse to a further Scheme Actuary or from the Secretary of the Professional Affairs Board. 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.
- 4.5 A 'mentor' Scheme Actuary is only required to give advice to the Scheme Actuary on request, and not to monitor his or her work.
- 4.6 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.
- 4.7 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 must therefore consider what arrangements should be put in place for short periods

of absence (such as normal holidays or short illnesses) to monitor developments. For example, the Scheme Actuary could arrange for a Professional Adviser (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 paragraph A6.8).

5 Relationship with other Advisers

- 5.1 Where another actuary is appointed to provide actuarial advice (as defined in Regulation 2(b) of the Principal Regulations), in addition to the Scheme Actuary, the Scheme Actuary must require the Trustees to set out in writing to both actuaries, the division in responsibilities consistent with the Pension Act 1995 and Regulations thereunder and to authorise both actuaries to communicate with each other on matters relevant to the Scheme.
- 5.2 The Scheme Actuary should, normally, keep the Trustees informed of communications with third parties relevant to the Trustees.
- 5.3 The Scheme Actuary should liaise where relevant with the Scheme Auditor to ensure consistency of data between the actuarial valuation and the accounts.
- 5.4 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 must ask the Trustees to obtain that information.

6 Reporting to Opra

- 6.1 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:
 - (a) 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
 - (b) the failure to comply is likely to be of material significance in the exercise by Opra of any of its functions.

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.

- 6.2 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.
- 6.3 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 is not broken by written communication to Opra in furtherance of the duty imposed on the Scheme Actuary under the Pensions Act 1995.
- 6.4 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. 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 (see paragraph 2.8).
- 6.5 The Scheme Actuary will need to assess information which comes to his or her attention to determine whether in his or her view that information is likely to be of material significance to Opra. In making that assessment, the Scheme Actuary must take into account his or her own knowledge of the scheme and current guidance 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. In particular, 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.
- 6.6 Whilst it may not be appropriate for the Scheme Actuary to make extensive verification, the Scheme Actuary must 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 have been. Unsubstantiated evidence must 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.
- 6.7 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 must 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.

- 6.8 The Scheme Actuary should normally communicate with Opra with the knowledge of the Trustees, provided this does not delay the report. However, when the matter casts doubts on the integrity of the Trustees, or in cases of suspected fraud, the Scheme Actuary must 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.
- 6.9 When making a written report to Opra the Scheme Actuary should follow the procedures specified in Opra guidance current at the date of making the report.
- 6.10 The Scheme Actuary must 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 must review the accumulated list on each new entry and a written report must be made immediately to Opra once the necessary conditions are satisfied. The Scheme Actuary must 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.
- 6.11 The Scheme Actuary may remove entries from the list of non-reported breaches if, in his or her opinion, they could no longer in any circumstances be relevant to any future decision on reporting to Opra.
- 6.12 If a Scheme Actuary considers that the Trustees have failed to comply with the terms of the agreement referred to in paragraph 2.5, or to allow access to the information specified in paragraph 2.7, the Scheme Actuary must provide a statement to the Trustees to that effect specifying the circumstances, and must consider whether Opra should also be notified or consulted or the failure recorded on the list of non-reported breaches.
- 6.13 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.

7 Significant Events

- 7.1 Without prejudice to the generality of 6.1 the following are events which a Scheme Actuary may come across which may need to be reported to 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. Further, the Scheme Actuary should refer to the relevant legislation and published guidance from Opra for a fuller perspective of the range of events that might need to be reported to Opra.
- 7.1.1 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 6).
- 7.1.2 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.
- 7.1.3 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.
- 7.1.4 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

Relevant persons 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 a relevant person (that is a Fellow, an Associate, an Affiliate who holds a qualification with an overseas actuarial body, or a Student of the Faculty or Institute of Actuaries) 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 ('Professional Adviser') 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 Adviser').
- A 1.2 The situation of a Professional Adviser could arise, for example, where an actuary is appointed to give a second opinion on matters connected with the work of the Scheme Actuary or where an actuary is providing actuarial advice to a money purchase scheme (including a Small Self Administered Scheme). The situation of an Other Adviser who advises the Trustees could arise, for example, where a relevant person provides advice on general consultancy issues but not actuarial matters.
- A 1.3 If there is to be a Professional Adviser or an Other Adviser , either a firm could be appointed to provide the required services or an individual could be appointed. This Appendix is written principally on the basis that an individual is appointed. If a firm is appointed, the relevant person providing advice on any particular matter must be identifiable as the source of the advice and must act in accordance with this Appendix.
- A 1.4 The Scheme Actuary will require the Trustees to set out in writing the division of responsibilities between the Scheme Actuary and a Professional Adviser providing actuarial advice (as defined in Regulation 2(b) of the Principal Regulations) 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 5).
- A 1.5 Where there is no Scheme Actuary, the Professional Adviser or the Other Adviser should interpret this Appendix appropriately.

A 2. Appointment

- A 2.1 A Professional Adviser 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 without becoming the Scheme Actuary.
- A 2.2 An Other Adviser (if advising the Trustees) must not give advice in areas which are the statutory duty of the Scheme Actuary or 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 or the Scheme Actuary (if the incumbent is to be replaced), as appropriate. If the terms of the appointment of the Other Adviser are not to change, then the Other Adviser must ask the Trustees to redirect any questions requiring advice on areas which are the statutory duty of the Scheme Actuary or which are defined under Section 47(3) of the Act to the Scheme Actuary or to a Professional Adviser, as appropriate.

A 3. Resignation or Removal

- A 3.1 If a Professional Adviser resigns or is removed by the Trustees the Professional Adviser should consider whether the circumstances of his or her resignation or removal give rise to any need to notify Opra of the circumstances of the scheme or inform the Scheme Actuary (see paragraph A 6.9 below). Similarly, an Other Adviser whose appointment terminates for any reason should consider the circumstances of the termination and whether any action is needed.

A 4. Responsibilities

- A 4.1 A Professional Adviser who has been appointed to provide actuarial advice (as defined in Regulation 2(b) of the Principal Regulations) must advise the Trustees, and must consider advising the Scheme Actuary, if a proposed action or inaction would, in the opinion of the Professional Adviser, materially affect the financing or solvency of the scheme. Where such a Professional Adviser also provides actuarial advice to a participating employer, the Professional Adviser should consider whether, in the light of his or her professional responsibility to respect confidentiality, it is also appropriate to inform the participating employer. A Professional Adviser who has been appointed to provide other types of advice to the trustees and an Other Adviser should advise the Trustees to refer all questions which might impact on the financing or solvency of the scheme to the Scheme Actuary or to a Professional Adviser, as appropriate (see paragraph A 2.2).
- A 4.2 On receipt of information from the Trustees that the scheme will discontinue or wind-up, a Professional Adviser or Other Adviser (if advising the Trustees) must write to the Trustees to advise them of the

need to take actuarial advice on the financial and investment implications for the scheme.

- A 4.3 A Professional Adviser or Other Adviser (if advising the Trustees) must draw to the attention of the Trustees any circumstances of which he or she becomes aware which the Trustees may need to notify to the Scheme Actuary (see paragraph 2.5 and 2.7), (unless the Scheme Actuary has already been notified of the matter and the Professional Adviser or Other Adviser has no information to add).

A 5. Relationship with Other Advisers

- A 5.1 A Professional Adviser or Other Adviser (if advising the Trustees) should normally keep the Trustees informed of communications with third parties relevant to the Trustees.

- A 5.2 If a Professional Adviser believes that one of the Trustees' or participating employers' advisers may have any information which could be relevant to his or her right to report to Opra, the Professional Adviser must ask the Trustees to obtain that information. An Other Adviser who believes that another adviser may have information which could be relevant to the Other Adviser's professional duties under paragraphs A6.12 or A6.13 should contact the adviser, although the adviser's duty of confidentiality may prevent him or her from responding.

A 6. Reporting to Opra

- A 6.1 Under Section 48(4) of the Pensions Act 1995 a Professional Adviser has a right (but not a legal duty) to give a report to Opra if he or she has reasonable cause to believe that:

(a) 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

(b) the failure to comply is likely to be of material significance in the exercise by Opra of any of its functions.

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 6.2 A Professional Adviser also has a right (but not a legal 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 6.3 The Pensions Act 1995 states that no duty to which a Professional Adviser is subject shall be regarded as contravened, merely because of information in a report to Opra. Thus the duty of confidentiality to the client is not broken by communication to Opra in furtherance of the right to report to Opra given to the Professional Adviser under the Pensions Act 1995.
- A6.4 An Other Adviser 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 with the administration of the scheme.
- A.6.5 Although Professional Advisers and Other Advisers do not have a legal duty to take any action if they believe that a relevant event has occurred which is likely to be of material significance to Opra, paragraphs A6.8, A6.9, A6.12 and A6.13 below place a professional duty on them to do so.
- A6.6 Professional Advisers and Other Advisers are not expected to search for circumstances which would be reportable; a Professional Adviser or Other Adviser merely has to act on circumstances which come to his or her attention. A Professional Adviser or Other Adviser is not expected to ask for any information above that which the Professional Adviser or Other Adviser would need if he or she did not have the professional duties described in paragraphs A6.8, A6.9, A6.12 and A6.13, unless he or she considers that another adviser may have relevant information about circumstances which may need to be reported to Opra (see paragraph A.5.2)
- A 6.7 Professional Advisers and Other Advisers will need to assess information which comes to their attention to determine whether in their view that information is likely to be of material significance to Opra . In making that assessment, Professional Advisers and Other Advisers must take into account their own knowledge of the scheme and current guidance 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. In particular, 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.
- A 6.8 If under paragraph 4.7 arrangements have been made for a Professional Adviser to be kept advised of developments during a Scheme Actuary's short period of absence, the Professional Adviser must report to Opra if he or she has reasonable cause to believe that a reportable event has occurred. The Professional Adviser must also maintain the accumulated list of non-reported breaches (see paragraph 6.10).
- A 6.9 In other circumstances, if a Professional Adviser has reasonable cause to believe a reportable event has occurred, he or she must 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 Professional Adviser has no information to add to the report). In a case where there is no Scheme Actuary, a Professional Adviser must make a report to Opra in the relevant circumstances.

- A 6.10 Professional Advisers should normally communicate with Opra or the Scheme Actuary with the knowledge of the Trustees provided this does not cause a delay. However, when the matter casts doubts on the integrity of the Trustees, or in cases of suspected fraud, a Professional Adviser must make the report to Opra or inform the Scheme Actuary without informing the Trustees.
- A 6.11 A copy of the report should normally be sent to the Scheme Actuary.
- A 6.12 An Other Adviser who does not have statutory protection but has knowledge of matters which could be relevant to the Scheme Actuary's statutory duty, or a Professional Adviser's statutory right, to report to Opra should normally seek his or her client's permission to contact the Scheme Actuary, or a Professional Adviser, immediately (unless Opra, the Scheme Actuary or a Professional Adviser have already been notified of the matter and the Other Adviser has no information to add). If the Other Adviser is unable to discuss the matters with the Scheme Actuary, or a Professional Adviser, the Other Adviser must consider discussing the situation with the Secretary of the Professional Affairs Board without identifying the client involved.
- A 6.13 An Other Adviser who has statutory protection and has reasonable cause to believe that a reportable event has occurred must make a report to Opra or, if he or she is not prevented by his or her duty of confidentiality, inform the Scheme Actuary, or a Professional Adviser, immediately (unless Opra, the Scheme Actuary or a Professional Adviser have already been notified of the matter and the Other Adviser has no information to add).

- A 6.14 Whilst it may not be appropriate for a Professional Adviser or Other Adviser to make extensive verification, a Professional Adviser or Other Adviser must obtain evidence or demonstrate that there is reasonable cause to believe Opra should be notified, if a report is to be made. In requiring a Professional Adviser or Other Adviser to show that there is 'reasonable cause to believe', it is not necessary that the Professional Adviser or Other Adviser should determine whether there has been a failure of duty by persons specified in the Regulations but only whether there could have been. Unsubstantiated evidence must 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, Professional Advisers or Other Advisers 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 Professional Adviser or Other Adviser to take legal advice.
- A6.15 When making a report to Opra under Section 48(4) of the Pensions Act 1995 a Professional Adviser or Other Adviser should follow the procedures specified in Opra guidance current at the date of making the report.
- A 6.16 If the Professional Adviser or Other Adviser 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 Professional Adviser or Other Adviser . 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 require the Trustees to notify to the Scheme Actuary (see paragraph 2.5 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 Schedule of Contributions within 10 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, or a participating employer ceasing to have any employees in the categories of employment to which the scheme relates.

Appendix C

Legislation

GB Provision

Pensions Act 1995 (c.26)

Section 47

Section 48

Section 101

Section 124(1)

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The Personal and Occupational Pension Schemes (Miscellaneous Amendments) Regulations 1997 (SI 1997/786)

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Article 47

Article 48

Article 99

Article 121(1)

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The Personal and Occupational Pension Schemes (Miscellaneous Amendments No 2) Regulations (Northern Ireland) 1997 (SR 1997 No 544)