

S.I. No. 295 of 2006

**OCCUPATIONAL PENSION SCHEMES (FUNDING STANDARD) (AMENDMENT)
REGULATIONS, 2006**

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**OCCUPATIONAL PENSION SCHEMES
(FUNDING STANDARD) (AMENDMENT) REGULATIONS, 2006**

The Minister for Social and Family Affairs, in exercise of the powers conferred on him by section 5, 42 (as amended by section 28 of the Pensions (Amendment) Act 2002 (No. 18 of 2002)) and 49 (as amended by section 31 of the Social Welfare and Pensions Act 2005 (No. 4 of 2005)) of the Pensions Act, 1990 (No. 25 of 1990) hereby makes the following Regulations:

- Citation.** 1. (1) These Regulations may be cited as the Occupational Pension Schemes (Funding Standard) (Amendment) Regulations, 2006.
- (2) These Regulations and the Occupational Pensions Schemes (Funding Standard) Regulations 1993 to 2002 shall be construed together as one and may be cited as the Occupational Pension Schemes (Funding Standard) Regulations 1993 to 2006.
- Revocation.** 2. The Occupational Pension Schemes (Funding Standard) (Amendment) Regulations 2005 (S.I. 595 of 2005) are revoked.
- Amendment to Regulations.** 3. The Occupational Pension Schemes (Funding Standard) Regulations, 1993 (S.I. No. 419 of 1993) are amended -
- (a) in article 3, by inserting the following before the definition of “self-investment”:
- “‘relevant period’ means the period since the scheme last satisfied the funding standard provided for in section 44 of the Act.”,
- (b) in article 4(1) by substituting the following for paragraph (d):
- “(d) an actuarial funding certificate having an effective date on or before 22 September 2005 in respect of a relevant scheme other than a certificate referred to in paragraphs (a) (b), or (c) above

shall be in the form set out in Schedule BB to these Regulations or in a form substantially to the like effect,

- (e) an actuarial funding certificate in respect of a relevant scheme other than a certificate referred to in paragraphs (a), (b), (c), or (d) above shall be in the form set out in Schedule BC to these Regulations or in a form substantially to the like effect.”,

- (c) by inserting the following after article 5:

“Compliance with guidance. 5A. (1) In completing an actuarial funding certificate under section 42 of the Act, the actuary must comply with the guidance note issued by the Society of Actuaries in Ireland in relation to the preparation of actuarial funding certificates in accordance with section 42 of the Act.

(2) In certifying a funding proposal under section 49(2) of the Act or the failure of the scheme to satisfy the funding standard in accordance with section 49(3) of the Act, the actuary must comply with the guidance note issued by the Society of Actuaries in Ireland in relation to the preparation of funding proposals in accordance with section 49 of the Act.

Funding proposals. 5B. For the purposes of section 49(3)(b) of the Act the factors and circumstances are as follows -

- (a) adverse experience relating to price inflation or rates of interest underlying the actuarial values over the relevant period,
- (b) adverse experience relating to increases in pensionable earnings,
- (c) adverse experience relating to the payment of benefits other than long service benefits.”, and

- (d) by inserting the following after Schedule BB:

“SCHEDULE BC

Article 4

ACTUARIAL FUNDING CERTIFICATE

THIS CERTIFICATE HAS BEEN PREPARED UNDER THE PROVISIONS OF SECTION 42 OF THE PENSIONS ACT 1990 (“the ACT”) FOR SUBMISSION TO THE PENSIONS BOARD BY THE TRUSTEES OF THE SCHEME

SCHEME NAME: _____

SCHEME COMMENCEMENT DATE: _____

PENSIONS BOARD REFERENCE NO.: _____

EFFECTIVE DATE OF

THIS CERTIFICATE: _____

PREVIOUS CERTIFICATE: _____

On the basis of information supplied to me and having regard to such financial and other assumptions as I consider to be appropriate:-

- (1) I am of the opinion that at the effective date of this certificate the resources of the scheme, which are calculated for the purposes of section 44 of the Act to be _____, *would/*would not have been sufficient if the scheme had been wound up at that date to provide for the liabilities of the scheme determined in accordance with section 44 of the Act which, including the estimated expenses of administering the winding up of the scheme, amount to _____.
- (2) I am of the opinion that at the effective date of this certificate the resources of the scheme, calculated for the purposes of section 44 of the Act, would have been sufficient, after allowance for the estimated expenses of administering the winding up of the scheme, to provide for the discharge of the liabilities of the scheme determined in accordance with section 44 of the Act as follows:
- (a) _____% of the benefits as set out in section 44(a)(i) of the Act
 - (b) _____% of the benefits as set out in section 44(a)(ii) of the Act
 - (c) _____% of the benefits as set out in sections 44(a)(iii) and 44(a)(iv) of the Act
 - (d) _____% of the benefits, other than those referred to in subparagraphs (a) to (c) of this paragraph, to which paragraph 5 of the Third Schedule of the Act relates..
- (3) *I hereby state the specified percentage for the above scheme for the purpose of section 44 of the Act to be _____.

**I hereby state that the specified percentage for the above scheme for the purposes of section 44 of the Act is not applicable as there are no benefits which are described in paragraph 5 of the Third Schedule.*

I therefore certify that as at the effective date of this certificate the scheme *satisfies/*does not satisfy the funding standard provided for in section 44 of the Act. I further certify that I am qualified for appointment as actuary to the scheme for the purposes of section 51 of the Act.

Signature: _____ Date: _____

Name: _____ Qualification: _____

Name of Actuary's Employer/Firm: _____ Scheme Actuary Certificate No.: _____

* Please delete whichever is not applicable. ”.

GIVEN under the Official Seal of the Minister for Social and Family Affairs, this 24th day of May 2006.

L.S. **SÉAMUS BRENNAN**

Minister for Social and Family Affairs.

EXPLANATORY NOTE

(This note is not part of the Instrument and does not purport to be a legal interpretation.)

These Regulations revoke and replace Regulation 595 of 2005.

Recent case law in Ireland has suggested that a provision of domestic legislation cannot be used for the purposes of implementing EC law unless it is clear that such delegated legislation is clearly authorised by the primary legislation.

To this end, section 5 of the Pensions Act 1990 was amended by section 44 of the Social Welfare Law Reform and Pensions Act, 2006 to expressly state that regulations made under the Pensions Act may be used to implement law.

As these Regulations implement some aspects of Directive 2003/41 on the activities and supervision of occupational pensions, they are now being re made under the appropriate Pensions Act powers including the amended section 5.