

GN29: Occupational Pension Schemes - Advisers to the Trustees

MEMBERS ARE REMINDED THAT THEY MUST ALWAYS COMPLY WITH THE PROFESSIONAL CONDUCT STANDARDS (PCS) AND THAT GUIDANCE NOTES IMPOSE ADDITIONAL REQUIREMENTS UNDER SPECIFIC CIRCUMSTANCES

Classification

Practice Standard

Definitions

For the purpose of this Guidance Note:

Reference	Definition
<i>actuarial advice</i>	Advice as defined in Regulation 2(b) of the <i>Regulations</i>
<i>declaration</i>	A declaration given to the <i>trustees</i> in accordance with regulation 5(4)(b) or 5(7)(b) of the <i>Regulations</i>
<i>firm</i>	The entity of which a <i>relevant person</i> is a partner, a director or an employee
<i>mentor</i>	An actuary who has countersigned a <i>Scheme Actuary's</i> application for the issue or renewal of a Scheme Actuary Certificate
<i>Regulations</i>	The regulations as set out in Appendix C
<i>Regulator</i>	The Pensions Regulator established by Section 1 of the Pensions Act 2004
<i>relevant person</i>	A Fellow, Associate, or Affiliate who holds a qualification with an overseas actuarial body, of the Faculty of Actuaries or the Institute of Actuaries
<i>Scheme Actuary</i>	An actuary appointed under Section 47(1)(b) of the Pensions Act 1995
<i>Section 70</i>	Section 70 of the Pensions Act 2004
<i>SPSS</i>	The Savings, Pensions, Share Schemes division of HM Revenue and Customs (or such other division or government department as may assume responsibility for relevant contracting-out matters)
<i>statement</i>	A statement given to the <i>trustees</i> in accordance with regulation 5(4)(a) or 5(7)(a) of the <i>Regulations</i>

<i>statutory responsibilities</i>	Requirements which, under legislation or regulations, are imposed on a <i>Scheme Actuary</i>
<i>trustees</i>	The trustees or, for schemes not established under trust, the managers as defined in Section 318(1) of the Pensions Act 2004
<i>Trustees' Adviser</i>	As defined in paragraph A 1.2

Application

- A *relevant person* who, in relation to any occupational pension scheme, provides advice to the *trustees* on any matter (as a *Scheme Actuary* or in another capacity) or is involved in the administration or management of the scheme at a level where he or she has direct contact with the *trustees* as part of his or her normal responsibilities. Direct contact includes contact by telephone or by e-mail.
- *Mentors*.

Purpose

The purpose of GN29 is to provide guidance:

- for *Scheme Actuaries* on:
 - appointment,
 - resignation or removal,
 - absence,
 - responsibilities, and
 - mentoring
- on the responsibilities of *Trustees' Advisers*
- on the responsibilities of *mentors*.

Legislation or Authority

Pensions Act 1995 (1995, c.26). Section 47.

Pensions Act 2004 (2004, c.35). Section 70.

Regulations set out in Appendix C.

The *Regulator's* Codes of Practice and Guidance.

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).

Author

Pensions Board

Status

Approved under Due Process

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6.0	06.04.05
7.0	01.04.07

1 Introduction

- 1.1 Sections 2-6 below contain guidance for *Scheme Actuaries* in connection with their *statutory responsibilities*. Section 6 also contains guidance for *mentors*. Appendix A contains guidance for *Trustees' Advisers* (including *Scheme Actuaries* when carrying out work which falls outside their *statutory responsibilities*).
- 1.2 A *relevant person* to whom this guidance applies must read the whole guidance and not just those parts specific to his or her role.

2 Appointment

2.1 An actuary who:

- holds a *Scheme Actuary* appointment at 1 April 2007, or
- between 1 April 2007 and 30 June 2007 inclusive accepts a new appointment as a *Scheme Actuary*

may, until 31 March 2008, choose to substitute Section 2 of Version 6.0 of GN29 for the following paragraphs of this Section for the purposes of that appointment. An actuary who takes advantage of this relaxation and who retains the appointment must ensure that, from 1 April 2008, the terms of his or her appointment fully reflect the requirements of this Section.

- 2.2 An actuary must not accept or retain an appointment as a *Scheme Actuary* unless he or she holds a current Scheme Actuary Certificate.
- 2.3 An actuary who is appointed to replace an existing *Scheme Actuary* may not act until the *trustees* have provided the *statement* or *declaration* from the previous *Scheme Actuary*, other than in exceptional circumstances (such as death, incapacity or other situations in which it is not physically possible for the previous *Scheme Actuary* to provide a *statement* or *declaration*).
- 2.4 The letter of appointment from the *trustees* must allow the *Scheme Actuary*:

- 2.4.1 to liaise with other advisers to the *trustees* in relation to matters which might be relevant either to the *Scheme Actuary's statutory responsibilities* or to responsibilities which are placed on the other adviser in relation to the scheme by legislation or regulations,
- 2.4.2 to ask the outgoing *Scheme Actuary* (if any) for information in accordance with paragraph 2.12, and
- 2.4.3 in the event of his or her resignation or removal, to provide the incoming *Scheme Actuary* with the information referred to in paragraph 3.2.
- 2.5 The *Scheme Actuary* must ensure that the *trustees* are aware that appointment as *Scheme Actuary* is a personal appointment and not the appointment of his or her *firm*. However, the *Scheme Actuary* must advise the *trustees* if he or she leaves the *firm*.
- 2.6 The *Scheme Actuary* must obtain the *trustees'* written agreement that the *trustees* will advise the *Scheme Actuary* of specified events which could, in the *Scheme Actuary's* opinion, be of material significance to the financing or solvency of the scheme. Appropriate timescales for notifying events must be included. The list must be reviewed by the *Scheme Actuary* as frequently as he or she considers necessary or appropriate.
- 2.7 Appendix B illustrates the types of event which, if material, a *Scheme Actuary* might typically require the *trustees* to notify to him or her. However, a *Scheme Actuary* will need to consider whether all the categories listed are relevant to a particular scheme, whether additional categories should be included and the actual events within each category which should be specified.
- 2.8 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, and, if used, how words such as 'unexpected' or 'major' should be interpreted. In specifying timescales, phrases such as 'as soon as possible' or 'as soon as reasonably practicable' may be used.
- 2.9 The *Scheme Actuary* must also obtain the *trustees'* written agreement that the *trustees* will:
- 2.9.1 provide the *Scheme Actuary* with copies of any future reports to the *Regulator* under *Section 70* which are either made by, or sent to, the *trustees*,
- 2.9.2 advise the *Scheme Actuary* if any order, notice, direction or statement (or similar) which is relevant to the financing or solvency of the scheme is issued by the *Regulator* (or has been issued and is still relevant at the date of the *Scheme Actuary's* appointment) of which the *trustees* are aware, for example:

- an order issued under section 231(2) of the Pensions Act 2004 (an order to modify the scheme as regards the future accrual of benefits etc),
- a contribution notice under Section 38, 47 or 55 of the Pensions Act 2004,
- a financial support direction under Section 43 of the Pensions Act 2004,
- a clearance statement under Section 42 or 46 of the Pensions Act 2004,
- a restoration order under Section 52 of the Pensions Act 2004,
- an approval notice in relation to a withdrawal arrangement under the Occupational Pension Schemes (Employer Debt) Regulations 2005

2.9.3 allow the *Scheme Actuary* access at all reasonable times and in all reasonable circumstances, on request, to such information and explanation as may be required to carry out his or her duties as the *Scheme Actuary*, including:

- the scheme's books, accounts and supporting documentation,
- copies of the minutes of all *trustees'* meetings and meetings of sub-committees of the *trustees*,
- copies of all *trustees'* resolutions,
- copies of any other documents recording decisions taken by the *trustees* following *actuarial advice* from him or her or from a *Trustees' Adviser*,
- copies of all documents constituting the scheme.

2.10 The *Scheme Actuary* does not have to require the *trustees* to provide him or her automatically with the information referred to in paragraph 2.9.3. 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 a report needs to be made to the *Regulator* under *Section 70*.

2.11 A newly appointed *Scheme Actuary* must 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 3.2.3) might invalidate a Reference Scheme Test Certificate or Certificate C. If the new *Scheme Actuary* concludes that any such certificate has been invalidated he or she must notify *SPSS* 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* must notify *SPSS*.

- 2.12 A newly appointed *Scheme Actuary* must consider whether there is any information, in addition to that specified in paragraphs 3.2.1 to 3.2.3, that he or she might need in order to carry out his or her *statutory responsibilities* (including the duty to report to the *Regulator* under *Section 70*) which it would be reasonable to request from the outgoing *Scheme Actuary*.

3 Resignation or Removal

- 3.1 The *Scheme Actuary* must include on a *statement* or *declaration* any information regarding the circumstances of his or her removal or resignation, in addition to that required by the *Regulations*, that he or she considers it appropriate to add.
- 3.2 The outgoing *Scheme Actuary* must provide the incoming *Scheme Actuary* with:
- 3.2.1 copies of any reports made to the *Regulator* under *Section 70* or to Opra under Section 48 of the Pensions Act 1995 which the outgoing *Scheme Actuary* holds (including reports made by someone other than the *Scheme Actuary*), indicating if he or she believes that the *trustees* have not been informed of the report - the *Scheme Actuary* may, however, omit any reports which, in his or her opinion, would no longer in any circumstances be relevant to any future decision on reporting to the *Regulator*,
- 3.2.2 a list of any other reports made to the *Regulator* under *Section 70* or to Opra under Section 48 of the Pensions Act 1995 of which the *Scheme Actuary* is aware, indicating if he or she believes that the *trustees* have not been informed of the report - the *Scheme Actuary* may, however, omit any reports which, in his or her opinion, would no longer in any circumstances be relevant to any future decision on reporting to the *Regulator*,
- 3.2.3 details of any events which the *Scheme Actuary* is aware of but which he or she has been unable to consider in relation to the continuing validity of a Reference Scheme Test Certificate or Certificate C, and
- 3.2.4 any other information which the incoming *Scheme Actuary* reasonably requests in accordance with paragraph 2.12.
- 3.3 The outgoing *Scheme Actuary* must also ensure that the *trustees* are aware of:
- 3.3.1 their duties under legislation to:
- appoint a new *Scheme Actuary* within three months of the date of his or her resignation or removal, and
 - send a copy of the outgoing *Scheme Actuary's statement* or *declaration* to the auditor appointed under Section 47(1)(a) of the Pensions Act

1995 and to the incoming *Scheme Actuary* within the statutory timescale,

- 3.3.2 any deadlines in relation to the *Scheme Actuary's statutory responsibilities* which fall within four months after the date of his or her resignation or removal.

4 Absence

- 4.1 A *Scheme Actuary* who expects to be absent from the office for a prolonged period must consider whether or not to resign the appointment.
- 4.2 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.
- 4.3 If a *Scheme Actuary* expects to be absent for a prolonged period, but does not intend to resign the appointment, 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.
- 4.4 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 an appropriate *Trustees' Adviser* 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 70* if the *Trustees' Adviser* failed to report to the *Regulator* where there was an obligation to do so.
- 4.5 If, under paragraph 4.4, arrangements have been made for another party to be kept advised of developments during a *Scheme Actuary's* short period of absence, the *Scheme Actuary* must, on his or her return, ask for copies of any reports made by that party to the *Regulator* during his or her absence and any other relevant information.

5 Responsibilities

- 5.1 A *Scheme Actuary* must consider whether it is necessary to draw the *trustees'* attention to any obligations placed on them, or conduct expected of them, under a Code of Practice or Guidance issued by the *Regulator* which are of material relevance to any advice which he or she is currently giving to them in relation to his or her *statutory responsibilities*. A *Scheme Actuary* is not, however, required to police the *trustees'* compliance with such a Code of Practice or Guidance.

5.2 The *Scheme Actuary* must advise the *trustees* if:

- a proposed action or inaction which he or she becomes aware of, or
- any events which he or she becomes aware of (whether notified to him or her under the agreement referred to in paragraph 2.6 or otherwise)

might, in his or her opinion:

- materially affect the financing or solvency of the scheme,
- invalidate any advice already given to the *trustees* by the *Scheme Actuary* when carrying out his or her *statutory responsibilities* (unless that advice is no longer relevant), or
- require the *trustees* to take particular action or commission advice from him or her or from another adviser, in particular investment advice.

5.3 If the *Scheme Actuary* becomes aware that, the *trustees* have, in his or her opinion:

- failed to comply with the terms of the agreement referred to in paragraph 2.6,
- failed to provide, or allow access to, the information specified in paragraphs 2.9.1 to 2.9.3,
- shown inconsistency in decisions that they have taken in areas relevant to the *Scheme Actuary's statutory responsibilities* and those inconsistencies cast doubt on the *trustees'* proper management of the scheme, or
- not given appropriate consideration to any matter on which he or she is advising them in connection with his or her *statutory responsibilities* and this casts doubt on the *trustees'* proper management of the scheme

the *Scheme Actuary* must discuss the underlying issues with the *trustees*, specifying the circumstances, and must then consider whether it would be appropriate to take any further action. Depending on the circumstances, appropriate actions might include making a report to the *Regulator* under *Section 70* and/or resigning his or her appointment.

6 Mentoring

6.1 If a *Scheme Actuary* who holds a *Scheme Actuary Certificate* on the basis of recourse to a *mentor* is in any doubt as to the proper course of action in relation to his or her *statutory responsibilities* he or she must initially seek advice from his or her current *mentor*. In the absence of that *mentor*, advice

must be sought from an actuary who holds a Scheme Actuary Certificate which is not on the basis of having recourse to a *mentor*. It is emphasised, however, that the responsibility for fulfilling the *Scheme Actuary's statutory responsibilities* is the *Scheme Actuary's* alone, even when advice has been sought from another actuary.

- 6.2 A *mentor* is only required to give advice to the *Scheme Actuary* on request, and not to monitor his or her work.

APPENDIX A

Trustees' Advisers

A 1 Introduction

A 1.1 This Appendix gives guidance to *Trustees' Advisers*.

A 1.2 A *Trustees' Adviser* is a *relevant person*:

- who is providing advice to the *trustees* on any matter other than *statutory responsibilities*, or
- who is involved in the administration or management of the scheme at a level where he or she has direct contact with the *trustees* as part of his or her normal responsibilities. Direct contact includes contact by telephone or by e-mail.

A 1.3 The role of a *Trustees' Adviser* could come about, for example, as a result of:

- the individual appointment of a *relevant person* as an external adviser or administrator,
- the appointment of a *relevant person's firm* as an external adviser or administrator, or
- a *relevant person's* in-house role in relation to a pension scheme connected with his or her *firm*.

A 1.4 The definition of *Trustees' Adviser* would include, for example:

- a *relevant person* who provides *actuarial advice* to the *trustees* of a defined benefits scheme on matters which fall outside the *statutory responsibilities* of the *Scheme Actuary*,
- a *relevant person* who provides *actuarial advice* to the *trustees* of a money purchase scheme,
- a *relevant person* who provides advice to the *trustees* on general or investment consultancy issues but not actuarial matters,
- a *relevant person* who is a professional adviser as defined in Section 47 (4) of the Pensions Act 1995 providing advice other than *actuarial advice* (for example investment advice),
- a *relevant person* who is the pensions manager of a scheme, and
- a *relevant person* who acts as a trustee or trustee director.

A 1.5 The definition of a *Trustees' Adviser* would not include, for example, a *relevant person* employed by an insurance company whose only direct contact with *trustees* is to provide factual information about the operation of his or her *firm's* policies.

A 2 Responsibilities

A 2.1 A *Trustees' Adviser* must advise the *trustees* if any event or proposed action or inaction which he or she becomes aware of might, in his or her opinion invalidate any advice already given to them by him or her (unless that advice is no longer relevant).

A 2.2 A *Trustees' Adviser* must also advise the *trustees* (or, if the *Trustees' Adviser* considers it appropriate, the *Scheme Actuary* instead) if any event or proposed action or inaction which he or she becomes aware of might, in his or her opinion:

- materially affect the financing or solvency of the scheme,
- need to be notified to the *Scheme Actuary* (whether under the terms of paragraph 2.6 or otherwise), or
- require the *trustees* to take specific action or to commission advice from the *Trustees' Adviser* or from another adviser.

If, when considering his or her responsibilities under this paragraph, a *Trustees' Adviser* does not have relevant expertise or does not have sufficient information to form an opinion on a matter, then no action is expected of him or her in relation to that particular matter.

A 2.3 If the *Trustees' Adviser* becomes aware that the *trustees* have, in his or her opinion:

- been inconsistent in decisions that they have taken in areas relevant to the *Trustees' Adviser's* role in relation to the scheme and those inconsistencies cast doubt on the *trustees'* proper management of the scheme, or
- not given appropriate consideration to any matter on which he or she is advising them and this casts doubt on the *trustees'* proper management of the scheme

the *Trustees' Adviser* must discuss the underlying issues with the *trustees*, specifying the circumstances, and must then consider whether it would be appropriate to take any further action. Depending on the circumstances, appropriate actions might include making a report to the *Regulator* under *Section 70* and/or resigning his or her appointment.

A 2.4 If, in a contracted-out scheme which does not have a *Scheme Actuary*, a *Trustees' Adviser* who is responsible for considering the continuing validity of a Reference Scheme Test Certificate or Certificate C is replaced:

A 2.4.1 the outgoing *Trustees' Adviser* must provide his or her replacement with details of any events notified to the outgoing *Trustees' Adviser* which he or she has been unable to consider in relation to the continuing validity of a Reference Scheme Test Certificate or Certificate C, and

A 2.4.2 the new *Trustees' Adviser* must consider whether any of the events which have occurred since the outgoing *Trustees' Adviser* ceased to act, or which have been notified to him or her under paragraph A 2.4.1, might invalidate the Reference Scheme Test Certificate or Certificate C. If the new *Trustees' Adviser* concludes that any such certificate has been invalidated he or she must notify *SPSS* in writing as soon as is practicable. If the newly appointed *Trustees' Adviser* is unable to assess, within six months of his or her appointment, the impact of any such events, the new *Trustees' Adviser* must notify *SPSS*.

APPENDIX B

Events which could affect the Financing or Solvency of a Scheme

This Appendix illustrates the types of event which could affect the financing or solvency of a scheme and which, if material, a *Scheme Actuary* might typically require the *trustees* to notify to him or her (see paragraph 2.7 of the Guidance Note). The lists are not intended to be exhaustive.

B1 **Changes affecting the status of the scheme**, for example:

- cessation of future accruals
- closure to new members
- a decision to wind up or otherwise discontinue the scheme
- a determination to defer winding up

B2 **Changes to (or legal opinions on the interpretation of) the Trust Deed and Rules**, for example in relation to:

- the definition of pensionable pay
- contribution or benefit levels
- normal retirement date
- the degree of priority accorded to benefits in the event of the scheme winding up

B3 **Unexpected changes to the membership**, for example in relation to:

- the general remuneration levels of scheme members
- the numbers of active members, deferred pensioners or pensioners

B4 **Events in relation to participating employers**, for example:

- a change in the *trustees*' view of the strength of a participating employer's covenant
- a relevant event (as defined in Section 75(6A) of the Pensions Act 1995) in relation to a participating employer
- a participating employer ceasing to have any employees in the categories of employment to which the scheme relates
- sales and purchases affecting the membership of the scheme

B5 Events in relation to investment matters, for example:

- a change in investment policy or investment management arrangements
- adverse investment performance relative to agreed objectives

B6 The exercise of a discretionary power, for example:

- the augmentation of a benefit, or the granting of a discretionary pension increase, where the cost is not met by additional contributions at the time on a basis agreed with the *Scheme Actuary*

B7 Events connected with the *Regulator*, for example:

- any event notified to the Regulator under Section 69 of the Pensions Act 2004 by the *trustees* (or any event of which the *trustees* are aware has been notified to the Pensions Regulator under Section 69 of the Pensions Act 2004 by a participating employer)
- an application for a refund of surplus to a participating employer

B8 Events in relation to financing, for example:

- non-payment of the employer's and/or employees' contributions stated in the most recent Schedule of Contributions
- a change of policy in relation to the payment of expenses
- a change in the arrangements for insuring death in service benefits or a change from insured to self-administered or vice versa
- a change to the scheme year for accounting purposes

Appendix C

Legislation

GB Provision

Pensions Act 1995 (c.26)

- Section 47

Pensions Act 2004 (c35)

- Section 70

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

NI Provision

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

- Article 47

Pensions (Northern Ireland) Order 2005
(SI 2005/255 (NI 1))

- Article 65

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