1976/237

THE SUPERANNUATION SCHEMES REGULATIONS 1976

DENIS BLUNDELL, Governor-General

ORDER IN COUNCIL

At the Government House at Wellington this 23rd day of August 1976

Present:

HIS EXCELLENCY THE GOVERNOR-GENERAL IN COUNCIL

PURSUANT to the Superannuation Schemes Act 1976, His Excellency the Governor-General, acting by and with the advice and consent of the Executive Council, hereby makes the following regulations.

ANALYSIS

REGULATIONS

1. Title and commencement—(1) These regulations may be cited as the Superannuation Schemes Regulations 1976.

(2) These regulations shall come into force on the day after the date of their notification in the *Gazette*.

2. Interpretation—In these regulations, unless the context otherwise requires,—

"The Act" means the Superannuation Schemes Act 1976:

"Actuary" means a person who is either a Fellow of the Institute of Actuaries of London or a Fellow of the Faculty of Actuaries in Scotland or any other person who is for the time being approved by the Minister as an actuary for the purposes of these regulations.

Expressions defined in the Act have the meanings so defined.

3. General requirements for approval of superannuation schemes—The general requirements for the approval of a superannuation scheme by the Government Actuary shall be:

(a) Constitution—Unless the scheme is constituted under an Act of the Parliament of New Zealand, and except as provided in paragraph (m) of this regulation, the scheme shall be governed by a trust deed in accordance with New Zealand law:

(b) Membership—The following provisions shall apply:

(i) The trust deed shall set out the conditions for membership; and, in a scheme for employees, the membership may be limited to employees of a specified class or classes, which may include those who have completed a specified period of service, or those who have been employed in particular positions, or any other class or classes whatsoever:

(ii) Where the scheme operates on the principle of unallocated funding, and has different benefit formulae, retiring ages, or other conditions for different classes of members, the Government Actuary may at his discretion make it a condition of approval that the benefits and contributions of some or all of the classes shall be accounted for in separate funds, and for all purposes be considered as if they were separate schemes:

(iii) For the purpose of these regulations a superannuation scheme shall be deemed to operate on the principle of unallocated funding if the employer's contributions are not allocated to individual employees but are applied to provide benefits for all employees, whether those contributions are made at the same time as those of the employees or at any other time:

(c) Contributions—The trust deed shall state the basis of contributions, and if appropriate shall define clearly the earnings or other factors on which contributions and benefits are based:

(d) Retiring ages—The trust deed shall specify the normal ages at which retirement benefits will become payable, being ages not less than 60 years:

Provided that:

(i) In the case of a scheme for employees, the trust deed may permit earlier retirement at the option of the employee subject to the consent of the employer at an age of 55 or higher:

(ii) Where there are special factors, the trust deed may, with the approval of the Government Actuary, permit earlier normal retiring ages:

(iii) The trust deed may permit retirement benefits to become payable before the normal retiring age (or optional earlier retiring age if provided for) where a member retires early because of ill-health or disablement; but, where retirement before the earlier of normal retiring age or optional early retiring age occurs for any reason other than ill-health or disablement, the payment of retirement benefits shall be deferred until the member reaches the earlier of normal retiring age or optional early retiring age:

(iv) The trustees may be empowered to defer the commencement of the member's retirement benefit until he ceases to be employed in cases where a member of a scheme for employees remains in his employer's service after the normal retiring age specified in the trust deed:

(e) Retirement and death benefits—Retirement benefits, and death benefits, if any, may be in the form of:

(i) Annuities:

(ii) Lump sums:

(iii) A combination of annuities and lump sums:

(f) Withdrawal benefits—The following provisions shall apply:

(i) The trust deed shall clearly state the terms of withdrawal from the scheme:

(ii) In the case of a scheme for employees, when a member ceases to be eligible to contribute to the scheme otherwise than by reason of his retirement or death, he shall be entitled to a return of not less than his contributions to the scheme, and the amount to be returned either shall be paid to the member as a lump sum, or (if the member so directs) may be transferred to another approved scheme for his benefit:

Provided that the trust deed shall provide that payment of a lump sum to a member shall not be made until the member ceases to be employed by the employer for whose employees the scheme is maintained:

Provided also that the trust deed may provide that the amount that would otherwise be paid or transferred shall be retained in the scheme until a benefit becomes payable on the member's death or attainment of retirement age or total and permanent incapacity:

(iii) In the case of a scheme for the benefit of the members thereof otherwise than as employees of any employer, the trust deed shall provide that any amount that would otherwise be paid or transferred shall be retained in the scheme until a benefit becomes payable on the member's death or attainment of retirement age, or total and permanent incapacity, or permanent emigration from New Zealand:

(iv) Nothing in this regulation shall affect a member's rights to receive on withdrawal from the scheme the benefits provided by the trust deed that arise from contributions made before the 31st day of August 1976:

(g) Reserve fund—The following provisions shall apply:

(i) The trust deed of a scheme that does not operate on the principle of unallocated funding shall normally include provision for a reserve fund, or similar fund, which fund may consist of benefits foregone when members cease to be eligible to contribute to the scheme, unclaimed benefits, interest and other income on the investments of the reserve fund, and other money not required for payment of benefits under the scheme:

(ii) A scheme that includes a reserve fund may retain this fund if the scheme is altered to operate on the principle of unallocated funding, but in such a case there may be no further accretions to the reserve fund other than interest and other income on its investments:

(iii) The uses of reserve fund money which will be approved include—

Payment of the contributions of all members of the scheme on an equitable basis;

Payment of the employer's contribution to the scheme;

Increasing the retirement benefits of all members, on an equitable basis according to their interests in the scheme;

Providing benefits other than retirement benefits for all members of the scheme on an equitable basis;

Providing personal benefits for members or their dependants in the case of hardship; and

Payment of the expenses of the scheme:

(h) Variations in benefit—Schemes in which the members' benefits may be reduced to take account of factors outside the scope of a superannuation scheme shall not be approved:

Provided that a scheme may be approved under which benefits are adjusted to take account of the member's entitlement to national superannuation, social security, and Accident Compensation Commission benefits:

(i) Benefits inalienable—The following provisions shall apply:

(i) No member or other beneficiary shall be allowed to assign, charge, alienate, or borrow against the security of his benefits, even with the consent of the trustees; and the trust deed shall not give the employer the right to recover money owing to him, or any monetary loss that he has suffered, from a member's benefit, except in the case of contributions to the scheme paid by the employer in advance:

(ii) The trust deed may provide that benefits of members or other beneficiaries are subject to forfeiture to the fund in the event of bankruptcy of the member or other beneficiary, and in any such event the trust deed shall give the trustees power to apply the forfeited benefit towards the support of the member or his dependants:

(iii) The trust deed may provide that in the event of the inability of a member or other beneficiary to manage his own affairs the trustees may administer any benefits on his behalf:

(j) Investments—The trust deed shall specify clearly the investment powers of the trustees, and a trust deed shall not be approved if it includes investment powers more extensive than those specified hereunder; also a trust deed governing a scheme for employees shall not be approved if it permits more than 5 percent of the market value of all the investments of the scheme, at the time when the investment is made, to be invested in shares, debentures, rights, notes, or other securities issued by the principal employer by or for whom the scheme is operated, or any company associated in capital structure with that principal employer, or if it permits more than 25 percent of such market value in total to be invested in such securities and in lease-back contracts and mortgages entered into by the principal employer by or for whom the scheme is operated, or any company associated in capital structure with that principal employer. Subject to any limitations imposed under the Reserve

Bank of New Zealand Act 1964 as that Act affects superannuation schemes, all money available for investment may be invested as follows:

(i) In any manner that would be authorised by the Trustee Act 1956 if section 4 (1) of that Act was amended by omitting the words "in any investments authorised by the instrument (if any) creating the trust for the investment of money subject to the trust, or":

(ii) Without regard to the limitations imposed by the Trustee Act 1956, in:

Deposits with any permanent building society that is for the time being designated under section 63 of the Building Societies Act 1965 as a society with which trustees may invest trust funds by way of deposit:

Mortgages of any estate or interest in land in New Zealand:

Any shares, stock, bonds, notes, debentures, or other securities issued by any company or body listed on any stock exchange affiliated to the Stock Exchange Association of New Zealand, whether such company was incorporated or formed in New Zealand or elsewhere:

The purchase or other acquisition of any estate or interest in land in New Zealand for development, sale, or letting:

Policies of life or endowment insurance and advances secured thereon:

Unit trusts, as defined by the Unit Trusts Act 1960:

Deposits with a life assurance or trustee company:

Provided that investments made on or before the date of these regulations that are not in accordance with the provisions of this paragraph may be retained until maturity, contractual repayment, sale, or other disposal, but in any case not for a period in excess of twenty years from the date of these regulations, and may not be added to unless within the limits of this paragraph:

(k) Actuarial examination—The trust deed governing a scheme that operates on the principle of unallocated funding or provides benefits in the form of annuities paid from the fund shall provide that an examination of the financial position of the scheme shall be made by an actuary at intervals of not more than 3 years, and a copy of the report of the actuary shall, as soon as practicable, be furnished to the Government Actuary:

Provided that, in the case of a scheme that does not operate on the principle of unallocated funding but which provides benefits in the form of annuities paid from the fund, the Government Actuary may at his discretion waive the requirement of an actuarial examination and report:

(l) Termination—The trust deed shall define the distribution of the assets of the scheme in the event of its termination; and in no case shall a scheme for employees provide that any part of the assets of the scheme will revert to any of the employers without the prior written approval of the Government Actuary:

(m) Overseas schemes—The following provisions shall apply:

(i) A scheme that is constituted outside New Zealand but that meets all the requirements of the Act and these regulations in respect of members in New Zealand may be approved by the Government Actuary notwithstanding that it is not governed by a trust deed in accordance with New Zealand law:

(ii) Where, in respect of a scheme that is constituted outside New Zealand, not more than 5 members are normally in New Zealand at any one time and the trustee or manager of the scheme satisfies the Government Actuary that, by reason of special circumstances, it would be reasonable for this clause to have effect as if all the requirements of the Act and these regulations had been complied with, the scheme may be approved by the Government Actuary on such terms and conditions as he at his discretion may apply:

(n) Schemes with members resident overseas—A scheme governed by a trust deed in accordance with New Zealand law providing benefits for certain members normally out of New Zealand may be approved at the discretion of the Government Actuary, notwithstanding that in order to meet requirements of taxation or other authorities in the jurisdiction or jurisdictions concerned the scheme does not (in respect only of those members) comply with all the requirements of the Act and these regulations:

(o) Amendments—The following provisions shall apply:

(i) A trust deed may include provision for its future amendment; and where such a provision is included, it shall be provided that no such amendment shall be made without the member's consent if the amendment would reduce or adversely affect that member's interest in the fund at the date of amendment and, in any event, not until the Government Actuary has notified the trustees that the trust deed as proposed to be amended will retain his approval:

(ii) The Government Actuary shall not approve an amendment unless all of the provisions of the trust deed as proposed to be amended comply with the Act and these regulations:

(p) Advice to members—The trust deed shall provide that—

(i) At the time of his entry to the scheme each member shall be advised in writing brief details of the scheme and of his principal rights and benefits, and at any time shall have the right to peruse the deed:

(ii) Each member shall have the right to be advised, as soon as practicable after request, the amount of his cash withdrawal rights as at the close of the last preceding financial year of the scheme.

4. Information to be supplied when seeking approval—In any case where it is desired to obtain approval of a scheme the trustees or managers of the scheme shall supply to the Government Actuary two copies of the trust deed or other instrument governing the scheme together with the following information:

(a) The date from which approval is sought:

(b) The commencement date of the scheme:
(c) The names of every employer, trustee, fund manager, insurer, and other person or body who or which stands or will stand possessed of any part of the assets of the scheme or documents relating thereto:
(d) Details of the eligibility arrangements that will apply:
(e) A copy of the most recent accounts for the scheme:
(f) In the case of a scheme operating on the principle of unallocated funding, a copy of the most recent actuarial report on the scheme, and a current certificate from an actuary setting out the recommended minimum rate at which contributions should be paid to support the benefits for members of the scheme, which certificate may be based upon the results of the most recent actuarial report if this report was based on a date not more than 3 years before the date from which approval is sought:
(g) In the case of a scheme where benefits are to be funded by life insurance policies, brief details of the type of policy to be employed, and a copy of a relevant specimen document:
(h) Such further information as the Government Actuary may require.

5. **Annual reports**—The following provisions shall apply:
(a) The report to be made to the Government Actuary by the trustees or managers of every scheme shall be made within 6 months after the end of the financial year for the scheme or within such longer period as the Government Actuary may approve, and shall include the following information:
(i) A statement of changes in the numerical membership of the scheme; and
(ii) Audited accounts in respect of the scheme for the previous financial year, which accounts shall include a revenue account and balance sheet and auditor's report; and
(iii) A certificate by the trustees that the value of the assets of the scheme exceeds the total of the cash withdrawal rights of all members:
(b) The Government Actuary may provide forms for submitting the information required under paragraph (a) of this regulation, and may vary the requirements if, in his opinion and with the agreement of the trustees, this would be appropriate for particular types of schemes.

6. **Notice of decisions**—Subject to the provisions of the Act and these regulations, the Government Actuary shall, as soon as practicable, give notice to the trustees of the scheme in writing of any decision in respect of which an objection may be made under section 16 of the Act.

7. **Objections**—The following provisions shall apply:
(a) Any objection to a decision of the Government Actuary under the provisions of section 16 of the Act shall be made by delivering or posting a written notice of objection, stating shortly the grounds of the objection, to the Government Actuary:

(b) The delivery or postage of the notice of objection shall be made within the period of 28 days commencing on the date on which notice has been given pursuant to these regulations of the decision in respect of which the objection is made, or within such extended time as the Government Actuary may allow on application made either before or after the expiration of that period of 28 days.

8. Consideration of objections—Any objection to a decision of the Government Actuary made in accordance with the Act and these regulations shall be considered by the Government Actuary within a period of 28 days from the date of receipt of the notice of objection. An objector whose objection is considered by the Government Actuary shall be advised as soon as practicable of the Government Actuary's decision on the objection.

9. Giving and service of notices, etc.—(1) Subject to subclause (2) of this regulation, the posting of any notice addressed to a person, body, company, or authority at his or its usual or last known address shall be sufficient service of the notice on him or it for the purposes of the Act and these regulations.

(2) A notice, application, or other document required by the Act or these regulations to be delivered, given, or sent to the Government Actuary may be delivered to him, or sent by post addressed to him at his usual address.

(3) Where a notice, application, or other document is sent by post in the manner prescribed in subclause (1) or subclause (2) of this regulation, it shall be deemed to have been given at the time at which, if it were a letter so sent by post, it would have been delivered in the ordinary course of post.

10. Certificates as evidence—In any proceedings against a person, body, company, or authority for refusing or failing to deliver or furnish any statement, certificate, return, report, or other form, or any information as and when required by the Act or these regulations, or by the Government Actuary, a certificate in writing signed by the Government Actuary certifying that the statement, or the certificate, or the return, or the report, or the form, or the information so required has not been received from that person, or that body, or that company, or that authority at the place where or by the person to whom the statement, or the certificate, or the return, or the report, or the form, or the information should have been furnished, shall, in the absence of proof to the contrary, be sufficient evidence that the defendant has refused or failed to deliver or furnish the statement, or the certificate, or the return, or the report, or the form, or the information.

11. Judicial notice of certain signatures—(1) Any notice or other document bearing the written, stamped, or printed signature of the Government Actuary, shall, until the contrary is proved, be deemed to have been duly signed by him.

(2) Judicial notice shall be taken of every such signature and of the fact that the person whose signature it purports to be holds or has held the office of Government Actuary.

12. Delivery of statements, etc.—(1) All statements, certificates, returns, reports, and other forms and information required by the Act and these regulations to be delivered or furnished to the Government Actuary shall be delivered or furnished by posting or delivering the same to such place as the Government Actuary may direct.

(2) Any such direction may be given by the insertion of a general direction in the appropriate form in which the statement, certificate, return, report, or other form, or the information, is to be so delivered or furnished, or in such other manner as the Government Actuary thinks fit.

(3) Every person, body, company, or authority who delivers or furnishes a statement or certificate or return or report or other form shall state therein his or its postal address and shall, within one month of any change of that postal address, deliver to the Government Actuary notice in writing of his or its new postal address.

P. G. MILLEN,
Clerk of the Executive Council.

EXPLANATORY NOTE

This note is not part of the regulations, but is intended to indicate their general effect.

These regulations prescribe general requirements for approval of superannuation schemes by the Government Actuary; information to be supplied when seeking approval; requirements in connection with annual reports to be made by trustees or managers of superannuation schemes; provisions in relation to objections to decisions of the Government Actuary; and procedural matters.

Issued under the authority of the Regulations Act 1936.
Date of notification in *Gazette*: 26 August 1976.
These regulations are administered in the Treasury.