1983/34

THE SUPERANNUATION SCHEMES REGULATIONS 1983

DAVID BEATTIE, Governor-General

ORDER IN COUNCIL

At the Government Buildings at Wellington this 14th day of March 1983

Present:

THE RIGHT HON. D. MACINTYRE PRESIDING IN COUNCIL

PURSUANT to section 18 of the Superannuation Schemes Act 1976 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 1983.

(2) These regulations shall come into force on the 1st day of April 1983.

2. Interpretation—(1) In these regulations, unless the context otherwise requires,—

"The Act" means the Superannuation Schemes Act 1976:

"Actuary" means a person who—

(a) Is a Fellow of the Institute of Actuaries of London; or

(b) Is a Fellow of the Faculty of Actuaries of Edinburgh; or

(c) Is a Fellow of the Institute of Actuaries of Australia; or

(d) Has other equivalent qualifications as an actuary and, subject to such conditions relating to work experience as the Minister thinks fit, has been approved by the Minister as an actuary for the purposes of these regulations; or

(e) Has been approved as an actuary under the Superannuation Schemes Regulations 1976*:

"Auditor" means a person who is either—

(a) A member of the New Zealand Society of Accountants; or

(b) A member, fellow, or associate of an association of accountants constituted in some part of the Commonwealth outside New Zealand, and for the time being approved for the purpose of the audit of company accounts under section 165 (4) of the Companies Act 1955:

"Bank" has the same meaning as in the Trustee Act 1956:

"Life insurance company" means a company as defined in section 2 of the Life Insurance Act 1908:

"Permanent incapacity" means permanent physical or mental incapacity suffered by any person that is of such an extent that,

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having regard to the previous employment and other characteristics of that person, he is unlikely to have a significant earning capacity in the future:

"Retirement age" means the age for the payment of retirement benefits defined or chosen in accordance with regulation 19 or regulation 36 of these regulations:

"Trust deed" includes a superannuation policy as defined in section 225 (1) of the Income Tax Act 1976:

"Trustee company" has the same meaning as in the Trustee Companies Act 1967.

(2) For the purposes of these regulations a superannuation scheme shall be deemed to operate on the principle of unallocated funding if the contributions are not allocated on a defined basis to individual members but are applied to provide benefits for members and other beneficiaries.

3. No approval unless requirements met—(1) The Government Actuary shall not grant approval or classification under Part II of the Act to any scheme that does not comply with the requirements of either Parts I and II of these regulations, or Parts I and III of these regulations.

(2) The Government Actuary shall approve as an employee superannuation scheme any scheme that complies with Parts I and II of these regulations.

(3) The Government Actuary shall approve as a personal superannuation scheme any scheme that complies with Parts I and III of these regulations.

PART I

REQUIREMENTS FOR APPROVAL AND CLASSIFICATION COMMON TO ALL SUPERANNUATION SCHEMES

4. Constitution of schemes—Except as provided in regulations 29 and 30 of these regulations, every scheme that is not constituted under an Act of Parliament of New Zealand shall be governed by a trust deed that shall be interpreted and administered in accordance with New Zealand law.

5. Information to be supplied when seeking approval and classification—In any case where it is desired to obtain approval and classification of a scheme, the trustees or managers of the scheme shall supply to the Government Actuary 2 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 classification sought:

(c) The commencement date of the scheme:

(d) The names of every employer, trustee, manager, and insurer:

(e) A copy of the most recent accounts of the scheme:

(f) The name and address of the person to whom all correspondence should be sent:

(g) The date upon which the financial year of the scheme ends:

(h) 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 the certificate of an actuary stating that the rate at which he has recommended contributions are to be paid is sufficient to support the benefits for members of the scheme, and specifying that rate. Any such certificate may be based upon the results of the most recent actuarial report if that report was based on a date not more than 3 years before the date from which approval is sought:

(i) In the case of a scheme where benefits are to be funded by life assurance policies or superannuation policies brief details of the type of policy to be employed, and a copy of a relevant specimen document:

(j) A copy of any booklet of explanatory material that has been or is intended to be issued to members or potential members:

(k) A statement of the persons or classes of persons to whom membership of the scheme is to be offered.

6. Amendment of trust deeds—(1) Every trust deed shall include provision for its future amendment.

(2) Every such provision shall provide that no such amendment shall be made without the consent of every member whose interest in the scheme at the date of amendment could be reduced or adversely affected by the proposed amendment.

(3) No such amendment shall be made until the Government Actuary has notified the trustees that the amendment of the trust deed will not affect the approval of the scheme.

(4) The Government Actuary shall not approve an amendment to a trust deed unless all of the provisions of the trust deed as amended would comply with the Act and these regulations.

(5) No amendment of a trust deed shall have effect until the Government Actuary has approved the amendment.

(6) The trustees shall supply to the Government Actuary 2 copies of any proposed amendment to a trust deed.

(7) The Government Actuary shall notify the trustees of his approval of any amendment to a scheme and any change to the classification of the scheme.

(8) The trustees shall notify the Government Actuary of the date of adoption of any amendment to a scheme approved by him.

7. Actuarial examination—(1) The trust deed governing any scheme that operates on the principle of unallocated funding or provides benefits in the form of pensions paid from the fund shall provide—

(a) 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

(b) That a copy of the report of the actuary shall, as soon as practicable, be furnished to the Government Actuary.

(2) In any case where a scheme that does not operate on the principle of unallocated funding provides benefits in the form of pensions paid from the fund, the Government Actuary may, from time to time, waive the requirements in the trust deed for an actuarial examination and report.

8. Annual reports—(1) 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:

(a) A statement of numerical changes in the membership of the scheme during the financial year:

(b) Audited accounts in respect of the scheme, which accounts shall include—

(i) A revenue account or a statement of fund transactions; and

(ii) A balance sheet or a statement of assets and liabilities; and

(iii) An auditor's report:

(c) A certificate by the trustees that the value of the assets of the scheme exceeds the total withdrawal benefits of all members:

(d) A certificate by the auditors that, in their opinion, the investments and, in the case of personal superannuation schemes any borrowings, conformed with the requirements of these regulations at all times throughout the year:

(e) If the Government Actuary so requires,—

(i) A schedule detailing the investments held for the benefit of members:

(ii) A schedule detailing the members and other beneficiaries of the scheme:

(f) A statement of any changes in trustees or managers during the year.

(2) For the purposes of paragraphs (b) and (d) of subclause (1) of this regulation the auditors' report may, if the scheme is managed by a fund manager that provides to the Government Actuary audited accounts in respect of its total business, be replaced by a certificate from the fund manager to the same effect.

(3) The Government Actuary may provide forms for submitting the information required under subclause (1) of this regulation.

(4) The Government Actuary may, with the consent of the trustees, require the inclusion of further information in any annual report or waive any of the requirements of subclause (1) of this regulation.

(5) This regulation shall apply to every superannuation scheme in respect of every financial year that ends on or after the 31st day of March 1984.

9. Members' rights to information, accounts, and audit reports—(1) The trust deed of every employee superannuation scheme shall provide that each member shall, at the time of his entry to the scheme, be advised in writing of the brief details of the scheme and of his principal rights and benefits under the scheme.

(2) The trust deed of every personal superannuation scheme shall provide that each member shall, at the time of his entry to the scheme,—

(a) Be given a copy of the trust deed; or

(b) Be advised in writing of—

(i) The brief details of the scheme:

(ii) His principal rights and benefits:

(iii) The names of the trustees and managers:

(iv) Any charges or fees that may be imposed:

(v) Any maximum or minimum amounts of contributions.

(3) The trust deed of every scheme shall provide that each member shall have the right to peruse a copy of the trust deed at any reasonable time.

(4) The trust deed of every scheme shall provide that each member shall have the right, upon request, to receive a copy of the last audited accounts of the scheme and the auditor's report or, where the accounts are not audited, a copy of the certificate by the fund manager.

10. Investments—(1) The trust deed of every scheme shall specify clearly the investment powers of the trustees.

(2) The Government Actuary shall not approve a scheme if the trust deed includes investment powers more extensive than those specified in this regulation.

(3) Subject to subclauses (4) to (6) of this regulation, and 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 only as follows:

(a) 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":

(b) Without regard to the limitations imposed by the Trustee Act 1956, in—

(i) Deposits with any 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:

(ii) Mortgages of any estate or interest in land in New Zealand:

(iii) Any shares or other securities listed on any stock exchange registered under the Sharebrokers Act 1908:

(iv) Any shares or other securities issued by any company whose shares are listed on any stock exchange registered under the Sharebrokers Act 1908:

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

(vi) Policies of life or endowment assurance:

(vii) Advances secured on policies of life or endowment assurance:

(viii) Unit trusts, as defined by the Unit Trusts Act 1960:

(ix) Deposits with a life insurance company or trustee company:

(c) In a fund that is comprised solely of investments of approved superannuation schemes and is governed by a trust deed that restricts investments to those specified in paragraphs (a) and (b) of this subclause.

(4) Except as provided in subclause (5) of this regulation, the Government Actuary shall not approve any scheme as an employee superannuation scheme if the trust deed for that scheme—

(a) Permits more than 5 percent of the market value of all the investments of the scheme at the time the investment is made to be invested in securities other than lease-back contracts or mortgages issued or granted by any employer of any person who is a member of the scheme, or any person associated with any such employer; or

(b) Permits more than 25 percent of the market value of all the investments of the scheme at the time the investment is made to be invested in securities (including those referred to in paragraph (a) of this subclause) issued or granted by any employer of any person who is a member of the scheme, or any person associated with any such employer.

(5) The Government Actuary may approve any scheme as an employee superannuation scheme if the trust deed for that scheme permits investments that would otherwise be in breach of the requirements of

subclause (4) of this regulation so long as those investments are loans to which the Local Authorities Loans Act 1956 applies or are public securities as defined in section 2 (1) of the Public Finance Act 1977.

(6) The Government Actuary shall not approve any scheme as a personal superannuation scheme unless the trust deed for that scheme prohibits investment in any investment issued or given by any member of the scheme or any relative of or person associated with any member of the scheme.

(7) The Government Actuary shall not approve any scheme if the trust deed permits the use of any funds directly or indirectly in any business in any manner other than by an investment authorised by or under this regulation.

(8) For the purposes of this regulation—

(a) The expressions "business" and "relative" shall have the same meanings as in the Income Tax Act 1976; and

(b) Persons shall be deemed to be associated with each other if they would be so associated in terms of section 8 of the Income Tax Act 1976.

11. Underwriting and sub-underwriting—The trust deed of any scheme may empower the trustees to underwrite or sub-underwrite the issue of any investment authorised in regulation 10 of these regulations.

12. Retention of unauthorised investments—Where any investment that has been made before the 27th day of August 1976 does not comply with regulation 10 of these regulations, that investment may be retained until—

(a) Its maturity, contractual repayment, sale, or other disposal; or

(b) The 27th day of August 1996—

whichever is the earlier, without any effect on the approval or classification of the scheme.

13. Variation of benefits—(1) Except as provided in subclause (2) of this regulation, the Government Actuary shall not approve any scheme in which a member's benefits may be reduced to take account of factors outside the scope of a superannuation scheme.

(2) The Government Actuary may approve any scheme where the trust deed provides—

(a) That benefits may be adjusted to take account of the member's or other beneficiaries' entitlements to social security, accident compensation benefits, or similar statutory benefits in New Zealand or elsewhere:

(b) That a member may elect to receive a reduced pension (being not less than one-half of the pension that would otherwise be payable to the member) in consideration of the provision of a pension payable to some other beneficiary.

14. Benefits inalienable—(1) Except as provided in regulation 13 (2) (b) of these regulations, the trust deed of every scheme shall prohibit any member or other beneficiary from assigning, charging, alienating, or borrowing against the security of his benefits even with the consent of the trustees.

(2) No trust deed shall give any person the right to recover from a member's benefit any money owing to that person, or any monetary loss

suffered by that person, other than, in the case of an employee superannuation scheme, contributions in respect of that member paid in advance to the scheme by an employer.

(3) The trust deed may provide that the benefits of a member or other beneficiary are subject to forfeiture to the fund in the event of bankruptcy of the member or other beneficiary. In any such case the trust deed shall give the trustees discretionary power to apply the forfeited benefit towards the support of the member or beneficiary, or his dependants.

(4) 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 that person's behalf.

15. Approval suspended where scheme has no members—(1) If at any time an approved scheme has no members and no beneficiaries, then the approval of the scheme shall be deemed to be suspended.

(2) The Government Actuary shall cancel the suspension if he is satisfied that the scheme has or intends to have members or beneficiaries and that the requirements of the Act and these regulations are complied with.

PART II

REQUIREMENTS FOR APPROVAL AND CLASSIFICATION OF EMPLOYEE SUPERANNUATION SCHEMES

16. Membership—(1) The trust deed of every employee superannuation scheme shall set out the conditions of membership.

(2) The membership may be limited to employees of a specified class or classes, which may include those who are employed by a particular employer or class of employers, those who have completed a specified period of service, those who are or have been employed in particular positions, or any other class or classes whatsoever.

(3) Where an employee superannuation scheme operates on the principle of unallocated funding, and has different benefit formulae, retirement ages, or other conditions for different members or classes of members, the Government Actuary may make it a condition of approval that the benefits, funds, and contributions by or in respect of some or all of the members shall be accounted for separately; and in any such case the contributions, funds, and benefits shall, for the purposes of these regulations, the approval and classification of the schemes, and the identification of contributions paid by an employer, be considered as if they were separate schemes.

17. Contributions—(1) The trust deed of every employee superannuation scheme shall show the rates or amounts (if any) of contributions of the employer or employers and members, or the basis on which such contributions are to be made.

(2) The trust deed of every employee superannuation scheme shall define clearly the classes of earnings or other factors on which contributions are based for each class of member.

(3) The trust deed of an employee superannuation scheme may include power for the employer or employers to increase, reduce, suspend, or terminate its or their contributions.

(4) The trust deed of an employee superannuation scheme may give members the opportunity to increase, reduce, or continue their contributions in any case where their employer reduces or suspends his contributions.

18. Minimum benefit—The trust deed of every employee superannuation scheme shall provide that the value of the benefit payable to or in respect of a member on his ceasing to be a member for any reason shall not be less than the member's own contributions to the scheme together with any contributions made by him to any previous scheme from which the member's benefits may be transferred.

19. Retirement ages—(1) The trust deed of every employee superannuation scheme shall specify the ages at which retirement benefits become payable.

(2) Subject to subclauses (3) and (4) of this regulation, the age at which retirement benefits shall become payable shall be not less than 60 years.

(3) The trust deed may permit payment of retirement benefits to a member who has attained the age of 55 years, at the option of the member, and subject to the consent of the employer.

(4) Where there are special factors relating to the nature of the employment the trust deed may, with the approval of the Government Actuary and subject to the other provisions of these regulations, permit payment of retirement benefits to members who attain an age specified in the deed.

20. Payment of retirement benefit before retirement age—(1) The trust deed of an employee superannuation scheme may permit the payment of retirement benefits to a member before he attains his retirement age if the member retires before he attains his retirement age because of ill-health or permanent incapacity.

(2) The trust deed of an employee pension superannuation scheme may empower the trustees to pay to a member his entire benefit as a lump sum if the member retires before he attains his retirement age because of permanent incapacity and the trustees are satisfied that such a payment would be in the best interests of the member.

21. Deferral of retirement benefit until employment ceases—The trust deed of an employee superannuation scheme may require or empower the trustees to defer the payment of a retirement benefit to a member until he ceases to be employed by an employer for whose employees the scheme is maintained, if the member remains in the employment of any such employer after he attains his retirement age.

22. Member entitled to be advised of amount of withdrawal benefit—The trust deed of every employee superannuation scheme shall provide that each member shall have the right to be advised, as soon as practicable after his request, of the amount of his withdrawal benefit as at the close of the last preceding financial year of the scheme.

23. Withdrawal rights—The trust deed of every employee superannuation scheme shall clearly state the terms of withdrawal from the scheme.

24. Withdrawal benefits—(1) The trust deed of every employee superannuation scheme shall provide that, except on retirement or death, every member who ceases to be eligible to contribute to the scheme shall be entitled to payment of a withdrawal benefit which, subject to subclauses (2) to (5) of this regulation, shall—

(a) Be paid to the member as a lump sum; or

(b) If the member so requests and the operators of the other scheme agree, be transferred for his benefit to another approved superannuation scheme or to a scheme that is operated outside New Zealand.

(2) The trust deed of every employee superannuation scheme shall provide that no member shall be entitled to the withdrawal benefit until he attains his retirement age or ceases to be employed by the employer, whichever is the earlier.

(3) The trust deed of an employee superannuation scheme may provide that, at the option of the member, the withdrawal benefit may be retained in the scheme until a benefit becomes payable on the member's—

(a) Death; or

(b) Attainment of his retirement age; or

(c) Permanent incapacity; or

(d) Permanent emigration from New Zealand.

(4) The trust deed of every employee pension superannuation scheme shall provide that where a member who has attained the age of 50 years becomes entitled to payment of a withdrawal benefit in circumstances that do not entitle him to receive his entire benefit as a lump sum under regulation 20 (2) of these regulations, the part of the withdrawal benefit arising from any employer's contributions shall be in the form of a pension.

(5) Notwithstanding subclause (4) of this regulation, the trust deed of an employee pension superannuation scheme may provide that where the pension referred to in that subclause does not exceed $520 per year the employee may commute or capitalise the whole of the pension at the date of cessation of service.

(6) The trust deed of an employee superannuation scheme may provide that where an employee who is a member of the scheme elects or is required to become a member of another scheme made available by the employer the withdrawal benefits of the employee in the first scheme may, at the option of the trustees or managers of the second scheme, be transferred to the second scheme on such terms that comply with these regulations as those trustees or managers think fit.

(7) Where a member of an employee superannuation scheme becomes a member of another scheme made available by his employer and his benefits in the first scheme are not transferred to the second scheme, the member shall, in accordance with subclause (2) of this regulation, not be entitled to the withdrawal benefit under the first scheme until he attains his retirement age or ceases to be employed by the employer, whichever is the earlier.

25. Protection of certain withdrawal rights—Nothing in regulation 23 or regulation 24 of these regulations shall affect any right of any member to receive on withdrawal from an employee superannuation scheme the benefits that arise from contributions made before the 31st day of August 1976.

26. Reserve fund—(1) The trust deed of every employee superannuation scheme that does not operate on the principle of unallocated funding shall, unless the Government Actuary otherwise permits, include provision for a reserve fund.

(2) Any such fund shall consist of—

(a) Benefits forgone when members cease to be eligible to contribute to the scheme:

(b) Unclaimed benefits:

(c) Interest and other income from the investments of the reserve fund:

(d) Other money not required for the payment of benefits under the scheme.

(3) Except as provided in subclauses (4) and (5) of this regulation, the trust deed of every employee superannuation scheme that operates on the principle of unallocated funding shall not permit the operation of a reserve fund.

(4) Any scheme that operates on the principle of unallocated funding and has a reserve fund at the date the approval of the Government Actuary is sought may retain that fund.

(5) Any scheme that has a reserve fund may retain that fund if the scheme is altered to operate on the principle of unallocated funding.

(6) In any case where a scheme that operates on the principle of unallocated funding retains a reserve fund in accordance with subclause (4) or subclause (5) of this regulation, there shall be no further accretions to the reserve fund other than interest and other income on the investment of that fund.

27. Approved uses of reserve fund—Where any employee superannuation scheme operates a reserve fund in accordance with regulation 26 of these regulations, that reserve fund may be applied only towards the following purposes:

(a) Meeting all or part of the contributions of all members of the scheme on an equitable basis:

(b) Meeting all or part of the employer's contributions to the scheme:

(c) Increasing the retirement benefits of all members on an equitable basis:

(d) Providing benefits other than retirement benefits for all members of the scheme on an equitable basis:

(e) Providing personal benefits for members or their dependants in the case of hardship:

(f) Payment of the expenses of the scheme.

28. Termination—(1) The trust deed of every employee superannuation scheme shall state clearly the circumstances in which the scheme may be totally or partially terminated, and the distribution of the assets of the scheme in the event of its total or partial termination shall be clearly defined.

(2) The trust deed shall provide that no part of the assets of the scheme may revert to any employer on the total or partial termination of the scheme without the prior written consent of the Government Actuary, which shall only be given if the Government Actuary is satisfied that there is no member or other beneficiary to whom any benefit arising from those assets should be paid.

(3) In the case of an employee pension superannuation scheme the trust deed shall provide that where a member has attained the age of 50 years when the scheme is terminated, at least that part of the benefit arising from the employer's contributions shall be paid in the form of a pension commencing not earlier than the date on which the member attains the age of 60 years or the earlier entitlement of the member to a retirement benefit on the grounds of ill-health or permanent incapacity.

(4) Notwithstanding subclause (3) of this regulation, the trust deed of an employee pension superannuation scheme may provide that where the pension referred to in that subclause does not exceed $520 per year the employee may commute or capitalise the whole of the pension at the date of cessation of service.

29. Overseas schemes—Any employee superannuation scheme that is constituted outside New Zealand and meets all the requirements of the Act and these regulations (except regulation 4 of these regulations) in respect of members who are ordinarily resident in New Zealand may be approved and classified by the Government Actuary notwithstanding that it is not governed by a trust deed interpreted and administered in accordance with New Zealand law.

30. Overseas schemes that do not comply with Act and these regulations—The Government Actuary may, on such conditions as he thinks fit, approve and classify as an employee superannuation scheme a scheme that is constituted outside New Zealand and that does not comply with the requirements of the Act and the other requirements of these regulations if—

(a) Not more than 5 members of the scheme are ordinarily resident in New Zealand at any one time; or

(b) The scheme has more than 5 members ordinarily resident in New Zealand at the time of the application for approval and classification, but provision is made that no other persons ordinarily resident in New Zealand may be admitted to the scheme,—

and in either case the Government Actuary is satisfied that there are special circumstances to justify approval and classification of the scheme.

31. Schemes with members resident overseas—The Government Actuary may approve and classify as an employee superannuation scheme a scheme that does not comply with the requirements of the Act and the other requirements of these regulations if the following conditions are met:

(a) The scheme is governed by a trust deed that is to be interpreted and administered in accordance with New Zealand law; and

(b) The scheme provides benefits for members ordinarily resident outside New Zealand; and

(c) The scheme fails to comply with all the requirements of the Act and these regulations only so far as is necessary to meet the requirements of taxation or other authorities in the jurisdiction or jurisdictions in which the members who are ordinarily residents outside New Zealand reside, or to match the assets and liabilities of the scheme in the currency of any jurisdiction.

PART III

REQUIREMENTS FOR APPROVAL OF PERSONAL SUPERANNUATION SCHEMES

32. Personal superannuation schemes—(1) The Government Actuary shall not approve and classify any scheme as a personal superannuation scheme unless none of the trustees or managers is a member of the scheme or a relative of or person associated with any member.

(2) For the purposes of this regulation—

(a) The expression "relative" shall have the same meaning as in the Income Tax Act 1976; and

(b) Persons shall be deemed to be associated with each other if they would be so associated in terms of section 8 of the Income Tax Act 1976.

(3) Nothing in this regulation shall apply to any personal superannuation scheme that was approved by the Government Actuary before the 6th day of August 1982, and is classified as a personal pension superannuation scheme.

33. Trustees and managers to be named in trust deed—(1) The trust deed of every personal superannuation scheme shall name all the trustees and managers of the scheme.

(2) The trust deed of every such scheme shall require that any change of trustees or managers shall be effected only by an amendment to the trust deed.

34. Membership—The trust deed of every personal superannuation scheme shall set out the conditions of membership.

35. Contributions—The trust deed of every personal superannuation scheme shall set out clearly the basis of contributions payable by members, and whether or not any minimum amount of contribution is payable.

36. Retirement ages—(1) The trust deed of every personal superannuation scheme shall provide that, except as provided in regulation 38 of these regulations, the age at which retirement benefits shall become payable shall be not less than 60 years.

(2) The trust deed of a personal pension superannuation scheme shall provide that retirement benefits shall become payable no later than age 70 years.

37. Member entitled to be advised of amount held for him in scheme—The trust deed of every personal superannuation scheme shall provide that each member shall have the right to be advised, as soon as practicable after his request, of the amount held for his benefit in the scheme as at the close of the last preceding financial year of the scheme.

38. Payment of benefits before retirement age—(1) The trust deed of every personal superannuation scheme shall provide that in the event of a member ceasing to contribute to a personal superannuation scheme, all benefits shall be retained in the scheme until a benefit becomes payable on the member's—

(a) Death; or

(b) Attainment of his retirement age; or

(c) Permanent incapacity; or

(d) Permanent emigration from New Zealand.

(2) Subject to subclause (3) of this regulation, the trust deed of any personal superannuation scheme may permit a member to transfer any amount held for his benefit to another approved personal superannuation scheme.

(3) No trust deed shall permit a member of a personal pension superannuation scheme to transfer his contributions and benefits to a personal lump sum superannuation scheme.

39. Borrowing restricted—(1) The trust deed of every personal superannuation scheme shall prohibit the borrowing of money by or on behalf of the scheme except to the extent that such borrowing is permitted by this regulation.

(2) The trust deed of a personal superannuation scheme may permit the borrowing of not more than 10 percent of the value of the total assets of the fund from any person who is not a member of the scheme or a relative of or person associated with any member.

(3) The trust deed of a personal superannuation scheme may permit the borrowing of money in excess of the amount that may be borrowed under a provision authorised by subclause (2) of this regulation, if that money is borrowed from a person who is not a member of the scheme or a relative of or person associated with any member, and is borrowed solely in order to pay any particular benefit, so long as—

(a) No benefit is paid from borrowed money for more than 12 months; and

(b) No money is borrowed for a term of longer than 12 months.

(4) Where any money has been borrowed by or on behalf of any personal superannuation scheme before the 1st day of April 1983 money may continue to be borrowed by or on behalf of that scheme in excess of any amount that may be borrowed under a provision authorised by subclause (2) of this regulation so long as the amount owed at any time does not exceed the amount owed on the 1st day of April 1983, and none of the money is borrowed from a member of the scheme or a relative of or person associated with any member.

(5) For the purposes of this regulation—

(a) The expression "relative" shall have the same meaning as in the Income Tax Act 1976; and

(b) Persons shall be deemed to be associated with each other if they would be so associated in terms of section 8 of the Income Tax Act 1976.

40. Termination—(1) The trust deed of every personal superannuation scheme shall state clearly the distribution of the assets of the scheme in the event of its termination.

(2) The trust deed of every personal superannuation scheme shall provide that the scheme shall not be terminated without prior notice of the intention to terminate the scheme being given to the Government Actuary.

(3) The trust deed of every personal superannuation scheme shall provide that on termination of the scheme the benefits of members shall be transferred to another scheme approved under this Part of these regulations until those benefits become payable on the member's subsequent—

(a) Death; or

(b) Attainment of his retirement age; or

(c) Permanent incapacity; or

(d) Permanent emigration from New Zealand.

(4) The trust deed of every personal pension superannuation scheme shall provide that in the event of termination of that scheme the assets of the scheme will be transferred to another personal pension superannuation scheme.

(5) The trust deed of every personal lump sum superannuation scheme shall provide that in the event of termination of that scheme the assets of the scheme will be transferred to another personal superannuation scheme.

PART IV

OBJECTION PROCEDURES AND ADMINISTRATION

41. Notice of decisions—The Government Actuary shall, as soon as practicable after making a decision in respect of which an objection may be made under section 16 of the Act, give notice of the decision in writing to the person who sought the decision, and to the trustees of the scheme.

42. Notice of objections—(1) Every objection under section 16 of the Act to a decision of the Government Actuary shall be made by delivering or posting a written notice of objection to the Government Actuary.

(2) Every such notice of objection shall state briefly the grounds of the objection and shall give a current postal address to which correspondence in respect of the objection may be sent.

(3) Every such notice of objection shall be given within 28 days after the date on which notice of the decision is received or deemed to have been received, or within such extended time as the Government Actuary may allow on application made either before or after the expiration of that 28 day period.

43. Consideration of objections—(1) Every objection made under the Act and these regulations to a decision of the Government Actuary shall be considered by the Government Actuary within 28 days after the receipt of the objection.

(2) The Government Actuary shall, as soon as practicable after making a decision in respect of an objection, give notice of the decision in writing to the person who made the objection, and to the trustees of the scheme.

44. Notification to Government Actuary of address and changes of address—Every person who gives or sends to the Government Actuary any notice or documents that he is required or entitled to give or send to the Government Actuary under the Act or these regulations shall, unless he has already done so, include in or with that notice or document a current postal address for that person to which correspondence may be sent.

PART V

TRANSITIONAL PROVISIONS

45. Classification of schemes approved before 1 April 1983— (1) In any case where it is desired to obtain the classification of a scheme that was approved before the 1st day of April 1983, the trustees or managers shall supply to the Government Actuary the following information—

(a) The classification sought:

(b) The date from which classification is sought:

(c) The name of every employer, trustee, manager, and insurer:

(d) The date on which the financial year of the scheme ends:

(e) The name of the person to whom all correspondence should be sent.

(2) Where it is sought to have funds of the scheme identified as Class A funds, the trustees or managers shall also supply to the Government Actuary the following information—

(a) The amount of those funds in existence on the date immediately preceding that from which classification is sought:

(b) The amount of contributions payable by or in respect of every member to whom the Class A funds apply:

(c) The amount of any permitted increase in contributions payable by or in respect of every member to whom the Class A funds apply:

(d) The names and dates of birth of those members to whom the Class A funds apply.

46. Amendment of schemes to comply with regulations—Every superannuation scheme that was approved before the 1st day of April 1983 and that does not comply with the requirements of the Act or these regulations shall be amended so that the scheme complies with those requirements no later than the 31st day of March 1984.

PART VI

MISCELLANEOUS PROVISIONS

47. Prescribed amount—For the purposes of the definition of the term "pension superannuation scheme" in section 2 (1) of the Act, the amount prescribed for the purposes of paragraph (b) of that definition is $520.

48. Specified pension benefit—Where a scheme that is classified as an employee or personal pension superannuation scheme is amended and classified as an employee or personal lump sum superannuation scheme, the benefits arising directly or indirectly from contributions paid to the scheme before the classification of the scheme as an employee or personal lump sum superannuation scheme shall be payable only in the manner in which they would be payable if the scheme had retained its classification as an employee or personal pension superannuation scheme.

49. Revocations—The following regulations are hereby revoked:

(a) The Superannuation Schemes Regulations 1976 (S.R. 1976/237):

(b) The Superannuation Schemes Regulations 1976, Amendment No. 1 (S.R. 1979/261).

50. Savings in respect of annual reports—Notwithstanding the revocation of the Superannuation Schemes Regulations 1976, regulation 5 of those regulations (which relates to annual reports) shall continue in force and apply to every scheme in respect of every financial year that ends before the 31st day of March 1984, as if that regulation had not been revoked.

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, which come into force on 1 April 1983, replace the Superannuation Schemes Regulations 1976.

By virtue of regulation 46 any scheme that was approved under the 1976 regulations but does not comply with these regulations has until 31 March 1984 to comply with these regulations.

Regulation 5 of the Superannuation Schemes Regulations 1976 (which relates to annual reports) will continue to apply in respect of every financial year that ends before 31 March 1984.

Issued under the authority of the Regulations Act 1936.
Date of notification in *Gazette:* 17 March 1983.
These regulations are administered in the Treasury.