

2005 No. 72

PENSIONS

The Occupational Pension Schemes (Winding Up, Deficiency on Winding Up and Transfer Values) (Amendment) Regulations 2005

<i>Made</i> - - - -	<i>19 January 2005</i>
<i>Laid before Parliament</i>	<i>25 January 2005</i>
<i>Coming into force</i> - -	<i>15 February 2005</i>

The Secretary of State for Work and Pensions, in exercise of the powers conferred upon him by sections 113, 181(1) and 182(2) of the Pension Schemes Act 1993(a) and sections 73(3), 75(5), 124(1) and 174(2) and (3) of the Pensions Act 1995(b) and of all other powers enabling him in that behalf, after consultation with such persons as he considered appropriate(c), hereby makes the following Regulations:

Citation, commencement and interpretation

1.—(1) These Regulations may be cited as the Occupational Pension Schemes (Winding Up, Deficiency on Winding Up and Transfer Values) (Amendment) Regulations 2005 and shall come into force on 15 February 2005.

(2) In these Regulations—

“the Deficiency on Winding Up Regulations” means the Occupational Pension Schemes (Deficiency on Winding Up etc.) Regulations 1996(d);

“the Transfer Values Regulations” means the Occupational Pension Schemes (Transfer Values) Regulations 1996(e); and

“the Winding Up Regulations” means the Occupational Pension Schemes (Winding Up) Regulations 1996(f).

Amendment of the Winding Up Regulations

2.—(1) The Winding Up Regulations shall be amended as provided for by the following paragraphs of this regulation.

(2) In regulation 4(1) (calculation of amounts of liabilities) for “regulations 4A and 4B” there shall be substituted “regulations 4A to 4C”.

(a) 1993 c. 48. Section 181(1) is cited because of the meaning given to “prescribe”.

(b) 1995 c. 26. Section 73(3) was amended by section 38(1) of the Welfare Reform and Pensions Act 1999 (c. 30) and is modified by regulation 3 of S.I. 1996/3126 as amended by S.I. 2000/2691 and S.I. 2004/1140. Section 75 of the Act is modified by regulation 4 of S.I. 1996/3128 as amended by S.I. 1997/786. Section 124(1) of the Act is cited because of the meaning given to “prescribed” and “regulations”.

(c) See section 185(1) of the 1993 Act and section 120(1) of the 1995 Act for the requirement to consult.

(d) S.I. 1996/3128; regulation 3A was inserted by S.I. 2002/380 and amended by S.I. 2004/403 and regulation 3B was inserted by S.I. 2004/403.

(e) S.I. 1996/1847.

(f) S.I. 1996/3126; regulation 4A was inserted by S.I. 2002/380 and amended by S.I. 2004/403 and regulation 4B was inserted by S.I. 2004/403.

(3) At the beginning of regulation 4B(1) (calculation of liabilities where employer not insolvent and where winding up commences on or after 11th June 2003) there shall be inserted “Subject to regulation 4C,”.

(4) After regulation 4B there shall be inserted the following regulation—

“Calculation of liabilities where winding up commences, and date of calculation falls, on or after 15 February 2005

4C.—(1) This regulation shall apply in the case of a scheme which begins to wind up on or after 15 February 2005 (“the commencement date”), and the date by reference to which the liabilities and assets of the scheme are determined, calculated and verified for the purposes of section 75 is a date falling on or after the commencement date.

(2) In the case of a scheme to which this regulation applies, regulation 4 shall have effect as if—

(a) for the words “paragraph (3)” in paragraph (1)(c), there were substituted the words “paragraphs (2A) and (3)”;

(b) after paragraph (2) there were inserted the following paragraph—

“(2A) For the purpose of calculating the amount of the liabilities for the accrued rights to any pensions or other benefits of members of the scheme (including any increase to a pension) and for any future pensions, or other future benefits, attributable (directly or indirectly) to pension credits (including any increase to a pension) that have arisen on or before the crystallisation date or, as the case may be, the amount of the liabilities for any entitlement of members of the scheme to the payment of any pension or other benefit (including any increase to a pension) that has arisen on or before that date—

(a) it shall be assumed that all such liabilities will be discharged by the purchase of annuities of a kind described in section 74(3)(c); and

(b) paragraph (1)(b) above shall not have effect.”; and

(c) in paragraph (5) there were substituted the words “section 73(3)” for the words “section 73(3)(aa) or (b)”.”

Amendment of the Deficiency on Winding Up Regulations

3.—(1) The Deficiency on Winding Up Regulations shall be amended as provided for by the following paragraphs of this regulation.

(2) In regulation 3(1) (calculation of the value of scheme liabilities and assets) for “regulations 3A and 3B” there shall be substituted “regulations 3A to 3D”.

(3) At the beginning of regulation 3B(1) (valuation of liabilities where employer not insolvent and where winding up commences on or after 11th June 2003) there shall be inserted “Subject to regulation 3C,”.

(4) After regulation 3B, there shall be inserted the following regulations—

“Valuation of liabilities where winding up commences, and date of calculation falls, on or after 15 February 2005

3C.—(1) This regulation shall apply in the case of a scheme which begins to wind up on or after 15 February 2005 (“the commencement date”), and the date by reference to which the liabilities and assets of the scheme are determined, calculated and verified for the purposes of section 75 is a date falling on or after the commencement date.

(2) In the case of a scheme to which this regulation applies, regulation 3 shall have effect as if—

(a) in paragraph (1)—

(i) at the beginning of sub-paragraph (a), there were inserted the words “except to the extent that the liabilities are in respect of any entitlement to a pension or other benefit that has arisen under the scheme and in respect of which paragraph (1B) applies,”;

- (ii) for the words “paragraphs (2) and (3)” in sub-paragraph (a), there were substituted the words “paragraphs (2)(a) to (c) and (3)”;
 - (iii) for the words “paragraphs (3) and (4)” in sub-paragraph (b), there were substituted the words “paragraphs (1B), (3) and (4)”;
 - (iv) for the words “regulations 3(2) and (3)” in sub-paragraph (c), there were substituted the words “regulations 3(2)(a) to (c) and (3)”;
 - (v) after the words “and 4 to 8 of the MFR Regulations” in sub-paragraph (c), there were inserted the words “or as respects paragraphs (1A) and (1B)”;
- (b) after paragraph (1) there were inserted the following paragraphs:

“(1A) The liabilities of a scheme which are to be taken into account under paragraph (1) above shall include all expenses (except the cost of annuities taken into account by virtue of paragraph (1B)) which, in the opinion of the trustees or managers of the scheme, are likely to be incurred in connection with the winding up of the scheme.

(1B) When calculating the liabilities of the scheme for any—

- (a) accrued rights that exist on or before the applicable time to the payment of any pension or other benefit under the scheme (including any increase to a pension);
- (b) future pensions, or other future benefits, attributable (directly or indirectly) to pension credits (including any increase to a pension) which have arisen on or before the applicable time; and
- (c) entitlement to the payment of a pension or other benefit (including any increase in a pension) that has arisen on or before the applicable time,

it shall be assumed that all such liabilities will be discharged by the purchase of annuities of the type described in section 74(3)(c) and, for the purposes of the calculation, the actuary shall estimate the costs of purchasing any such annuities.

Valuation of liabilities where there is more than one employer

3D.—(1) This regulation shall apply where there is a scheme to which regulation 4 (multi-employer schemes) applies (including a section of a scheme in relation to which there is more than one employer which is treated as a separate scheme for the purposes of section 75) and the circumstances described in paragraph (2) apply.

(2) The circumstances are that—

- (a) the scheme is not being wound up;
- (b) a relevant insolvency event occurs in relation to an employer in relation to the scheme; and
- (c) the applicable time is on or after 15 February 2005.

(3) In the case of a scheme to which this regulation applies, regulation 3 shall have effect with the modifications set out in regulation 3C(2)(a) and (b).”.

(5) In the Note at the end of the form of certificate set out in Schedule 1 (form of actuary’s certificate), for “does not reflect the cost” there shall be substituted “may not reflect the actual cost”.

Amendment of the Transfer Values Regulations

4. In regulation 11 of the Transfer Values Regulations (disclosure)—

(a) in paragraph (4)—

- (i) after sub-paragraph (b)(iv) the word “and” shall be omitted, and;
- (ii) after sub-paragraph (b)(v) there shall be inserted—

“and

- (vi) where the scheme has begun to wind up, explaining that—

- (aa) the value of the member's guaranteed cash equivalent may be affected by the scheme's winding up;
 - (bb) a decision to take a guaranteed cash equivalent should be given careful consideration; and
 - (cc) the member should consider taking independent financial advice before deciding whether to take the guaranteed cash equivalent.”; and
- (b) after that paragraph there shall be inserted—
- “(4A) For the purposes of paragraph (4)(b)(vi), the question whether a scheme has begun to wind up shall be determined in accordance with section 124(3A) to (3D) of the 1995 Act.”.

Signed by authority of the Secretary of State for Work and Pensions.

19 January 2005

Malcolm Wicks
Minister of State,
Department for Work and Pensions

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations are made under the Pension Schemes Act 1993 and the Pensions Act 1995 (“the 1995 Act”). They make amendments to the Occupational Pension Schemes (Winding Up) Regulations 1996 (“the Winding Up Regulations”), the Occupational Pension Schemes (Deficiency on Winding Up etc.) Regulations 1996 (“the Deficiency on Winding Up Regulations”) and the Occupational Pension Schemes (Transfer Values) Regulations 1996 (“the Transfer Values Regulations”).

Regulation 2 amends regulations 4 and 4B of, and inserts regulation 4C into, the Winding Up Regulations and regulation 3 amends regulations 3 and 3A of, and inserts regulations 3C and 3D into, the Deficiency on Winding Up Regulations. The changes provide for the calculation of liabilities in the case of any occupational pension scheme to which section 75 of the Act applies. The inserted regulations 4C and 3C apply to schemes which begin to wind up on or after 15 February 2005 (“the commencement date”) and where the date by reference to which the liabilities and assets of the scheme are determined, calculated and verified falls on or after the commencement date. The inserted regulation 3D applies to multi-employer schemes where the scheme is not being wound up but the employer becomes insolvent on or after the commencement date.

The inserted regulations 4C, 3C and 3D require the scheme’s liabilities to be calculated and valued on a basis which assumes that any accrued rights to a pension or other benefit under the scheme for members with more than two years of pensionable service, as well as any entitlement to the payment of a pension that has arisen under the scheme (including any increase in a pension), will be discharged by the purchase of annuities.

Regulation 4 amends regulation 11(4)(b) of the Transfer Values Regulations to require trustees who receive a request for a statement of entitlement to a guaranteed cash equivalent to inform the member, where the scheme is being wound up, that the value of the member’s guaranteed cash equivalent may be affected by the scheme winding up, that a decision to take a guaranteed cash equivalent should be given careful consideration, and that the member should consider taking independent financial advice before deciding whether to take the guaranteed cash equivalent.

A full regulatory impact assessment of the effect that this instrument will have on the costs to business, charities, or the voluntary sector has been prepared and a copy placed in the libraries of both Houses of Parliament. Copies may be obtained from the Department for Work and Pensions, Regulatory Impact Unit, 3rd Floor, The Adelphi, 1-11 John Adam Street, London WC2N 6HT.

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