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STATUTORY INSTRUMENTS

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**1996 No. 3126**

**PENSIONS**

**The Occupational Pension Schemes  
(Winding Up) Regulations 1996**

*Made* - - - - *11th December 1996*  
*Laid before Parliament* *18th December 1996*  
*Coming into force* - - *6th April 1997*

The Secretary of State for Social Security, in exercise of the powers conferred on him by sections 97(1) and (2), 113(1)(d), 168, 181(1) and 182(2) and (3) of the Pension Schemes Act 1993<sup>(1)</sup> and sections 38(3)(b), 49(2)(b), (3) and (4), 68(2)(e), 73(3) and (7) to (9), 74(2), (3)(a) to (d) and (5)(b), 118(1)(a) and (b), 119, 124(1), 125(2) and (3) and 174(2) to (4) of the Pensions Act 1995<sup>(2)</sup> and of all other powers enabling him in that behalf, the Occupational Pensions Board having agreed that the proposals to make these regulations, to the extent that they are made under the Pensions Schemes Act 1993, need not be referred to them<sup>(3)</sup> and the Secretary of State having consulted with such persons as he considered appropriate<sup>(4)</sup>, by this instrument hereby makes the following regulations:—

*Preliminary*

**Citation, commencement and interpretation**

1.—(1) These Regulations may be cited as the Occupational Pension Schemes (Winding Up) Regulations 1996 and shall come into force on 6th April 1997.

(2) These Regulations do not apply to any scheme which has begun to be wound up before that date.

(3) Unless the context otherwise requires—

(a) expressions used in these Regulations have the same meaning as if they were used in Part I of the Pensions Act 1995; and

(b) in these Regulations any reference to a section is a reference to a section of that Act.

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(1) 1993 c. 48. Section 168 was substituted by section 155 of the Pensions Act 1995. Section 181(1) is cited for the meaning given to “prescribed” and “regulations”.

(2) 1995 c. 26. Section 124(1) is cited for the meaning given to “prescribed” and “regulations”.

(3) See section 185(6) of the Pension Schemes Act 1993 and section 173(1)(b) of the Social Security Administration Act 1992 (c. 5).

(4) See section 120(1) of the Pensions Act 1995.

(4) In these Regulations “the MFR Regulations” means the Occupational Pension Schemes (Minimum Funding Requirement and Actuarial Valuations) Regulations 1996<sup>(5)</sup>.

(5) References in these Regulations to the guidance given in GN 19 are to the guidelines on winding up and scheme asset deficiency (GN 19), prepared and published by the Institute of Actuaries and the Faculty of Actuaries<sup>(6)</sup> and approved for the purposes of these Regulations by the Secretary of State, as they apply as respects schemes of the description in question with such revisions as have been so approved as at the date as at which the valuation in question is made.

### **Commencement of winding up**

2.—(1) For the purposes of these Regulations, the time when a scheme begins to be wound up shall be determined in accordance with this regulation.

(2) Subject to paragraphs (3) and (5), where the rules of the scheme require or permit the scheme to be wound up and the scheme is wound up under those rules, the scheme begins to be wound up—

- (a) either—
  - (i) at such time as the rules provide that it does so, or
  - (ii) if the rules make no provision as to that time, at such time as the trustees determine that the scheme shall begin to be wound up; or
- (b) as soon as there are no members who are in pensionable service under the scheme,

whichever is the later.

(3) Where the rules of the scheme require or permit the scheme to be wound up, but the trustees determine in pursuance of section 38 or otherwise that the scheme is not for the time being to be wound up, then for the purposes of paragraph (2), in so far as any provision made by the rules of the scheme as to the time when it begins to be wound up is inconsistent with the trustees' determination, that provision shall be disregarded.

(4) Where under the rules of the scheme any person other than the trustees may determine that the scheme is to be wound up, or is not to be wound up for the time being, then the references in paragraphs (2)(a)(ii) and (3) to the trustees' determination shall be taken, in a case where the winding up begins or is deferred by virtue of that other person's determination, as a reference to his determination; and this paragraph applies where such a power is vested in the trustees jointly with another person, or in some but not all of the trustees, as it applies where such a power is vested only in a person other than the trustees.

(5) Where—

- (a) a scheme is wound up in pursuance—
  - (i) of an order of the Authority under section 11, or
  - (ii) of an order of a court; and
- (b) the order makes provision as to the time at which the scheme is to begin to be wound up,

the scheme begins to be wound up at the time specified in the order or, if none is so specified, the date on which the order takes effect.

### *Preferential liabilities on winding up*

### **Modifications of s. 73(3)**

3.—(1) Section 73(3) applies—

(5) S.I. 1996/1536.

(6) Copies of GN 19 may be obtained from the Faculty of Actuaries, 17 Thistle Street, Edinburgh, EH2 1DF.

- (a) in all cases subject to the modifications mentioned in paragraphs (3) and (4);
  - (b) in the case of a scheme which begins to be wound up before the expiry of the transitional period, subject to the modifications mentioned in paragraphs (5) and (6); and
  - (c) in the case of a scheme which begins to be wound up after the expiry of that period, subject to the modification mentioned in paragraph (7).
- (2) For the purposes of paragraph (1), the transitional period is—
- (a) the period of 10 years beginning with 6th April 1997; or
  - (b) in the case of a scheme—
    - (i) to which regulation 16(2) of the MFR Regulations applies (extension of period covered by schedule of contributions where minimum funding valuation shows minimum funding requirement not met), and
    - (ii) the schedule period in relation to which has been extended under regulation 25 or 27 of those Regulations (extension by the Authority),that extended schedule period;
- and in this paragraph “the schedule period” has the same meaning as in the MFR Regulations.
- (3) After paragraph (a) of section 73(3) there shall be inserted—
- “(aa) where—
    - (i) the trustees or managers of the scheme are entitled to benefits under a contract of insurance which was entered into before 6th April 1997 with a view to securing the whole or part of the scheme’s liability for any pension or other benefit payable in respect of one particular person whose entitlement to payment of a pension or other benefit has arisen and for any benefit which will be payable in respect of that person on his death, and
    - (ii) either that contract may not be surrendered or the amount payable on surrender does not exceed the liability secured by the contract (but excluding liability for increases to pensions),the liability so secured”.
- (4) In section 73(3)(b)—
- (a) at the beginning there shall be inserted the words “in a case not falling within paragraph (aa),”; and
  - (b) for the words “to dependants” there shall be substituted the words “in respect”.
- (5) For paragraphs (c) and (d) of section 73(3) there shall be substituted—
- “(c) any liability—
    - (i) for equivalent pension benefits (within the meaning of section 57(1) of the National Insurance Act 1965), guaranteed minimum pensions, protected rights or section 9(2B) rights (within the meaning of regulation 1(2) of the Contracting-out (Transfer and Transfer Payments) Regulations 1996(7)) (but excluding increases to pensions), or
    - (ii) in respect of members with less than two years pensionable service who are not entitled to accrued rights under the scheme, for the return of contributions,
  - (d) any liability for increases to pensions referred to in paragraphs (aa) and (b),
  - (e) any liability for increases to pensions referred to in paragraph (c),

(f) so far as not included in paragraph (c) or (e), any liability for pensions or other benefits which have accrued to or in respect of any members of the scheme (including increases to pensions).”.

(6) In the words following paragraph (f) of section 73(3) (as inserted by paragraph (5)), for the words “paragraphs (b) to (d)” there shall be substituted the words “paragraphs (aa) to (f)”.

(7) In the words following paragraph (d) of section 73(3) for the words “paragraphs (b) to (d)” there shall be substituted the words “paragraphs (aa) to (d)”.

(8) In the case of any scheme to which section 73(3) applies with the modifications mentioned in paragraphs (5) and (6), regulations 7(3)(b)(iv) and 8(4) of the Occupational Pension Schemes (Transfer Values) Regulations 1996(8) have effect with the insertion after “(c)(i)” of “(e)” and with the substitution for “(d)” of “(f)”.

### **Calculation of amounts of liabilities**

4.—(1) Subject to paragraphs (4) and (5), for the purposes of section 73(2) the amounts of the liabilities mentioned in section 73(3) shall be calculated and verified by the actuary of the scheme—

- (a) on the assumption that the questions whether or not a person’s entitlement to payment of a pension or other benefit has arisen and whether any amount must be treated as an increase or as part of a pension are to be determined as at the crystallisation date;
- (b) on the assumption that liabilities in respect of members do not include the expenses involved in meeting them;
- (c) subject to paragraph (3), in the manner specified in regulations 7(2), (3) and (7) to (10) and 8(2) of the MFR Regulations (so far as they relate to the calculation and verification of liabilities); and
- (d) otherwise in accordance with the guidance given in GN 19 (so far as it applies for the purposes of these Regulations).

(2) Such a calculation must be accompanied by a statement that it is in accordance with the guidance mentioned in paragraph (1)(d).

(3) For the purposes of this regulation, regulations 7 and 8 of the MFR Regulations are modified as follows—

- (a) references in regulations 7(3), (7) and (8) and 8(2) to the relevant date shall be taken as references to the date as at which the calculation is made (being a date not earlier than the crystallisation date or the commencement of winding up, if later);
- (b) in regulation 7(3) the words “subject to paragraphs (4) and (5)” shall be omitted; and
- (c) paragraph (i) of regulation 8(2)(a) shall be omitted.

(4) If, when the assets of the scheme are applied in accordance with section 73(2) towards satisfying any liability of the scheme mentioned in section 73(3), that liability, as calculated in accordance with the rules of the scheme (without any reduction by reason of its falling within a class of liability which is to be satisfied after another class), is in the opinion of the actuary fully satisfied by applying assets of a value less than the amount of that liability calculated in accordance with paragraph (1), then the amount to be taken as the amount of that liability for the purposes of section 73(2) shall be reduced accordingly.

(5) If, when the assets of the scheme are applied in accordance with section 73(2) towards satisfying the liabilities mentioned in section 73(3)(aa) or (b), those liabilities, as calculated in accordance with the rules of the scheme (without any reduction by reason of their falling within a class of liability which is to be satisfied after another class), cannot in the opinion of the actuary

be fully satisfied by applying assets of a value equal to the amount of those liabilities calculated in accordance with paragraph (1), then the amount to be taken as the amount of those liabilities for the purposes of section 73(2) shall be increased accordingly.

- (6) Subject to paragraph (7), in this regulation “the crystallisation date” means—
- (a) in the case of a scheme where—
    - (i) the trustees or managers determined (whether in pursuance of section 38 or otherwise) that the scheme was not for the time being to be wound up, despite rules otherwise requiring it to be so,
    - (ii) the time when the paragraph of section 73(3) into which the liability in respect of any person falls is determined is fixed under the provisions of the scheme, and
    - (iii) that time falls on or after the date of the determination mentioned in paragraph (i) and before the date on which the scheme begins to be wound up,the date when that time occurs, and
  - (b) otherwise, the date on which the scheme begins to be wound up.
- (7) Where the trustees or managers of a scheme—
- (a) determined before 6th April 1997 that the scheme was not for the time being to be wound up, despite rules otherwise requiring it to be so, and
  - (b) before that date determined a time (being a time before 6th April 1997) when the amounts or descriptions of liabilities of the scheme were to be determined for the purposes of any rule of the scheme requiring the assets of the scheme to be applied on winding up in satisfying the amounts of certain liabilities to or in respect of members before other such liabilities,

the date when that time occurs is the crystallisation date.

#### **Modification of schemes to fix time for settling priority of liabilities on winding up**

5.—(1) The trustees of a trust scheme may by resolution modify the scheme with a view to fixing or providing for the fixing of the time when the paragraph of section 73(3) into which the liability in respect of any person falls is to be determined for the purposes of section 73(2) and (3) or of any priority rule of the scheme, in the event of a determination (whether in pursuance of section 38 or otherwise) that the scheme is not for the time being to be wound up, despite rules otherwise requiring it to be so.

- (2) That time must be—
- (a) on or after the date of the resolution and of any such determination to defer winding up, and
  - (b) before the date on which the scheme begins to be wound up.

(3) In paragraph (1) “priority rule” means a rule of the scheme requiring the trustees to apply the assets of the scheme on a winding up in satisfying the amounts of certain liabilities to or in respect of members before other such liabilities.

#### *Discharge of liabilities by insurance etc.*

#### **Arrangements for discharge of liabilities under s. 74**

6.—(1) For the purposes of section 74(2), the arrangements with which the trustees or managers of a scheme must comply in providing for the discharge of a liability under that section are as follows.

- (2) Where the trustees or managers of a scheme propose to discharge a liability of the scheme to or in respect of a member—

- (a) they must give him or, if he has died, each beneficiary who is entitled to benefits in respect of him, notice in writing of that fact;
  - (b) if they propose to discharge the liability wholly or partly—
    - (i) in the way mentioned in section 74(3)(a) or (b), or
    - (ii) in the way mentioned in regulation 8(5) in a case where sub-paragraph (a) of that regulation applies, then, subject to paragraph (4), they must obtain the written consent of the member or, as the case may be, the beneficiary to discharging the liability in that way; and
  - (c) in the case of discharge in the way mentioned in regulation 8(5), any other requirements which apply to the making of a payment so mentioned must have been met.
- (3) A notice under paragraph (2)(a) must comply with the requirements of regulation 7.
- (4) In a case where regulation 12 of the Occupational Pension Schemes (Preservation of Benefit) Regulations 1991<sup>(9)</sup> (transfer of member's accrued rights without consent) applies, no consent need be obtained to a discharge of liability in the way mentioned in section 74(3)(a).
- (5) Where—
- (a) the trustees or managers have complied with paragraphs (2) and (3); and
  - (b) an election has been made under regulation 7(3)(a),

they may discharge the liability in pursuance of the election without complying with those paragraphs again.

#### **Requirements applicable to notices of discharge under regulation 6**

- 7.—(1) A notice under regulation 6(2)(a) (“a discharge notice”) must specify—
- (a) the sum which is available to be used to discharge the liability of the scheme to the member or, as the case may be, the beneficiary in respect of his rights under the scheme; and
  - (b) if the full amount of that liability, as calculated in accordance with regulation 4, is greater than that sum, that amount and the reason for the difference.
- (2) A discharge notice must—
- (a) specify the way or ways in which it is proposed to discharge the liability;
  - (b) if the proposed way or any of the proposed ways requires the consent of the member or, as the case may be, the beneficiary, state—
    - (i) that his consent is so required,
    - (ii) the period within which his consent must be given, being at least three months beginning with the date on which the notice is given, and
    - (iii) the way or ways in which it is proposed to discharge the liability if he does not give his consent; and
  - (c) if the proposed way is that mentioned in regulation 8(5), state any further requirements which must be met before discharge may be made in that way.
- (3) If there are any options available to the member or beneficiary, the discharge notice must specify them and state—
- (a) that if he wishes to elect that, instead of the liability being discharged in the proposed way, it should be discharged in one or more of the other ways mentioned in section 74(3) which

<sup>(9)</sup> S.I. 1991/167. Regulation 12 has been amended by S.I. 1992/1531, regulation 35; S.I. 1993/1822, regulation 2; S.I. 1994/1062, paragraph 30(15) of Schedule 2; S.I. 1995/3067, regulation 2(4); S.I. 1996/2131, regulation 2(7).

are available in his case (or partly in the proposed way and partly in another such way), then he must give notice to that effect in writing to the trustees or managers, specifying—

- (i) the way or ways in which he wishes the liability to be discharged, and
  - (ii) the name of the relevant provider;
- (b) that such a notice must be given by him before the expiry of the period of three months beginning with the date on which the discharge notice is given to him; and
- (c) that it would be advisable for him to obtain independent financial advice before deciding whether to make such an election.

(4) The statement mentioned in paragraph (3)(c) must also be included in any case where the consent of the member or the beneficiary is required.

(5) Where it is proposed to discharge the liability in the way mentioned in section 74(3)(a), the discharge notice must specify the name of the relevant provider and the scheme address.

(6) Where it is proposed to discharge the liability in the way mentioned in section 74(3)(b), the discharge notice must specify the name of the relevant provider and (if different) of the person who is the scheme administrator and the scheme address.

(7) Where it is proposed to discharge the liability in the way mentioned in section 74(3)(c) or in regulation 8(4), the discharge notice must specify—

- (a) the name and address of the relevant provider;
- (b) if different, the name and address of the person from whom information about the terms of the contract for the provision of the annuity which is to be purchased or, as the case may be, the benefit of which is to be transferred can be obtained; and
- (c) in a case where the contract for the provision of the annuity has not been made at the time the notice is given, whether information about its terms will be given on the assumption that they will coincide with the terms of a quotation.

(8) In this regulation—

“the relevant provider” means—

- (a) in the case of the acquisition of transfer credits under another occupational pension scheme, the trustees or managers of the scheme;
- (b) in the case of the acquisition of rights under a personal pension scheme, the person who is responsible for the provision of pensions and other benefits under the scheme; and
- (c) in the case of the purchase or transfer of the benefit of an annuity, the insurance company or companies from which the annuity is to be or, as the case may be, has been purchased;

“the scheme address”, in relation to a scheme, means the place in the United Kingdom where the management of the scheme is conducted or, if there is more than one such place, the principal place;

“scheme administrator” has the meaning given in section 630(1) of the Income and Corporation Taxes Act 1988(10).

(9) A discharge notice and any notice under paragraph (3) shall be treated as having been given to a person if it has been sent to him by post at the address at which he was last known by the trustees or managers of the scheme to be living.

(10) Discharge notices and notices under paragraph (3) are not required to be given to a person if—

- (a) the trustees or managers know no such address as is mentioned in paragraph (9) for him, or



- (b) correspondence sent to the address at which he was last known by them to be living has been returned.

**Requirements to be satisfied by transferee schemes, annuities etc.**

8.—(1) For the purpose of section 74(3)(a) (discharge of liability to or in respect of a member by the acquisition of transfer credits under another occupational pension scheme), the requirements to be satisfied by the other scheme are the same as those which would apply by virtue of section 95(2)(a) of the Pension Schemes Act 1993<sup>(11)</sup> (ways of taking right to cash equivalent) if—

- (a) the member were entitled to a cash equivalent under Chapter IV of Part IV of that Act in respect of the rights liability in respect of which is being discharged, and
- (b) he required his cash equivalent to be used to acquire transfer credits allowed under the rules of the scheme.

(2) For the purpose of section 74(3)(b) (discharge of liability to or in respect of a member by the acquisition of rights under a personal pension scheme), the requirements to be satisfied by the personal pension scheme are the same as those which would apply by virtue of section 95(2)(b) of that Act if the member were so entitled and he required his cash equivalent to be used to acquire rights allowed under the rules of the scheme.

(3) For the purpose of section 74(3)(c) (discharge of liability to or in respect of a member by the purchase of one or more annuities) the requirements to be satisfied by the annuities are the same as those which would apply by virtue of section 95(2)(c) of that Act if the member were so entitled and he required his cash equivalent to be used to purchase annuities from such insurance companies as are mentioned in section 95(2)(c).

(4) For the purpose of section 74(3)(d) (discharge of liability to or in respect of a member by subscribing to other pension arrangements satisfying prescribed requirements) the discharge of a liability to or in respect of a member may be provided for by transferring to him, or to any person who is entitled to benefits in respect of him, the benefit—

- (a) of one or more contracts to provide annuities which—
  - (i) satisfy the requirements mentioned in paragraph (3); and
  - (ii) are provided by insurance companies which consent to the transfer; or
- (b) of one or more policies of insurance which satisfy the requirements mentioned in section 19(4) of the Pension Schemes Act 1993<sup>(11)</sup> (appropriate policies and annuity contracts).

(5) For the purpose of section 74(3)(d), the discharge of a liability to or in respect of a member of a contracted-out scheme may also be provided for in a case where sub-paragraph (3B) of paragraph 5 of Schedule 2 to the Pension Schemes Act 1993<sup>(12)</sup> applies by a payment to the Secretary of State of the amount mentioned in paragraph (b) of that sub-paragraph (amount required for restoring the member's State scheme rights) if—

- (a) the member has duly made such an application as is required for the restoration of his State scheme rights in accordance with that provision, or
- (b) in a case where such an application may be made by the trustees or managers, they have duly made such an application;

and in this paragraph “State scheme rights” has the same meaning as in that sub-paragraph.

<sup>(11)</sup> 1993 c. 48.

<sup>(11)</sup> 1993 c. 48.

<sup>(12)</sup> Sub-paragraphs (3A) to (3E) were inserted in paragraph 5 of Schedule 2 by section 141(2) of the Pensions Act 1995 (c. 26).



## **Relationship of these Regulations and requirements under s. 32A of the Pension Schemes Act 1993**

9. In any case where the liability to or in respect of the member is a liability in respect of protected rights, nothing in regulations 6 to 8 affects any requirements imposed by or under section 32A of the Pension Schemes Act 1993(13) (discharge of protected rights on winding up: insurance policies) or any rules of the scheme reflecting those requirements.

### *Power to defer winding up*

## **Disapplication of s. 38**

10.—(1) Section 38 does not apply—

- (a) to any scheme in relation to which no relevant employer debt event has occurred;
- (b) to a scheme in respect of which any Minister of the Crown has given a guarantee or made any other arrangements for the purpose of securing that the assets of the scheme are sufficient to meet its liabilities;
- (c) to a scheme which provides relevant benefits, but is neither an approved scheme nor a relevant statutory scheme;
- (d) to a section 615(6) scheme;
- (e) to a scheme with less than two members;
- (f) to a small self-administered scheme which is an approved scheme;
- (g) to a scheme the only benefits provided by which (other than money purchase benefits) are death benefits; or
- (h) to a relevant lump sum retirement benefits scheme.

(2) For the purposes of paragraph (1)(a), a relevant employer debt event has only occurred in relation to a scheme if (apart from section 38 or any other power to defer winding up the scheme) the rules of the scheme require the scheme to be wound up as a result of a relevant insolvency event having occurred in relation to any person who immediately before the event occurred was an employer in relation to the scheme; and for the purposes of this paragraph—

- (a) subsection (4) of section 75 (definition of relevant insolvency events) applies as it applies for the purposes of section 75 (disregarding any modifications of that section); and
- (b) in the case of a scheme which has no active members, the reference to an employer is to the person who was the employer immediately before the occurrence of the event after which the scheme ceased to have any active members.

(3) In this regulation—

“approved scheme” means a scheme which is approved or was formerly approved under section 590 or 591 of the Taxes Act or in respect of which an application for such approval has been duly made which has not been determined;

“lump sum benefits” does not include benefits paid by way of commuted retirement pension;

“relevant benefits” has the meaning given in section 612(1) of the Taxes Act;

“relevant lump sum retirement benefits scheme” means an approved scheme—

- (a) which has been categorised by the Commissioners of Inland Revenue for the purposes of its approval as a centralised scheme for non-associated employers;
- (b) which is not contracted-out; and

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(13) Section 32A was inserted by section 146(1) of the Pensions Act 1995.

- (c) under the provisions of which the only benefits which may be provided on or after retirement (other than money purchase benefits derived from the payment of additional contributions by any person) are lump sum benefits which are not calculated by reference to any member's salary;

“relevant statutory scheme” has the meaning given in section 611A of the Taxes Act<sup>(14)</sup>;

“section 615(6) scheme” means a scheme with such a superannuation fund as is mentioned in section 615(6) of the Taxes Act;

“small self-administered scheme” has the meaning given in regulation 2(1) of the Retirement Benefits Schemes (Restriction on Discretion to Approve) (Small Self-administered Schemes) Regulations 1991<sup>(15)</sup>;

“the Taxes Act” means the Income and Corporation Taxes Act 1988<sup>(16)</sup>.

### **Records and information**

**11.**—(1) The trustees of any trust scheme or any other persons with power in respect of any such scheme to make a determination—

- (a) to defer winding up the scheme;
- (b) as to the time when the paragraph of section 73(3) into which the liability in respect of any person falls is fixed; or
- (c) as to the time when the amounts or descriptions of liabilities of the scheme are to be determined for the purposes of any rule of the scheme requiring the assets of the scheme to be applied on winding up in satisfying the amounts of certain liabilities to or in respect of members before other such liabilities,

must keep a written record of any such determination made by them.

(2) Where any such determination is made, before the expiry of the period of one month beginning with the date on which it is made the person who has made it shall inform—

- (a) the members of the scheme, and
- (b) any other persons whose entitlement to payment of a pension or any other benefit under the scheme has arisen,

in writing that it has been made.

(3) If any person fails to comply with paragraph (2), the Authority may require him by notice in writing to pay a penalty—

- (a) in the case of a contravention by an individual, not exceeding £1,000; and
- (b) otherwise, not exceeding £10,000,

before the expiry of the period of 28 days beginning with the date on which the notice is given.

### *Modifications affecting certain schemes*

### **Winding up of sectionalised schemes etc.**

**12.**—(1) Where section 56 applies to a salary related occupational pension scheme as if different parts of the scheme were separate schemes, section 73 shall apply where such a part of the scheme is being wound up as it applies where the whole of a scheme is being wound up, but—

<sup>(14)</sup> Section 611A was inserted by section 75 of and paragraph 15 of Schedule 6 to the Finance Act 1989 (c. 26).

<sup>(15)</sup> S.I. 1991/1614.

<sup>(16)</sup> 1988 c. 1.

- (a) taking references to the assets of the scheme as references only to those assets treated for the purposes of section 56 as assets of that part; and
- (b) taking references to the liabilities of the scheme, or any particular description of liabilities, as references only to such liabilities of the scheme or, as the case may be, of that description, as are treated for the purposes of section 56 as liabilities of that part.

(2) In relation to a scheme to which section 56 applies as if different parts of the scheme were separate schemes, section 74 shall apply as if those parts were separate schemes and with the modifications mentioned in paragraph (1)(a) and (b).

(3) Where by virtue of paragraph 1 of Schedule 5 to the MFR Regulations (sectionalised multi-employer schemes) section 56 applies to a trust scheme as if different parts of the scheme were separate schemes, section 38 and regulation 10 (except paragraph (1)(e) of that regulation) shall also so apply.

(4) Where any provision of this regulation applies in relation to a scheme, then references to the scheme and its members in the provisions of other regulations shall be construed accordingly.

### **Hybrid schemes**

**13.**—(1) In relation to any scheme—

- (a) which is not a money purchase scheme, but
- (b) where some of the benefits that may be provided are relevant money purchase benefits,

section 73 applies as if—

- (i) the liabilities of the scheme did not include liabilities in respect of those benefits, and
- (ii) the assets of the scheme did not include the assets by reference to which the rate or amount of those benefits is calculated.

(2) In paragraph (1) “relevant money purchase benefits” means money purchase benefits other than—

- (a) benefits derived from the payment by any member of voluntary contributions, or
- (b) underpin benefits.

(3) In this regulation “underpin benefits” means money purchase benefits which under the provisions of the scheme will only be provided in respect of a member if their value exceeds the value of other benefits in respect of him under the scheme which are not money purchase benefits.

(4) Where a scheme which is not a money purchase scheme may provide underpin benefits, the amount of the liability for those benefits shall be calculated in accordance with regulation 4 (but omitting paragraphs (1)(c) and (3) to (5) of that regulation).

(5) If in the case of a scheme to which paragraph (1) applies—

- (a) the aggregate value of the assets of the scheme has been reduced, and
- (b) there are reasonable grounds for believing that the reduction is attributable to an act or omission constituting an offence prescribed for the purposes of section 81(1)(c),

then, for the purposes of section 73 as it applies by virtue of paragraph (1), the values of the assets excluded by paragraph (1)(ii) and of the other assets shall be taken to be equal to their values apart from the reduction, less in the case of each asset so much of the reduction as its value bears to the aggregate value of the assets of the scheme apart from the reduction.

(6) This regulation does not affect section 73 as it applies for the purposes of the MFR Regulations and the guidance in GN 27 (as that guidance applies for the purposes of those Regulations).

(7) In paragraph (6) “GN 27” means the guidelines on minimum funding requirement (GN 27), prepared and published by the Institute of Actuaries and the Faculty of Actuaries<sup>(17)</sup> and approved for the purposes of the MFR Regulations by the Secretary of State.

Signed by authority of the Secretary of State for Social Security.

Department of Social Security  
11th December 1996

*Oliver Heald*  
Parliamentary Under-Secretary of State,

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<sup>(17)</sup> Copies of GN 27 may be obtained from the Faculty of Actuaries 17 Thistle Street, Edinburgh, EH2 1DF.

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## EXPLANATORY NOTE

*(This note is not part of the Regulations)*

These regulations concern the application of the statutory priority order set out in section 73 of the Pensions Act 1995 (“the Act”); the ways in which the trustees can be treated as having discharged their liabilities in respect of scheme members under section 74 of the Act and the cases in which the statutory power to defer winding up under section 38 of the Act is not to apply. The Occupational Pensions Board have agreed that the regulations, to the extent that they are made under the Pensions Schemes Act 1993, need not be referred to them and the Secretary of State has consulted such persons as he considers appropriate.

Regulation 1 provides for citation, commencement and interpretation of the regulations.

Regulation 2 makes provision as to when the winding up of a scheme starts for the purpose of the regulations.

Regulation 3 makes provision for modifications to the statutory priority order.

Regulation 4 makes provision for the calculation of the preferential liabilities.

Regulation 5 makes provision for trust scheme rules to be modified to fix the liabilities of the scheme at a date earlier than the commencement of winding up.

Regulation 6 sets out the arrangements which have to be followed by the trustees in order for them to be treated as having discharged the scheme’s liabilities in respect of scheme members.

Regulation 7 sets out the requirements which have to be met by the notices of discharge issued under regulation 6.

Regulation 8 sets out the requirements which apply to methods of discharge under section 74(3) of the Act.

Regulation 9 provides that the requirements under section 32A of the Pensions Schemes Act 1993 are unaffected by regulations 6 to 8.

Regulation 10 disapplies the statutory power to defer winding up under section 38 of the Act in certain cases.

Regulation 11 sets out the records required to be kept and the information to be disclosed to members concerning determinations about deferring winding up or the timing of the crystallisation of preferential liabilities.

Regulation 12 makes provision for where the minimum funding requirement applies separately to different parts of a scheme.

Regulation 13 makes provision for modifications of the amounts of assets and liabilities to be taken into account where some of the benefits provided by the scheme are money purchase benefits or calculated on a money purchase basis.

An assessment of the compliance cost for employers of the measures arising from the Pensions Act 1995, including regulations has been placed in the libraries of both Houses of Parliament. Copies can be obtained by post from the Department of Social Security, Adelphi, 1-11 John Adam Street, London WC2N 6HT.