

2002 No. 380

PENSIONS

The Occupational Pension Schemes (Minimum Funding Requirement and Miscellaneous Amendments) Regulations 2002

Made - - - - 22nd February 2002

Laid before Parliament 26th February 2002

Coming into force 19th March 2002

The Secretary of State for Work and Pensions, in exercise of the powers conferred on him by sections 56(3), 57(1)(b), (2) and (5), 58(2), (4)(b) and (6)(a), 59(3), 61, 73(3), 75(5), 120(1), 124(1), 125(2), 174(2) and (3) and 175(1) of the Pensions Act 1995(a), and of all other powers enabling him in that behalf, having consulted with such persons as he considered appropriate(b), hereby makes the following Regulations:

Citation, commencement and interpretation

1.—(1) These Regulations may be cited as the Occupational Pension Schemes (Minimum Funding Requirement and Miscellaneous Amendments) Regulations 2002 and shall come into force on 19th March 2002.

(2) In these Regulations—

“the Minimum Funding Requirement Regulations” means the Occupational Pension Schemes (Minimum Funding Requirement and Actuarial Valuations) Regulations 1996(c);

“the Winding Up Regulations” means the Occupational Pension Schemes (Winding Up) Regulations 1996(d); and

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

Amendment of the Minimum Funding Requirement Regulations

2.—(1) The Minimum Funding Requirement Regulations shall be amended in accordance with the following paragraphs of this regulation.

(2) In regulation 2(1) (interpretation), for the definition of “the transitional period” there shall be substituted the following definition:

““the transitional period” means the period beginning on the commencement date and ending on 31st December 2004.”.

(a) 1995 c.26. Sections 58(6)(a) and 59(3) were amended by paragraph 14(1) and (2) of Schedule 2 to the Welfare Reform and Pensions Act 1999 (c.30). Section 73(3) is modified by regulation 3 of S.I. 1996/3126. Section 124(1) is cited for the meaning given to “prescribed” and “regulations”.

(b) See section 120(1) of the Pensions Act 1995 for the requirement to consult.

(c) S.I. 1996/1536; relevant amending instruments are S.I. 1997/786 and S.I. 2001/3649.

(d) S.I. 1996/3126 to which there are no relevant amendments.

(e) S.I. 1996/3128 to which there are no relevant amendments.

(3) For paragraph (9) of regulation 7 (determination and valuation of liabilities; gilts-matching policy), there shall be substituted the following paragraph:

“(9) For the purposes of this regulation—

- (a) a scheme is only to be taken to have a gilts-matching policy for liabilities in respect of pensioner members, pension credit benefit members, deferred members or pension credit members at any time if the last statement in respect of the scheme under section 35 before that time states that the trustees’ policy is to meet all liabilities (excluding liabilities in respect of any money purchase benefits other than underpin benefits) in respect of pensioner members, pension credit benefit members or, as the case may be, deferred members or pension credit members from investments in gilt-edged securities; and
- (b) “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) In subparagraph (b) of regulation 12(1) (duty to obtain minimum funding valuations where new serious underfunding suspected), after the words “the scheme would meet the minimum funding requirement on or before the” there shall be inserted the words “date 7 days before the”.

(5) For paragraph (2) of regulation 16 (periods covered by schedules of contributions), there shall be substituted the following paragraph:

“(2) Where, on or after 19th March 2002, a schedule of contributions following a minimum funding valuation is certified by virtue of section 58(3)(a) or (c) and—

- (a) that valuation shows that, on the effective date, the minimum funding requirement was not met; or
- (b) the minimum funding requirement did not appear to the actuary to be met on the date falling 7 days before the date on which the certificate of the rates of contributions shown in the schedule is signed,

the period referred to in paragraph (1) which applies for the schedule which must be prepared following that valuation by virtue of paragraph (a) or (c) of section 58(3) is extended so as to end with the expiry of the period of 10 years beginning with the date on which the rates of contributions shown in the schedule are certified.”.

(6) In regulation 17 (content and certification of schedules of contributions)—

(a) in paragraph (1)—

- (i) after the words “in relation to the scheme” at the end of subparagraph (b), there shall be inserted the words “(excluding the amount of any contributions required by subparagraph (d) below to be shown separately)”;
- (ii) the word “and” at the end of subparagraph (b) shall be deleted; and
- (iii) after the word “contributions” at the end of paragraph (c), there shall be added the following:

“; and

- (d) in the case only of a schedule of contributions which is certified on or after 19th March 2002, the due dates and amounts of any payments required by subparagraph (a) of section 60(2) (serious under-provision).”;

(b) after paragraph (1) there shall be inserted the following paragraph:

“(1A) For the purposes of section 58(6), the prescribed date is the date 7 days before the date on which the actuary signs the certificate of the rates of contributions shown in the schedule.”.

- (c) in paragraph (2)(b)—
 - (i) the words “date he signs the certificate” shall be substituted by the words “date 7 days before the date on which he signs the certificate”; and
 - (ii) the word “is” shall be substituted by the word “was”.
 - (d) in paragraph (3)(b)—
 - (i) the words “date he signs the certificate” shall be substituted by the words “date 7 days before the date on which he signs the certificate”; and
 - (ii) the word “is” shall be substituted by the word “was”.
 - (e) in paragraph (4)(a), the word “additional” shall be inserted between the words “year” and “contributions”.
 - (f) in paragraph (5)—
 - (i) the words “additional payments and contributions” shall be substituted by the words “additional payments and additional contributions”;
 - (ii) the words “the expiry of the period of one year” shall be substituted by the words “the expiry of the period of three years”; and
 - (iii) the words “(extended as mentioned in regulation 20(3) where that regulation applies)” shall be deleted.
- (7) In regulation 18 (occasional and periodic certification of adequacy of contributions)—
- (a) at the beginning of paragraph (1), for the word “The” there shall be substituted the words “Subject to paragraphs (1A) and (1B), the”;
 - (b) in subparagraph (b) of paragraph (1), for the words “that valuation” there shall be substituted the words “the last minimum funding valuation”; and
 - (c) after paragraph (1) there shall be inserted the following paragraphs:

“(1A) Paragraph (1) shall not apply to any scheme the value of whose assets was, or appears to the actuary to have been, not less than 100% of the amount of its liabilities both at the effective date of the last minimum funding valuation obtained by the trustees or managers under section 57 and—

 - (a) in any case where the first schedule of contributions following that valuation was certified before 19th March 2002, at the date on which that schedule was certified; and
 - (b) in any case where the first schedule of contributions following that valuation is certified on or after 19th March 2002, at the date 7 days before the date on which that schedule was certified.”; and

“(1B) In a case where the trustees or managers of a scheme have obtained a minimum funding valuation since the relevant date of the last certificate under section 58 of the rates of contributions shown in the schedule of contributions, no certificate need be obtained under paragraph (1) in relation to the anniversary of that date.”.
- (8) In regulation 20 (minimum funding valuations showing serious underprovision)—
- (a) for the words “Where there has been a serious shortfall valuation for a scheme,” in paragraph (1), there shall be substituted the words “Where, following a serious shortfall valuation for a scheme, a schedule of contributions is certified on or after 19th March 2002,”;
 - (b) the words “subject to paragraph (3),” at the beginning of paragraph (1)(a) shall be deleted and for the words “the period of one year” in that paragraph there shall be substituted the words “the period of three years”; and
 - (c) paragraph (3) shall be deleted.

(9) In regulation 21(1) (failure reports), after the words “they shall” following the end of subparagraph (b) there shall be inserted the words “before the end of the period of 3 months beginning with the end of any such period”.

(10) In Part I of Schedule 2 (certification of schedules of contributions)—

- (a) for the words “(minimum funding requirement met on date certificate signed)” in paragraph 1, there shall be substituted the words “(minimum funding requirement met on date 7 days before date certificate signed)”;
- (b) for the words “(minimum funding requirement not met on date certificate signed)” in paragraph 2, there shall be substituted the words “(minimum funding requirement not met on date 7 days before date certificate signed)”;
- (c) for paragraph 5 there shall be substituted the following paragraph:

“5. If, in a case where there has been a serious shortfall valuation, the actuary is of the opinion that on the date 7 days before the date on which he signs the certificate there was no longer such a difference as is mentioned in section 60(1), he must insert the following statement after paragraph 1 of the certificate—

“1A. Cessation of serious shortfall in assets

In my opinion an actuarial valuation for the scheme as at the date 7 days before the date of this certificate would not show a shortfall as is mentioned in section 60(1) of the Pensions Act 1995 (value of scheme assets less than 90 per cent. of amount of scheme liabilities).””; and

(d) for paragraph 6 there shall be substituted the following paragraph—

“6. If, in a case where there has been a serious shortfall valuation, the actuary is of the opinion that on the date 7 days before the date on which he signs the certificate the difference mentioned in section 60(1) has decreased, he must insert the following statement after paragraph 1 of the certificate—

“1A. Decrease in serious shortfall in assets

In my opinion an actuarial valuation for the scheme as at the date 7 days before the date of this certificate would show that the shortfall mentioned in section 60(1) of the Pensions Act 1995 (value of scheme assets less than 90 per cent. of amount of scheme liabilities) has decreased since the last actuarial valuation for the purposes of section 57 and is now .””.

(11) In Part II of Schedule 2 (form of actuary’s certificate), for paragraph 1 of the form of actuary’s certificate there shall be substituted the following paragraph:

“1. I hereby certify that, in my opinion, the rates of the contributions payable in accordance with the schedule of contributions dated are adequate for the purpose of securing that throughout the period it covers the scheme will meet the minimum funding requirement imposed by section 56(1) of the Pensions Act 1995.”.

(12) In Part I of Schedule 3 (certification), for the words in quotation marks in paragraph 5 of the statement mentioned in regulation 12(1) (duty to obtain minimum funding valuations where actuary suspects new serious underfunding), there shall be substituted the following words:

““3. *Serious shortfall in assets*

In my opinion an actuarial valuation for the scheme as at the date 7 days before the date of this certificate would show such a shortfall as is mentioned in section 60(1) of the Pensions Act 1995 (value of scheme assets less than 90 per cent. of amount of scheme liabilities).””.

(13) In paragraph 1(1) of Schedule 4 (methods of securing shortfall in cases of serious underprovision^(a)), for the words “(or, in a case where section 60(7A) applies, the date the actuary signed the certificate)” where they appear in the definition of “section 60 shortfall”, there shall be

(a) Paragraph 1(1) of Schedule 4 was amended by the Financial Services and Markets Act 2000 (Consequential Amendments and Repeals) Order 2001 (S.I. 2001/3649).

substituted the words “(or, in a case where section 60(7A) applies, the date 7 days before the date on which the actuary signs the certificate)”.

Amendment of the Winding Up Regulations

3.—(1) The Winding Up Regulations shall be amended in accordance with the following paragraphs of this regulation.

(2) In regulation 4(1) (calculation of amounts of liabilities), after the words “Subject to” there shall be inserted the words “regulation 4A and”.

(3) After regulation 4 there shall be inserted the following regulation:

“Calculation of liabilities where employer not insolvent

4A.—(1) In the case of a scheme in respect of which the employer was not insolvent at the time the winding up of the scheme commenced, 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 in respect of any entitlement to the payment of any pension or other benefit (including any increase in a pension) that has arisen under the scheme on or before the crystallisation 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) for paragraph (5), there were substituted the following paragraph:

“(5) If, when the assets of the scheme are applied in accordance with section 73(2) towards satisfying the liabilities mentioned in paragraph (aa) or (b) of section 73(3) and towards satisfying any liability for an increase to a pension or other benefit to which those paragraphs of that section apply, those liabilities, as calculated in accordance with the rules of the scheme (without any reduction by reason of them 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.”.

(2) For the purposes of paragraph (1) above, an employer is insolvent if a relevant insolvency event within the meaning given by section 75(4) has occurred in relation to that employer.”.

(4) In regulation 13(4) (hybrid schemes—calculation of liability for underpin benefits), after the words “that regulation)” there shall be inserted the words “, but regulation 4A shall not apply for that purpose”.

Amendment of the Deficiency Regulations

4.—(1) The Deficiency Regulations shall be amended in accordance with the following paragraphs of this regulation.

(2) In regulation 3 (calculation of the value of the scheme’s liabilities and assets), for the words “The liabilities” at the beginning of paragraph (1) there shall be substituted the words “Subject to regulation 3A, the liabilities”.

(3) After regulation 3 there shall be inserted the following regulation:

“Valuation of liabilities where employer not insolvent

3A.—(1) Where a scheme (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) is being wound up and the employer was not insolvent immediately before the winding up of the scheme commenced, regulation 3 shall have effect as if—

(a) in paragraph (1)—

- (i) at the beginning of subparagraph (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) below applies,”;
- (ii) for the words “paragraphs (2) and (3)” in subparagraph (a), there were substituted the words “paragraphs (2)(a) to (c) and (3)”;
- (iii) for the words “paragraphs (3) and (4)” in subparagraph (b), there were substituted the words “paragraphs (1B), (3) and (4)”;
- (iv) for the words “regulations 3(2) and (3)” in subparagraph (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 subparagraph (c), there were inserted the words “or as respects paragraphs (1A) and (1B) below”; and

(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) below) 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.”; and

“(1B) When calculating the liabilities of the scheme in respect of any entitlement to the payment of any pension or other benefit (including any increase in a pension) that has arisen under the scheme on or before the applicable time, 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) (discharge of liabilities by insurance—annuity purchase) and, for the purposes of the calculation, the actuary shall estimate the cost of purchasing any such annuities.”.

(2) Where 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) is being wound up in circumstances where—

- (a) an employer in relation to the scheme ceases to employ persons in the description or category of employment to which the scheme relates at a time when there are no other employers in relation to the scheme continuing to employ such persons; and
- (b) that employer was not insolvent immediately before the winding up commenced,

regulation 3 shall have effect with the modifications set out in paragraph (1)(a) and (b) of this regulation.

(3) For the purposes of paragraphs (1) and (2) above, an employer is insolvent if a relevant insolvency event has occurred in relation to that employer.

(4) In the Note at the end of the form of certificate set out in Schedule 1 (form of actuary’s certificate), after the word “securing” there shall be inserted the words “all of”.

Amendment to section 60(7A) of the Pensions Act 1995

5. Section 60(7A) of the Pensions Act 1995 shall be amended as follows:

- (a) for the words “on the date he signs the certificate” in paragraph (b), there shall be substituted the words “on the date seven days before the date on which he signs the certificate”;

- (b) for the word “is” in subparagraph (b)(i) there shall be substituted the word “was”;
- (c) for the word “has” in subparagraph (b)(i) there shall be substituted the word “had”; and
- (d) for the word “is” in subparagraph (b)(ii) there shall be substituted the word “was”.

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

22nd February 2002

P. Hollis
Parliamentary Under-Secretary of State,
Department for Work and Pensions

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations are made under the Pensions Act 1995 (“the 1995 Act”). They make amendments to the Occupational Pension Schemes (Minimum Funding Requirement and Actuarial Valuations) Regulations 1996, the Occupational Pension Schemes (Deficiency on Winding Up etc.) Regulations 1996 and the Occupational Pension Schemes (Winding Up) Regulations 1996.

Regulation 1 provides for citation, commencement and interpretation.

Regulation 2 amends the Occupational Pension Schemes (Minimum Funding Requirement and Actuarial Valuations) Regulations 1996 so as to make miscellaneous amendments to regulations 2, 7, 12, 16, 17, 18, 20 and 21 of, and Schedules 2, 3 and 4 to, those Regulations.

Regulation 3 amends the Occupational Pension Schemes (Winding Up) Regulations 1996 so as to amend the calculation of liabilities in respect of any pension or other benefit (including any increase in a pension) which has become payable under a scheme in circumstances where the scheme winds up and the employer is not insolvent at the time the winding up commenced.

Regulation 4 amends the Occupational Pension Schemes (Deficiency on Winding Up etc.) Regulations 1996 so to provide that, where a scheme is in the process of winding up and the employer is not insolvent, the scheme’s liabilities are to be calculated so as to include the actual cost of winding up and the cost of securing pensions or other benefits in payment by way of annuities.

Regulation 5 makes consequential amendments to section 60(7A) of the 1995 Act.

An assessment of the cost to business of complying with these Regulations has been prepared. A copy of the Regulatory Impact Assessment has been 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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