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STATUTORY INSTRUMENTS

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**2004 No. 403**

**PENSIONS**

**The Occupational Pension Schemes (Winding Up and Deficiency on Winding Up etc.) (Amendment) Regulations 2004**

<i>Made</i>	- - - -	<i>18th February 2004</i>
<i>Laid before Parliament</i>		<i>23rd February 2004</i>
<i>Coming into force</i>	- -	<i>15th March 2004</i>

The Secretary of State for Work and Pensions, in exercise of the powers conferred upon him by sections 73(3), 75(5), 124(1) and 174(2) and (3) of the Pensions Act 1995<sup>(1)</sup> and of all other powers enabling him in that behalf, after consultation with such persons as he considered appropriate<sup>(2)</sup>, hereby makes the following Regulations:

**Citation, commencement, interpretation and application**

1.—(1) These Regulations may be cited as the Occupational Pension Schemes (Winding Up and Deficiency on Winding Up etc.) (Amendment) Regulations 2004 and shall come into force on 15th March 2004.

(2) In these Regulations—

“the Act” means the Pensions Act 1995;

“the Winding Up Regulations” means the Occupational Pension Schemes (Winding Up) Regulations 1996<sup>(3)</sup>; and

“the Deficiency on Winding Up Regulations” means the Occupational Pension Schemes (Deficiency on Winding Up etc.) Regulations 1996<sup>(4)</sup>.

(3) For the purposes of these Regulations, the time when a scheme begins to be wound up shall be determined in accordance with subsections (3A) to (3E) of section 124 of the Act.

(4) These Regulations shall apply to any occupational pension scheme to which section 75 of the Act (deficiencies in the assets) applies in any case where the scheme begins, or has begun, to wind up and the date by reference to which the assets and liabilities of the scheme are determined,

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(1) 1995 c. 26. Section 73(3) of the Act 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. Section 75 of the Act is modified by regulation 4 of S.I.1996/3128. Section 124(1) of the Act is cited because of the meaning given to “prescribed” and “regulations”.

(2) See section 120(2)(b) of the Act for the requirement to consult.

(3) S.I.1996/3126 as amended by S.I.1997/786, S.I.1999/3198, S.I.2000/2691 and S.I.2002/380.

(4) S.I.1996/3128 as amended by S.I.1997/786, S.I.1997/3038, S.I.1999/3198 and S.I.2002/380.

calculated and verified for the purposes of that section is a date falling on or after the date on which these Regulations come into force.

### **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 paragraph (1) of regulation 4 (calculation of amounts of liabilities), for the words “regulation 4A and” there shall be substituted the words “regulations 4A and 4B and”.

(3) At the end of the heading to regulation 4A (calculation of liabilities where employer not insolvent)(5) there shall be added the words “and where winding up commences before 11th June 2003”.

(4) At the beginning of paragraph (1) of regulation 4A, after the words “In the case of a scheme” there shall be inserted the words “which has begun to wind up before 11th June 2003 and”.

(5) After regulation 4A, there shall be inserted the following regulation—

#### **“Calculation of liabilities where employer not insolvent and where winding up commences on or after 11th June 2003**

**4B.**—(1) This regulation shall apply in the case of a scheme which begins to wind up on or after 11th June 2003 in circumstances where the employer was not insolvent at the time the winding up of the scheme commenced.

(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) 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 section 73(3), 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.””

(3) 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.”.

### **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) At the beginning of regulation 3 (calculation of the value of scheme liabilities and assets), for the words “Subject to regulation 3A” there shall be substituted the words “Subject to regulations 3A and 3B”.

(3) At the end of the heading to regulation 3A (valuation of liabilities where employer not insolvent)(6) there shall be added the words “and where winding up commences before 11th June 2003”.

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

#### **“Valuation of liabilities where employer not insolvent and where winding up commences on or after 11th June 2003**

**3B.—**(1) This regulation shall apply in the case of a scheme to which regulation 4B of the Occupational Pension Schemes (Winding Up) Regulations 1996 (calculation of liabilities where employer not insolvent and where winding up commences on or after 11th June 2003) applies.

(2) In the case of a scheme to which this regulation applies, paragraph (1)(b) of regulation 3A (valuation of the liabilities where employer not insolvent) shall have effect as if for paragraph (1B) in quotation marks there were substituted the following paragraph—

“(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) (discharge of liabilities by insurance – annuity purchase) and, for the purposes of the calculation, the actuary shall estimate the costs of purchasing any such annuities.”.”.

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**Status:** This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

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

18th February 2004

*Malcolm Wicks*  
Minister of State,  
Department for Work and Pensions

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## EXPLANATORY NOTE

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

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

Regulation 1 provides for citation, commencement, interpretation and application.

Regulation 2 amends regulations 4 and 4A of the Winding Up Regulations so as to provide for the calculation of liabilities in the case of any occupational pension scheme to which section 75 of the Act applies that has begun to wind up before 11th June 2003 in circumstances where the sponsoring employer is not insolvent. Regulation 2 also inserts a new regulation 4B into the Winding Up Regulations so as to provide a new method of calculating liabilities when a scheme begins to wind up on or after 11th June 2003 in circumstances where the sponsoring employer is not insolvent. By virtue of the new regulation 4B, a scheme’s liabilities in these circumstances are to be calculated 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 3 amends regulations 3 and 3A of the Deficiency on Winding Up Regulations so as to provide for the calculation of liabilities in the case of any occupational pension scheme to which section 75 of the Act applies that has begun to wind up before 11th June 2003 in circumstances where the sponsoring employer is not insolvent. Regulation 3 also inserts a new regulation 3B into the Deficiency on Winding Up Regulations so as to provide a new method of calculating liabilities when a scheme begins to wind up on or after 11th June 2003 in circumstances where the sponsoring employer is not insolvent. By virtue of the new regulation 3B, the scheme’s liabilities in these circumstances are to be calculated 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.

An assessment of the costs 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.