

2005 No. 2426

PENSIONS

The Occupational Pension Schemes (Administration and Audited Accounts) (Amendment) Regulations 2005

Made - - - - - *30th August 2005*

Laid before Parliament *1st September 2005*

Coming into force in accordance with regulation 1

The Secretary of State for Work and Pensions, in exercise of the powers conferred upon him by sections 113(1)(d), 181(1) and 182(2) and (3) of the Pension Schemes Act 1993(a) and sections 41(1) and (6), 47(5) and (6), 49(2), (4) and (9)(b), 87(1), 88(1), 124(1) and 174(2) and (3) of the Pensions Act 1995(b), and of all other powers enabling him in that behalf, and after consulting such persons as he considers appropriate(c), hereby makes the following Regulations:

Citation, commencement and interpretation

1.—(1) These Regulations may be cited as the Occupational Pension Schemes (Administration and Audited Accounts) (Amendment) Regulations 2005.

(2) These Regulations shall come into force as follows—

- (a) in the case of an occupational pension scheme established before 22nd September 2005, this regulation, regulation 2(1) to (4) and regulation 3 on the first day of the first scheme year that starts on, or after 22nd September 2005;
- (b) in the case of an occupational pension scheme established on or after 22nd September 2005, this regulation, regulation 2(1) to (4), and regulation 3, on 22nd September 2005; and
- (c) for all other purposes on 6th April 2006.

(3) In these Regulations—

“the Audited Accounts Regulations” means the Occupational Pension Schemes (Requirement to obtain Audited Accounts and a Statement from the Auditor) Regulations 1996(d);

“the Scheme Administration Regulations” means the Occupational Pension Schemes (Scheme Administration) Regulations 1996(e); and

“scheme year” means—

(a) 1993 c.48. Section 181 is cited for the meaning there given to “prescribe” and “regulations”.
(b) 1995 c.26. Section 124 is cited for the meaning there given to “prescribed” and “regulations”. Section 41(6) was amended by section 1(2)(a) of the Employment Rights (Dispute Resolution) Act 1998 (c.8). Sections 49(9)(b) and 88(1) were substituted by section 269 of the Pensions Act 2004 (c.35).
(c) See section 185(1) of the Pension Schemes Act 1993, which was amended by sections 122, 151 and 177 of, and paragraph 46 of Schedule 3, paragraph 80 of Schedule 5 to, the Pensions Act 1995, and section 81 of, and paragraphs 20 and 23 to, the Welfare Reform and Pensions Act 1999 (c.30) and section 120(1) of the Pensions Act 1995.
(d) S.I. 1996/1975 which was amended by S.I. 1997/786 and 3038, and 2000/833 and 3198.
(e) S.I. 1996/1715 which was amended by S.I. 1997/786 and 819, 1998/1494, 1999/3198, 2000/679 and 2001/3649.

- (a) either—
 - (i) a year specified for the purposes of the scheme rules in any document which contains those scheme rules; or
 - (ii) if no such year is specified, a period of 12 months commencing on 1st April or on such date as the trustees or managers select,
- or
- (b) such other period (if any) exceeding 6 months but not exceeding 18 months as is selected by the trustees or managers in connection with—
 - (i) the commencement or termination of the scheme; or
 - (ii) a variation of the date on which the year or period referred to in paragraph (a) is to commence.

Amendment of the Audited Accounts Regulations

2.—(1) The Audited Accounts Regulations are amended in accordance with this regulation.

(2) In regulation 1 (citation, commencement and interpretation), after the definition “ear-marked scheme” insert—

““group of companies” has the meaning given by section 71 of the Finance Act 2005(a);”.

(3) In regulation 2 (requirement of trustees or managers to obtain documents)—

- (a) in paragraph (1), for “Subject to paragraph (2)” substitute “Subject to paragraphs (2), (2A) and (2B)”;
- (b) for paragraph (2), substitute—

“(2) In the case of an ear-marked scheme, the requirements contained in paragraph (1)(a) shall not apply and the trustees and managers of such a scheme shall—

- (a) upon receiving a written request from a person specified in section 41(4) of the Pensions Act 1995—
 - (i) make available a copy of the most recent accounts published in relation to the insurance companies (whether as part of a group of companies or otherwise) with which they hold ear-marked policies of insurance or annuity contracts in relation to that person; and
 - (ii) make that information available to the person who requested it within a reasonable time of receiving the request; and
- (b) provide each scheme member within 12 months of the end of each scheme year with a statement detailing the amount of contributions credited to him during that scheme year.”;

(c) after paragraph (2A) insert—

“(2B) In relation to a scheme to which section 47(1)(a) of the Pensions Act 1995 does not apply, the requirement to obtain accounts in accordance with paragraph (1)(a) or an auditor’s statement in accordance with paragraph (1)(b) shall apply—

- (a) to such a scheme—
 - (i) which falls within regulation 3(1)(c) or (i) of the Occupational Pension Schemes (Scheme Administration) Regulations 1996, and
 - (ii) which has 100 or more members;
- (b) to such a scheme which falls within regulation 3(1)(j), (m) or (o) of the Occupational Pension Schemes (Scheme Administration) Regulations 1996.”;

(a) 2005 c.7.

- (d) in paragraph (3)(a) for “the Occupational Pensions Regulatory Authority” substitute “the Regulator”; and
 - (e) omit paragraph (4)(b).
- (4) For sub-paragraph (a) of regulation 4(1)(c) (form and content of the auditor’s statement) substitute—
- “(a) a statement as to whether or not in his opinion contributions have in all material respects been paid at least in accordance with the schedule of contributions or payment schedule; and”.
- (5) In the Schedule (contents of accounts audited by the auditor of the scheme), in paragraph 2(3)(a) omit “to which section 111 of the Pension Schemes Act 1993 applies”.

Amendment of the Scheme Administration Regulations

3.—(1) The Scheme Administration Regulations are amended in accordance with this regulation.

(2) In regulation 1(2) (citation, commencement and interpretation) for the definition of “wholly insured scheme”(d) substitute—

““wholly insured scheme” means a trust scheme, other than a stakeholder pension scheme within the meaning of section 1 of the Welfare Reform and Pensions Act 1999, which has no investments other than specified insurance policies with specified insurers and for these purposes “investments” shall not include—

- (a) cash held on deposit by the trustees or managers pending payment to the insurer or to members of the scheme; or
 - (b) cash held on deposit by the trustees or managers to meet accrued liabilities or administrative expenses; or
 - (c) investments arising from voluntary contributions; and
- in relation to a trust scheme which has policies of insurance with more than one insurer, a reference in this regulation to an insurer shall be to any of the insurers with which a policy of insurance is taken out.”.

(3) In regulation 3(1)(e) (exemptions from the professional advisers requirements)—

(a) for sub-paragraph (a) substitute—

“(a) a scheme which is—

- (i) provided for, or by, or under an enactment (including a local Act);
- (ii) guaranteed by a Minister of the Crown or other public authority.”;

(b) in sub-paragraph (h)(ii) for “;” substitute “; and”;

(c) after sub-paragraph (h)(ii), insert—

“(iii) there are fewer than 12 members;”;

(d) in sub-paragraph (hh) after “ear-marked schemes” insert “with fewer than 12 members;”;

(e) for sub-paragraph (m) substitute—

“(m) the AWE Pension Scheme established by a deed made on 29th March 1993;”;

(f) after sub-paragraph (m) insert the following head—

“(o) the Babcock Naval Services Pension Scheme, established by a deed made on 29th August 2002.”; and

(g) omit sub-paragraphs (b), (d), (g), (k), (l) and (n).

(a) Paragraph (3) was inserted by S.I. 2000/833.
 (b) Paragraph (4) was inserted by S.I. 2000/833.
 (c) Regulation 4(1)(a) was amended by S.I. 1997/786.
 (d) Regulation 1 was amended by S.I. 1997/786.
 (e) Regulation 3(1) was amended by S.I. 1997/786.

(4) In regulation 3(2)—

(a) for sub-paragraphs (b) and (c) substitute—

“(b) schemes mentioned in—

(i) paragraph (1)(a), (d) to (f), (j), (m) and (o); or

(ii) paragraph (1)(c) or (i) where these schemes have fewer than 100 members.”.

(5) In regulation 3(3)(c) and (4) for “paragraph (1)(a) to (g), (i) and (n)” in both places it occurs substitute “paragraph (1)(a) to (f) and (i)”.

(6) In regulation 5(11) (manner and terms of appointment and removal of professional advisers), and regulation 6(4) (duty to disclose information), for “regulation 3(1)(b) to (g) and (i)” substitute “regulation 3(1)(c) to (f) and (i)”.

(7) After regulation 12(2)(a) (requirement for trustees to keep books and records) add—

“(3) This regulation shall not apply in the case of a trust scheme which falls within the description referred to in—

(a) regulation 3(1)(f);

(b) regulation 3(1)(c) or (i) where any such scheme has fewer than 100 members; or

(c) to a scheme which is a Republic of Ireland scheme within the meaning of the Occupational Pension Schemes (Republic of Ireland Schemes Exemption) Regulations 2000(b).”.

(8) For regulation 13(2) (records of trustees’ meetings) substitute—

“(2) This regulation shall not apply in the case of a trust scheme which falls within the descriptions referred to in—

(a) regulation 3(1)(f); or

(b) regulation 3(1)(c) or (i) where any such scheme has fewer than 100 members.”.

(9) In regulation 16A(2)(c) (time limits for giving notice to the Authority and to the member and circumstances in which such notice need not be given)—

(a) in sub-paragraph (b)(i) for “, or” substitute “.”; and

(b) omit sub-paragraph (b)(ii).

(10) For regulation 17 (exemption from requirement to secure a payment schedule) substitute—

“Exemption from requirement to secure a payment schedule

17. For the purposes of section 87(1) of the 1995 Act (requirement for occupational pension schemes which are money purchase schemes to secure and maintain a payment schedule unless the scheme falls within a prescribed class or description) the prescribed class or description is a money purchase scheme which falls within the descriptions referred to in—

(a) regulation 3(1)(a), (d), (f), (h) or (hh); or

(b) regulation 3(1)(c) or (i) where any such scheme has fewer than 100 members.”.

Further amendments of the Scheme Administration Regulations

4.—(1) The Scheme Administration Regulations are amended in accordance with this regulation.

(2) In regulation 1(2)—

(a) omit the definitions of—

(a) Regulation 12(2) was amended by S.I. 2000/3198.

(b) S.I. 2000/3198.

(c) Regulation 16A was inserted by S.I. 2000/679.

- (i) “approved scheme”;
 - (ii) “pensioner trustee”;
 - (iii) “relevant ear-marked scheme”(a);
 - (iv) “relevant statutory scheme”; and
 - (v) “small self-administered scheme”;
- (b) after the definition of “public service pension scheme” insert—
- ““registered scheme” means a scheme which, on or after 6th April 2006, is registered in accordance with section 153 of the Finance Act 2004(b) (registration of pension schemes);”; and
- (c) for the definition of “relevant benefits” substitute—
- ““relevant benefits” has the meaning given in section 393B of the Income Tax (Earnings and Pensions) Act 2003(c) (relevant benefits);”.
- (3) In regulation 3 (exemptions from the professional advisers requirements)—
- (a) for sub-paragraph (c) of paragraph (1) substitute—
- “(c) an occupational pension scheme which provides relevant benefits and which on or after 6th April 2006 is not a registered scheme;”;
- (b) for sub-paragraph (h) of paragraph (1) substitute—
- “(h) a scheme—
- (i) with fewer than 12 members where all the members are trustees of the scheme and either—
 - (aa) the provisions of the scheme provide that all decisions which fall to be made by the trustees are made by unanimous agreement by the trustees who are members of the scheme; or
 - (bb) the scheme has a trustee who is independent in relation to the scheme for the purposes of section 23 of the 1995 Act(d) (power to appoint independent trustees), and is registered in the register maintained by the Authority in accordance with regulations made under subsection (4) of that section; or
 - (ii) with fewer than 12 members where all the members are directors of a company which is the sole trustee of the scheme, and either—
 - (aa) the provisions of the scheme provide that any decisions made by the company in its capacity as trustee are made by the unanimous agreement of all the directors who are members of the scheme; or
 - (bb) one of the directors of the company is independent in relation to the scheme for the purposes of section 23 of the 1995 Act, and is registered in the register maintained by the Authority in accordance with regulations made under subsection (4) of that section;”;
- (c) omit sub-paragraph (hh) of paragraph (1); and
- (d) in paragraph (2)(c)(i), after “(d) to (f),” insert “(h),”.
- (4) In regulation 8 (meaning of trustee of a trust scheme), for “any pensioner trustee” substitute “a trustee who is a trustee in relation to a scheme to which regulation 3(1)(h)(i)(bb) or (ii)(bb) applies (exemptions from the professional advisers requirements)”.
- (5) For regulation 16A, substitute—

(a) The definition of “relevant ear-marked scheme” was inserted by S.I. 1997/786.
(b) 2004 c.12.
(c) 2003 c.1.
(d) Section 23 is substituted by section 36(1) and (3) of the Pensions Act 2004.

“Exemptions from the requirement to notify the Authority or the member of a late contribution payment

16A. Where—

- (a) an amount corresponding to any contribution payable on behalf of an active member of an occupational pension scheme is deducted from that member’s earnings in respect of any employment; and
- (b) is not paid to the trustees or managers of the scheme within the period of 19 days beginning on the first day of the month after which the deduction is made,

the trustees or managers do not need to give notice of that failure to the Authority or member where—

- (c) the scheme is exempt from the requirement to secure the preparation, maintenance and revision of a payment schedule for the purposes of section 87(1)(a) of the 1995 Act (schedules of payments to money purchase schemes) by virtue of regulation 17; or
 - (d) the scheme is exempt from the requirement to secure the preparation, maintenance and revision of a schedule of contributions for the purposes of section 58(1) of the 1995 Act(b) (schedule of contributions) by virtue of any of sub-paragraphs (a) to (e) or (g) to (i) of regulation 28(1) of the Occupational Pension Schemes (Minimum Funding Requirement and Actuarial Valuations) Regulations 1996(c).”.
- (6) In regulation 17(a) for “(h) or (hh)” omit “or (hh)”.
- (7) Omit regulation 20 (period within which notice must be given).
- (8) In regulation 21(d) (circumstances where notice of non-payment of any amount payable to a scheme need not be given)—
- (a) omit paragraphs (1) and (3); and
 - (b) in paragraph (4) for “within a prescribed time” substitute “within a reasonable period”.

Revocation

5. Regulations 2, 3, 4, 6 and 7 of the Personal Pension Schemes (Payments by Employers) Regulations 2000(e) are revoked.

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

Stephen C. Timms
Minister of State,
Department for Work and Pensions

30 August 2005

(a) Section 87 is amended by sections 319 and 320 of, and paragraphs 34, 64 of Schedule 12 and Schedule 13 to, the Pensions Act 2004.

(b) Section 58(1) is amended by sections 18 and 88 of, and paragraphs 14 of Schedule 2 and Schedule 13 to, the Welfare Reform and Pensions Act 1999.

(c) S.I. 1996/1536 was amended by S.I. 1996/3127, 1997/786 and 3038, 1999/3198, 2000/2691, 2001/3649, 2002/380, 2004/3031 and 2005/678 and 706.

(d) Regulation 21 was amended by S.I. 1999/3198 and 2000/679.

(e) S.I. 2000/2692.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend the Occupational Pension Schemes (Scheme Administration) Regulations 1996 (S.I. 1996/1715) (“the Scheme Administration Regulations”) and the Occupational Pension Schemes (Requirement to obtain Audited Accounts and a Statement from the Auditor) Regulations 1996 (S.I. 1996/1975) (“the Audited Accounts Regulations”). These amendments implement the European Directive on the activities and supervision of Institutions for Occupational Retirement Provision (Directive 2003/41/EC) (“the Directive”), and are consequential on the coming into force of the Finance Act 2004 (c.12), and the Pensions Act 2004 (c.35).

Regulation 2 amends the Audited Accounts Regulations. In particular it amends the exemptions contained in those regulations from the requirement to maintain audited accounts and introduces a ‘materiality’ requirement in relation to the occasions where the auditor of a scheme is required to qualify a scheme’s accounts. It also further amends the Audited Accounts Regulations by removing an obsolete reference.

Regulation 3 amends the Scheme Administration Regulations to come into force in the case of a new scheme on 22nd September 2005, and in the case of an existing scheme on the first day of the scheme year that falls on or after 22nd September 2005. In particular it adds a number of new definitions, amends the exemptions of schemes that are not required to appoint an auditor, and makes other changes that are consequential on these amendments.

Regulation 4 amends the Scheme Administration Regulations to come into force on 6th April 2006. In particular it makes further amendments to the list of schemes which are exempt from the requirement to appoint professional advisers, deletes an obsolete regulation and makes further amendments to the requirements to notify the Authority of the late payment of a contribution.

Regulation 5 provides for the revocation of regulations following the revocation of the enabling power that supported them.

These Regulations transpose the Directive. Article 10 requires that every relevant institution in a member state must provide annual accounts and annual reports in respect of every pension scheme it operates giving a true and fair view of the institution’s assets, liabilities and financial position. It also provides that the accounts shall be approved by an authorised person. Article 5 permits an exemption from these requirements in relation to small pension schemes (those which have fewer than 100 members) and in relation to certain statutory schemes. Regulation 2(1) to (4) and regulation 3 of these Regulations amend the Audited Accounts and Scheme Administration Regulations to delete exemptions which are not within the scope of Article 5.

The transposition of Article 10 of the Directive is detailed in the Transposition Table that accompanied the Act. A copy of that Table has been placed in the libraries of both Houses of Parliament. Copies may be obtained from the Department for Work and Pensions, Better Regulation Unit, 4th floor, Adelphi, 1-11 John Adam Street, London WC2N 6HT.

These Regulations have only a negligible impact on business. Publication of a full Regulatory Impact assessment is not necessary for such legislation.

2005 No. 2426

PENSIONS

**The Occupational Pension Schemes (Administration and
Audited Accounts) (Amendment) Regulations 2005**

£3.00

© Crown copyright 2005

Printed and published in the UK by The Stationery Office Limited
under the authority and superintendence of Carol Tullo, Controller of Her Majesty's
Stationery Office and Queen's Printer of Acts of Parliament.

E1288 9/2005 151288T 19585

ISBN 0-11-073312-6



9 780110 733128