
STATUTORY INSTRUMENTS

2005 No. 3377

**The Occupational Pension Schemes
(Scheme Funding) Regulations 2005**

Citation and commencement

1. These Regulations may be cited as the Occupational Pension Schemes (Scheme Funding) Regulations 2005 and shall come into force on 30th December 2005.

Interpretation

2.—(1) In these Regulations—

“the 1993 Act” means the Pension Schemes Act 1993⁽¹⁾;

“the 1995 Act” means the Pensions Act 1995;

“the 2004 Act” means the Pensions Act 2004;

“the actuary”, in relation to a scheme, means the actuary appointed under section 47(1)(b) of the 1995 Act (professional advisers) in relation to that scheme;

“the commencement date” means 30th December 2005;

“insurance policy” means an insurance policy which is a contract on human life or a contract of annuity on human life, but excluding a contract which is linked to investment funds;

“pension credit rights” has the meaning given by section 124(1) of the 1995 Act⁽²⁾;

“the relevant accounts”, for the purposes of identifying and valuing the assets of a scheme, are audited accounts for the scheme—

(a) which comply with the requirements imposed under section 41 of the 1995 Act⁽³⁾ (provision of documents for members), and

(b) which are prepared in respect of a period ending with the effective date of the valuation.

(2) In these Regulations “scheme” must be read in appropriate cases in accordance with the modifications of Part 3 of the 2004 Act made by paragraphs 1, 4, 5 and 7 of Schedule 2 (multi-employer sectionalised schemes, partly foreign schemes and schemes with a partial public authority guarantee), and “employer” and “member” must be construed accordingly.

Determination of assets and liabilities

3.—(1) The assets of a scheme to be taken into account for the purposes of Part 3 of the 2004 Act are the assets attributed to the scheme in the relevant accounts, excluding—

(a) any resources invested (or treated as invested by or under section 40 of the 1995 Act) in contravention of section 40(1) of the 1995 Act (employer-related investments);

(1) 1993 c. 48.

(2) The definition of “pension credit rights” was inserted into section 124(1) of the 1995 Act by paragraph 61(3) of Schedule 12 to the Welfare Reform and Pensions Act 1999 (c. 30).

(3) Section 41 was amended by paragraph 12 of Schedule 5 to the Child Support, Pensions and Social Security Act 2000 (c. 19) and paragraph 52 of Schedule 12 to the Pensions Act 2004.

- (b) any amounts treated as a debt due to the trustees or managers under section 75(2) or (4) of the 1995 Act⁽⁴⁾ (deficiencies in the assets) or section 228(3) of the 2004 Act (amounts due in accordance with a schedule of contributions) which are unlikely to be recovered without disproportionate cost or within a reasonable time, and
 - (c) where it appears to the actuary that the circumstances are such that it is appropriate to exclude them, any rights under an insurance policy.
- (2) The liabilities of a scheme to be taken into account for the purposes of Part 3 of the 2004 Act are any liabilities—
- (a) in relation to a member of the scheme by virtue of—
 - (i) any right that has accrued to or in respect of him to future benefits under the scheme rules, or
 - (ii) any entitlement to the present payment of a pension or other benefit which he has under the scheme rules, and
 - (b) in relation to the survivor of a member of the scheme, by virtue of any entitlement to benefits, or right to future benefits which he has under the scheme rules in respect of the member.
- (3) For the purposes of paragraph (2)—
- “right” includes a pension credit right, and
- “the survivor” of a member is a person who—
- (a) is the widow, widower or surviving civil partner of the member, or
 - (b) has survived the member and has any entitlement to benefit, or right to future benefits, under the scheme in respect of the member.
- (4) Where rights under an insurance policy are excluded under paragraph (1)(c), the liabilities secured by the policy shall be disregarded for the purposes of paragraph (2).
- (5) Where arrangements are being made by the scheme for the transfer to or from it of accrued rights and any pension credit rights, until such time as the trustees or managers of the scheme to which the transfer is being made (“the receiving scheme”) have received assets of the full amount agreed by them as consideration for the transfer, it shall be assumed—
- (a) that the rights have not been transferred, and
 - (b) that any assets transferred in respect of the transfer of those rights are assets of the scheme making the transfer and not of the receiving scheme.

Valuation of assets and determination of the amount of liabilities

4.—(1) Subject to paragraph (2), the value to be given to the assets of a scheme for the purposes of Part 3 of the 2004 Act is the value given to those assets in the relevant accounts, less the amount of the external liabilities.

(2) The value to be given to any rights under an insurance policy taken into account under regulation 3(1) is the value the actuary considers appropriate in the circumstances of the case.

(3) In paragraph (1), “the external liabilities” of a scheme are such liabilities of the scheme (other than liabilities within regulation 3(2)) as are shown in the net assets statement in the relevant accounts, and their amount shall be taken to be the amount shown in that statement in respect of them.

(4) The assets of the scheme shall be valued, and the amount of the liabilities determined, by reference to the same date.

(4) Section 75 was amended by section 271 of the Pensions Act 2004.

Calculation of technical provisions

5.—(1) Subject to paragraphs (2) and (3), it is for the trustees or managers of a scheme to determine which method and assumptions are to be used in calculating the scheme's technical provisions.

(2) The method used in calculating a scheme's technical provisions must be an accrued benefits funding method.

(3) In determining which accrued benefits funding method and which assumptions are to be used, the trustees or managers must—

- (a) follow the principles set out in paragraph (4), and
- (b) in the case of a scheme under which the rates of contributions payable by the employer are determined—
 - (i) by or in accordance with the advice of a person other than the trustees or managers, and
 - (ii) without the employer's agreement, take account of the recommendations of that person.
- (4) The principles to be followed under paragraph (3) are—
 - (a) the economic and actuarial assumptions must be chosen prudently, taking account, if applicable, of an appropriate margin for adverse deviation;
 - (b) the rates of interest used to discount future payments of benefits must be chosen prudently, taking into account either or both—
 - (i) the yield on assets held by the scheme to fund future benefits and the anticipated future investment returns, and
 - (ii) the market redemption yields on government or other high-quality bonds;
 - (c) the mortality tables used and the demographic assumptions made must be based on prudent principles, having regard to the main characteristics of the members as a group and expected changes in the risks to the scheme, and
 - (d) any change from the method or assumptions used on the last occasion on which the scheme's technical provisions were calculated must be justified by a change of legal, demographic or economic circumstances.

Statement of funding principles

6.—(1) A statement under section 223 of the 2004 Act must include the following matters, in addition to those specified in that section—

- (a) any funding objectives provided for in the rules of the scheme, or which the trustees or managers have adopted, in addition to the statutory funding objective;
- (b) whether there are arrangements for a person other than the employer or a member of the scheme to contribute to the funds held by the scheme, and, if there are such arrangements, the circumstances in which they apply;
- (c) whether there is a power to make payments to the employer out of funds held for the purposes of the scheme and, if there is such a power, the circumstances in which it may be exercised;
- (d) whether there are discretionary powers to provide or increase benefits for, or in respect of, all or any of the members and, if there are such powers, the extent to which they are taken into account in the funding of the scheme;

- (e) the policy of the trustees or managers regarding the reduction of the cash equivalent of benefits which have accrued to or in respect of members on account of the state of the funding of the scheme, and
 - (f) the intervals at which the trustees or managers will obtain actuarial valuations in accordance with section 224(1)(a) of the 2004 Act, and the circumstances in which and occasions on which they will, or will consider whether to, obtain actuarial valuations in addition to those obtained at such intervals.
- (2) The first statement under section 223 of the 2004 Act in respect of a scheme must be prepared by the trustees or managers within 15 months after the effective date of the first actuarial valuation obtained by them under section 224 of that Act.
- (3) A statement under section 223 must be reviewed, and if necessary revised—
- (a) within 15 months after the effective date of each subsequent actuarial valuation, and
 - (b) within a reasonable period after any occasion on which the Regulator has exercised any of the powers conferred by section 231(2) of the 2004 Act in relation to the scheme.
- (4) A statement under section 223 must specify the date on which it was prepared, or, if it has been revised, the date on which it was last revised.

Actuarial valuations and reports

7.—(1) In addition to the regular valuations provided for in section 224(1)(a) of the 2004 Act, the trustees or managers of a scheme must obtain an actuarial valuation where the Regulator has given directions under section 231(2)(b)(i) of that Act as to the manner in which the scheme's technical provisions are to be calculated.

(2) Where the trustees or managers have obtained an actuarial valuation or an actuarial report, they must ensure that it is received by them—

- (a) in the case of a valuation under section 224(1)(a), within 15 months after its effective date;
- (b) in the case of a valuation where the Regulator has given directions under section 231(2)(b)(i)—
 - (i) within three months after the date of the directions if the effective date of the valuation is before the date of the directions, and
 - (ii) within six months after the effective date of the valuation if that date is the same as or later than the date of the directions;
- (c) in the case of a report, within 12 months after its effective date.

(3) Where the assets taken into account in an actuarial valuation include rights under an insurance policy, the valuation must state the reason why the value given to such rights is considered appropriate in the circumstances of the case.

(4) An actuarial valuation must include—

- (a) the actuary's certification of the calculation of the technical provisions, in the relevant form set out in Schedule 1, and
- (b) the actuary's estimate of the solvency of the scheme.

(5) An actuarial report must include an assessment by the actuary of changes in the value of the scheme's assets since the last actuarial valuation was prepared.

(6) In paragraph (4), "the actuary's estimate of the solvency of the scheme" means—

- (a) except in the case referred to in sub-paragraph (b), an estimate by the actuary of whether, on the effective date of a valuation, the value of assets of the scheme to be taken into account under paragraph (1) of regulation 3 exceeded or fell short of the sum of—

- (i) the cost of purchasing annuities, of the type described in section 74(3)(c) of the 1995 Act⁽⁵⁾ (discharge of liabilities by purchase of annuities satisfying prescribed requirements) and on terms consistent with those in the available market, which would be sufficient to satisfy the liabilities taken into account under paragraph (2) of regulation 3, and
 - (ii) the other expenses which, in the opinion of the actuary, would be likely to be incurred in connection with a winding up of the scheme,
- and the amount of the excess or, as the case may be, the shortfall;
- (b) where the actuary considers that it is not practicable to make an estimate in accordance with sub-paragraph (a), an estimate of the solvency of the scheme on the effective date of the valuation made in such manner as the actuary considers appropriate in the circumstances of the case.
- (7) Where the actuary's estimate of solvency is made under paragraph (6)(b), the valuation must include a brief account of the principles adopted in making the estimate.

Recovery plan

8.—(1) Where section 226(1) of the 2004 Act applies, and the trustees or managers of a scheme are required, following an actuarial valuation, either to prepare a recovery plan or to review and if necessary revise an existing recovery plan, they must do so—

- (a) in the case of the first actuarial valuation obtained by them under section 224 of the Act and each subsequent valuation under section 224(1)(a), within 15 months after the effective date of the valuation;
 - (b) in the case of a valuation under section 224(1)(b) and regulation 7(1), within whichever period is applicable under regulation 7(2)(b).
- (2) In preparing or revising a recovery plan, the trustees or managers must take account of the following matters—
- (a) the asset and liability structure of the scheme;
 - (b) its risk profile;
 - (c) its liquidity requirements;
 - (d) the age profile of the members, and
 - (e) in the case of a scheme under which the rates of contributions payable by the employer are determined—
 - (i) by or in accordance with the advice of a person other than the trustees or managers, and
 - (ii) without the agreement of the employer,the recommendations of that person.
- (3) A recovery plan must be reviewed, and if necessary revised, where the Regulator has given directions under section 231(2)(b)(ii) of the 2004 Act as to the period within which, and manner in which, a failure to meet the statutory funding objective is to be remedied.
- (4) Where paragraph (3) applies, the review and any necessary revision must be completed within a reasonable period after the date of the Regulator's directions.
- (5) A recovery plan may be reviewed, and if necessary revised, where the trustees or managers consider that there are reasons that may justify a variation to it.

(5) Section 74(3)(c) was amended by S.I.2001/3649.

(6) A recovery plan must specify the date on which it was prepared, or, if it has been revised, the date on which it was last revised.

(7) A copy of any recovery plan sent to the Regulator by the trustees or managers of a scheme must be accompanied—

- (a) in a case where the plan has been prepared or revised following an actuarial valuation, by a summary of the information contained in the valuation, and
- (b) in a case where the plan has been revised in the circumstances described in paragraph (5), by an explanation of the reasons for the revision.

(8) The commencement of the winding up of an eligible scheme, as defined in section 126 of the 2004 Act (eligible schemes), during the recovery period specified in the scheme's recovery plan is a notifiable event for the purposes of section 69(2)(a) of that Act (duty to notify the Regulator of prescribed events in respect of eligible schemes).

Schedule of contributions

9.—(1) A schedule of contributions for a scheme must be prepared within 15 months after the effective date of the first actuarial valuation following the establishment of the scheme.

(2) Where a schedule of contributions has been prepared, it must be reviewed, and if necessary revised—

- (a) within 15 months after the effective date of each subsequent actuarial valuation under section 224(1)(a) of the 2004 Act;
- (b) within whichever period is applicable under regulation 7(2)(b) after any valuation under section 224(1)(b) and regulation 7(1), and
- (c) within a reasonable period after any revision of a recovery plan under regulation 8(3) or (5).

Content and certification of schedules of contributions

10.—(1) A schedule of contributions must show the rates and due dates of all contributions (other than voluntary contributions) payable towards the scheme by or on behalf of the employer and the active members during the relevant period.

(2) In this regulation, “the relevant period” means the period of five years after the date on which the schedule is certified, or, in a case where—

- (a) a recovery plan is in force, and
- (b) the period set out in the recovery plan as the period within which the statutory funding objective is to be met is longer than five years after the date on which the schedule is certified,

that longer period.

(3) The schedule must show separately—

- (a) the rates and due dates of contributions payable by or on behalf of active members of the scheme;
- (b) the rates and due dates of the contributions payable by or on behalf of the employer, and
- (c) if separate contributions to satisfy liabilities other than those referred to in regulation 3(2) which are likely to fall due for payment by the trustees or managers during the relevant period are made to the scheme, the rates and due dates of those contributions.

(4) Where additional contributions are required in order to give effect to a recovery plan, the rates and dates of those contributions must be shown separately from the rates and dates of contributions otherwise payable.

(5) The schedule must be signed by the trustees or managers of the scheme, and make provision for signature by the employer in order to signify his agreement to the matters included in it.

(6) The schedule must incorporate the actuary's certification, in the relevant form set out in Schedule 1.

Records

11.—(1) The trustees or managers of a scheme to which Part 3 of the 2004 Act applies must keep records of all contributions made to the scheme by any person, showing separately—

- (a) the aggregate amounts of contributions paid by or on behalf of active members of the scheme (whether by deductions from their earnings or otherwise) and the dates on which they are paid, distinguishing voluntary contributions from other contributions, and showing the amounts of voluntary contributions paid by each member, and
- (b) the aggregate amounts of contributions paid by or on behalf of each person who is an employer in relation to the scheme and the dates on which they are paid.

(2) The trustees or managers must also keep records of any action taken by them to recover—

- (a) the amount of any contributions which are not paid on the date on which they are due, and
- (b) the amount of any debt which has arisen under section 75(2) or (4) of the 1995 Act (deficiencies in the assets).

Failure to make payments

12. The trustees or managers of a scheme are not required to give notice, under section 228(2) of the 2004 Act (requirement to notify Regulator of failure likely to be of material significance), of a failure to make a payment in accordance with the schedule of contributions where they have given the Regulator notice of the failure under—

- (a) section 49(9)(b) of the 1995 Act⁽⁶⁾ (failure to remit deductions from members' earnings), or
- (b) section 30(7)(c) of the 2004 Act (failure to pay employer's contributions in accordance with Regulator's order).

Period for obtaining employer's agreement

13. Where, following an actuarial valuation, the trustees or managers of a scheme are required under section 229(1) of the 2004 Act to obtain the agreement of the employer to any of the matters mentioned in paragraphs (a) to (d) of that provision, they must do so within 15 months after the effective date of the valuation.

Powers of the Regulator

14.—(1) In exercising any of the powers conferred by section 231 of the 2004 Act in the case of a scheme of the kind referred to in regulations 5(3)(b) and 8(2)(e), the Regulator must take into account any relevant recommendations made to the trustees or managers under those regulations.

(6) Section 49(9)(b) of the 1995 Act was inserted by section 10(1) of the Welfare Reform and Pensions Act 1999.

(2) In exercising the power in section 231(2)(b)(i) to give directions as to the manner in which a scheme's technical provisions are to be calculated, the Regulator must include a direction specifying the effective date by reference to which assets are valued and the amount of liabilities is determined.

Guidance relating to actuarial advice

15. When advising the trustees or managers of a scheme on any of the matters specified in section 230(1) of the 2004 Act, the actuary shall have regard to the guidance note "Occupational Pension Schemes – scheme funding matters on which advice of actuary must be obtained" (GN49) prepared and published by the Institute of Actuaries and the Faculty of Actuaries and approved for the purposes of these Regulations by the Secretary of State, with such revisions as have been so approved⁽⁷⁾.

Modification of shared cost schemes

16.—(1) The trustees of a shared cost scheme to which Part 3 of the 2004 Act applies may by resolution modify the scheme with a view to making such provision that, where any additional contributions are required to give effect to a recovery plan, those contributions are payable by the employer and the members in the appropriate proportions, unless the employer and the trustees or managers agree—

- (a) that the additional contributions should be payable by the employer alone, or
- (b) that he should pay a greater proportion than would otherwise fall to be paid by him.

(2) In paragraph (1)—

“shared cost scheme” means a scheme under the provisions of which—

- (a) the level of benefits expected to be provided is defined;
- (b) contributions are payable by the employer and the active members in specified proportions, and
- (c) if—
 - (i) it appears to the trustees or managers, or
 - (ii) an actuarial valuation shows,

that otherwise the assets of the scheme will (or are likely to) fall short of its technical provisions, the rates of contributions payable by both the active members and the employer may be increased in specified proportions, and

“the appropriate proportions” means those specified proportions.

(3) For the purposes of paragraph (2) there shall be disregarded—

- (a) voluntary contributions by members and any associated contributions by the employer, and
- (b) any temporary suspension of the liability to make contributions, or alteration in the proportions in which the contributions are payable, under any provision of the scheme allowing such a suspension or alteration in any circumstances.

Exemptions - general

17.—(1) Part 3 of the 2004 Act does not apply to—

- (a) a scheme which—
 - (i) is established by or under an enactment (including a local Act), and

(7) Copies of GN49 may be obtained from the Institute of Actuaries, Staple Inn Hall, High Holborn, London WC1V 7QJ and from the Faculty of Actuaries, Maclaurin House, 18 Dublin Street, Edinburgh EH1 3PP.

- (ii) is guaranteed by a public authority;
- (b) a pay-as-you-go scheme;
- (c) a scheme which is made under section 2 of the Parliamentary and other Pensions Act 1987⁽⁸⁾ (power to provide for pensions for Members of the House of Commons etc.);
- (d) a scheme which is treated as such by virtue of paragraph 4 or 5 of Schedule 2 to these Regulations and—
 - (i) in the cases described in paragraphs 4(2) and 5(2)(a) of that Schedule, applies to members in employment outside the member States, and
 - (ii) in the cases described in paragraphs 4(3) and 5(2)(b) of that Schedule, applies to members in employment outside the United Kingdom;
- (e) a scheme which—
 - (i) provides relevant benefits;
 - (ii) is neither a relevant statutory scheme nor a tax approved scheme, or, from 6th April 2006, is not a tax registered scheme, and
 - (iii) has fewer than 100 members;
- (f) a section 615(6) scheme which has fewer than 100 members;
- (g) a scheme which has fewer than two members;
- (h) a scheme which has fewer than 12 members, where all the members are trustees of the scheme and either—
 - (i) the provisions of the scheme provide that all decisions which fall to be made by the trustees are made by the unanimous agreement of the trustees who are members of the scheme, or
 - (ii) the scheme has a trustee who is an independent trustee in relation to the scheme for the purposes of section 23 of the 1995 Act⁽⁹⁾ (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;
- (i) a scheme which has fewer than 12 members, where a company is a trustee of the scheme and all the members of the scheme are directors of the company and either—
 - (i) the provisions of the scheme provide that any decision made by the company in its capacity as trustee is made only by the unanimous agreement of the directors who are members of the scheme, or
 - (ii) one of the directors is a trustee who 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;
- (j) a scheme under which the only benefits provided for (other than money purchase benefits) are death benefits, if the death benefits are secured by insurance policies or annuity contracts;
- (k) a scheme which is the subject of a scheme failure notice under section 122 or 130 of the 2004 Act;
- (l) subject to regulation 18, a scheme which is being wound up, or
- (m) the Chatsworth Settlement Estate Pension Scheme.

⁽⁸⁾ 1987 c. 45.

⁽⁹⁾ Section 23 was substituted by the Pensions Act 2004, section 36(3).

(2) In paragraph (1)—

“enactment” includes an enactment comprised in, or in an instrument under, an Act of the Scottish Parliament;

“pay-as-you-go scheme” means an occupational pension scheme under which there is no requirement for assets to be set aside in advance for the purpose of providing benefits under the scheme (disregarding any requirements relating to additional voluntary contributions);

“public authority” means—

- (a) a Minister of the Crown (within the meaning of the Ministers of the Crown Act 1975)**(10)**;
- (b) a government department (including any body or authority exercising statutory functions on behalf of the Crown);
- (c) the Scottish Ministers;
- (d) the National Assembly for Wales, or
- (e) a local authority;

“relevant benefits” has the meaning given in section 612(1) of the Income and Corporation Taxes Act 1988**(11)** (interpretation) or, from 6th April 2006, section 393B of the Income Tax (Earnings and Pensions) Act 2003**(12)** (relevant benefits);

“relevant statutory scheme” has the meaning given in section 611A(1) of the Income and Corporation Taxes Act 1988**(13)** (definition of relevant statutory scheme);

“section 615(6) scheme” means a scheme with such a superannuation fund as is mentioned in section 615(6) of the Income and Corporation Taxes Act 1988**(14)** (funds for the provision of benefits in respect of employment outside the United Kingdom);

“a tax approved scheme” means a scheme which is approved or was formerly approved under section 590 or 591 of the Income and Corporation Taxes Act 1988**(15)** (approval of retirement benefit schemes) or in respect of which an application for such approval has been duly made but has not been determined;

“a tax registered scheme” means a scheme which is, or is treated as, registered under Chapter 2 of Part 4 of the Finance Act 2004 (registration of pension schemes).

(3) In paragraph (2), “local authority” means—

- (a) in relation to England, a county council, a district council, a London borough council, the Greater London Authority, the Common Council of the City of London in its capacity as a local authority or the Council of the Isles of Scilly;
- (b) in relation to Wales, a county council or county borough council;
- (c) in relation to Scotland, a council constituted under section 2 of the Local Government etc. (Scotland) Act 1994**(16)** (constitution of councils);
- (d) an administering authority as defined in Schedule 1 to the Local Government Pension Scheme Regulations 1997**(17)**.

(10) 1975 c. 26.

(11) 1988 c. 1; the definition of “relevant benefits” was amended by paragraph 10(1) of Schedule 10 to the Finance Act 1999 (c. 16). Section 612(1) is repealed by Part 3 of Schedule 42 to the Finance Act 2004 (c. 12) with effect from 6th April 2006.

(12) 2003 c. 1; section 393B is inserted by section 249(3) of the Finance Act 2004 with effect from 6th April 2006..

(13) Section 611A was inserted by paragraph 15 of Schedule 6 to the Finance Act 1989 (c. 26) and amended by paragraph 5 of Schedule 5 to the Finance Act 1999. The section is repealed by Part 3 of Schedule 42 to the Finance Act 2004 with effect from 6th April 2006.

(14) Section 615(6) was amended by paragraph 11 of Schedule 10 to the Finance Act 1999.

(15) Section 590 is amended by paragraph 3 of Schedule 6 to the Finance Act 1989.

(16) 1994 c. 39.

(17) S.I. 1997/1612.

(4) Where Part 3 of the 2004 Act ceases to apply to a scheme to which it previously applied, because the scheme satisfies any of the criteria for exemption in paragraph (1), that does not affect any rights or obligations arising before Part 3 ceased to apply.

Exemption connected with winding up

18.—(1) Where the winding up of a scheme begins on or after the commencement date, the exemption provided for in regulation 17(1)(l) is subject to the condition set out in paragraph (2).

(2) The condition referred to in paragraph (1) is that the trustees or managers of the scheme ensure that they receive, before the end of each scheme year following the scheme year in which the winding up of the scheme begins, the actuary's estimate of the solvency of the scheme as at the end of the preceding scheme year.

(3) In paragraph (2)—

“the actuary's estimate of the solvency of the scheme” means—

- (a) except in the case referred to in sub-paragraph (b), an estimate by the actuary of whether, at the end of the relevant scheme year, the value of assets of the scheme to be taken into account under paragraph (1) of regulation 3 exceeded or fell short of the sum of—
 - (i) the cost of purchasing annuities, of the type described in section 74(3)(c) of the 1995 Act⁽¹⁸⁾ and on terms consistent with those in the available market, which would be sufficient to satisfy the liabilities to be taken into account under paragraph (2) of regulation 3, and
 - (ii) the other expenses which, in the opinion of the actuary, would be likely to be incurred in connection with the winding up of the scheme,and the amount of the excess or, as the case may be, the shortfall;
- (b) where the actuary considers that it is not practicable to make an estimate in accordance with sub-paragraph (a), an estimate of the solvency of the scheme at the end of the relevant scheme year made in such manner as the actuary considers appropriate in the circumstances of the case;

“scheme year” means—

- (a) either—
 - (i) a year specified for the purposes of the scheme rules in any document which contains those rules, or
 - (ii) if no such year is specified, the 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 six 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.

Modification of provisions of the 2004 Act

19. Schedule 2 has effect for the purpose of modifying Part 3 of the 2004 Act and these Regulations as they apply in the circumstances specified there.

⁽¹⁸⁾ Section 74(3)(c) was amended by S.I. [2001/3649](#).

Supplementary and consequential provisions, transitional provisions and savings

20.—(1) Schedule 3 has effect for the purpose of making supplementary provisions and consequential amendments connected with the commencement of Part 3 of the 2004 Act and Part IV of the Pensions (Northern Ireland) Order 2005⁽¹⁹⁾ and the coming into force of these Regulations.

(2) Schedule 4 has effect for the purpose of making transitional modifications of the 2004 Act and these Regulations, and saving the effect of repealed provisions of the 1995 Act and provisions revoked by these Regulations.

Revocations

21. The enactments mentioned in Schedule 5 are revoked to the extent specified, subject to the savings in Schedule 4.

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

8th December 2005

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